

ENVIRONMENTAL MANAGEMENT IN KENYA:
A framework for sustainable forest management in Kenya.

Understanding the new Forest Policy and Forests Act, 2005

Authors:

Jael V. Ludeki | George M. Wamukoya | Dominic Walubengo
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Preface

For a long time, the Government has intended to see the state as the prime beneficiary of forests, whether forests are managed as producers of timber revenue or as protected natural resources. Yet, concerns about deforestation and population growth have continued to exert pressure on forest resources. Complicating the question of rights of different communities is the problem of imbalances in Authority and decision-making. Often, those most dependent on forest resources have the least power of access and the most limited role in decision-making.

The Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007 which is the government’s blue print to economic growth and poverty reduction recognizes the importance of forests in national economic growth and its support to productive sectors especially agriculture.

The ERS identifies and highlights some of the major constraints, which have hampered growth in the forest sector. These constraints in addition to other factors they include inadequate Policy, legal and institutional framework, inadequate community participation in the management of the environment and natural resources, insufficient information for informed policy decision-making, weak governance and lack of cheaper alternative sources of energy.

It is against the above background that a new Forest Policy and Forests Act has been formulated. This book aims at providing a simplified version of the forests policy and legislation have been approved and enacted, respectively. The policy identifies critical areas to be addressed if the forest sector is to be revamped and the new Forests Act provides the appropriate legal and institutional framework for sustainable forest management in Kenya.

Jael V. Ludeki

George M. Wamukoya

Dominic Walubengo

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PART 1 A GUIDE TO THE NEW FOREST POLICY, 2005

Content

PART 1

1.0 INTRODUCTION 15

2.0 POLICY MAKING PROCESS 17

2.1 What is Public Policy?	17
2.2 Who formulates Public Policy?	17
2.3 Policy making process	17
2.3.1 Steps of Formulating a Public Policy	17
2.3.2 Main Actors in Public Policy Formulation Process	25
2.3.2.1 The Ruling Party	25
2.3.2.2 Line Ministry	25
2.3.2.3 The Cabinet	25
2.3.2.4 Parliament	26
2.3.3 Civil Society Participation in Formulation of Public Policy	26

3.0 FOREST POLICIES 27

3.1 Background	27
3.1.1 Forests Policy 1968	
3.2 Functions of forests	28
3.2.1 What are the environmental goods and services provided by forests?	28
3.3 Challenges	29
3.3.1 What are the main challenges that necessitated the formulation and adoption of Forests Policy 2004?	29
3.3.2 What actions are proposed to ameliorate the challenges?	30
3.3.3 What are the opportunities?	30
3.3.4 What should Government do?	31
3.4 Goal, Principles and Objectives	31
3.4.1 What is the goal of the policy?	31
3.4.2 What then are the principles underpinning the Forests policy?	31
3.4.3 What is the broad objective of the Forests policy?	32
3.4.4 What are the specific objectives of the Forests policy?	32

3.5 Key Elements of the Forests Policy	33
3.5.1 What are the key elements of the Forests policy?	33
3.6 Categories of forests and their management	33
3.6.1 How many types of forests does the policy recognize?	33
3.6.1.1 Indigenous Forests	34
3.6.1.1.1 What actions does the policy propose to enhance sustainable management of indigenous forests?	34
3.6.1.2 Farm Forestry	34
3.6.1.2.1 Why does the policy encourage farm forestry?	34
3.6.1.2.2 What actions does the policy provide regarding promotion of farm forestry?	34
3.6.1.3 Forest Plantations	35
3.6.1.3.1 What is the main purpose of forest plantations?	35
3.6.1.3.2 What actions does the policy propose to promote sustainable management of forest plantations?	35
3.6.1.4 Dryland Forestry	36
3.6.1.4.1 Why is dryland forestry important in Kenya?	36
3.6.1.4.2 What are some of the major forest products associated with dryland forests?	36
3.6.1.4.3 What actions does the policy propose to improve productivity of dryland forests?	36
3.6.1.5 Local Authority Forests	37
3.6.1.5.1 What are local authority forests?	37
3.6.1.5.2 What measures does the policy provide geared towards enhancing the conservation and management of local authority forests?	37
3.6.1.6 Private Forests	38
3.6.1.6.1 What is the role of private forests?	38
3.6.1.6.2 What measures does the policy propound to promote private forests?	38
3.6.1.7 Roadside Tree Planting	39
3.7 Forests Products and Industries	39
3.7.1 What strategies are embodied in the policies that are geared towards self-sufficiency in timber and other wood products?	39
3.7.2 Of what significance is wood fuel in the lives of Kenyans?	39
3.7.3 What measures does the policy provide to enhance sustainable and efficient production of wood fuel?	39

3.7.4 Of what importance are non-wood forest products to the livelihoods of the people?	40	3.9.2.2 What measures and strategies does the Forest Policy provide geared towards promoting Research in Forestry?	45
3.7.5 What are the examples of non-wood forest products?	40	3.9.3 Education and awareness	46
3.7.6 What measures and strategies does the policy provide to enhance sustainable use of non-wood products?	41	3.9.3.1 What Measures and Strategies does the Forest Policy provide geared towards promoting education and awareness in Forestry?	46
3.7.7 Does the forestry sector related industries contribute to the national economy?	41	3.10 Forest user Rights and Livelihoods	46
3.7.8 What measures and strategies does the policy put in place to improve the efficiency of forests industries?	41	3.10.1 To what extent does the Forest Policy recognize traditional user rights of communities living adjacent to Forest areas?	46
3.7.9 To what extent does the forestry sector contribute to wealth creation?	42	3.10.2 What measures and strategies does the Forest Policy propose aimed at improving the livelihoods of communities who depend on Forests?	47
3.7.10 What strategies does the policy put in place to enhance wealth creation from the forestry sector?	42	3.11 International obligations	47
3.7.11 What opportunities are available for trade in forest products?	43	3.11.1 Does the Forest Policy recognize International obligations in matters relating to Forestry?	47
3.7.12 What measures and strategies are embodied in the policy to strengthen domestic and regional trade in forest products?	43	3.12 Gender and Youth Issues	47
3.8 Legal and Institutional Arrangements.	43	3.12.1 What provisions does the Forest Policy provide to enhance the participation of Marginalized groups such as youth and Women in Forest Management?	47
3.8.1 Forest Sector Legal Reforms	43	3.13 Non-state sector Actors	48
3.8.1.1. What actions does the government intend to take to achieve reforms in the Forest Sector	43	3.13.1 Does Kenya have non-governmental organizations working in the Forest Sector?	48
3.8.2 Institutional Arrangements	44	3.13.2 What is the role of non-state sectors in the conservation and management of Forests in Kenya?	48
3.8.3 Funding for Forest Development	44	3.14 HIV-Aids	49
3.8.3.1 What Funding Opportunities are envisaged to support Forest Sector development?	44	3.14.1 How does the Forest Policy address the issue of HIV-Aids?	49
3.9 Linkages with other Sectors	44		
3.9.1 Co-ordination with related Sectors	45		
3.9.1.1 Is there a need for integrated approach to conservation and Management of forests in Kenya?	45		
3.9.2 Forest Research and Monitoring	45		
3.9.2.1 Does the Forest Policy recognize the importance of Research and Monitoring in Forest Sector Management?	45		

Abbreviations and Acronyms

AWF	- African Wildlife Foundation
CBD	- Convention on Biological Diversity
CBO	- Community Based Organization
CREEL	- Centre for Environmental Research and Education
DFID	- Department for International Development
EAWLS	- East African Wild Life Society
ERS	- Economic Recovery Strategy for Wealth and Employment Creation
FAN	- Forest Action Network
HIV/AIDS	- Acquired Immune Deficiency Syndrome
IUCN	- The World Conservation Union
KEFRI	- Kenya Forestry Research Institute
KFWG	- Kenya Forest Working Group
KWS	- Kenya Wildlife Service
MEA	- Multi-lateral Environmental Agreements
NARC	- National Rainbow Coalition
NEMA	- National Environment Management Authority
NGO	- Non Governmental Organization
WWF	- The Global Conservation Organization. (World Wide Fund for Nature)

1.0 INTRODUCTION

Kenya's first forest policy was published in 1957. The policy primarily dealt with reservation, protection of the forest estate and sustainable exploitation of forests. It also covered afforestation and conservation of forests in "African areas" and proper management of privately owned forests. In addition, it recognized the value of forests for public amenity, recreation and as habitat for wildlife.

Forest policy has undergone a series of changes since then, but largely retaining the reservation and protection of the forest estate at the exclusion of local communities. The last policy review was in 1968, but this contained limited shift from the traditional forest management as espoused in the 1957 Forest Policy. Furthermore it contained limited guidance on principles and strategies for implementation, especially on forests outside the gazetted state forests and on the balance between production and conservation. It is also silent on the role of various stakeholders especially local communities, private sector and NGOs/CBOs in forestry and the linkages with other sectors and land uses.

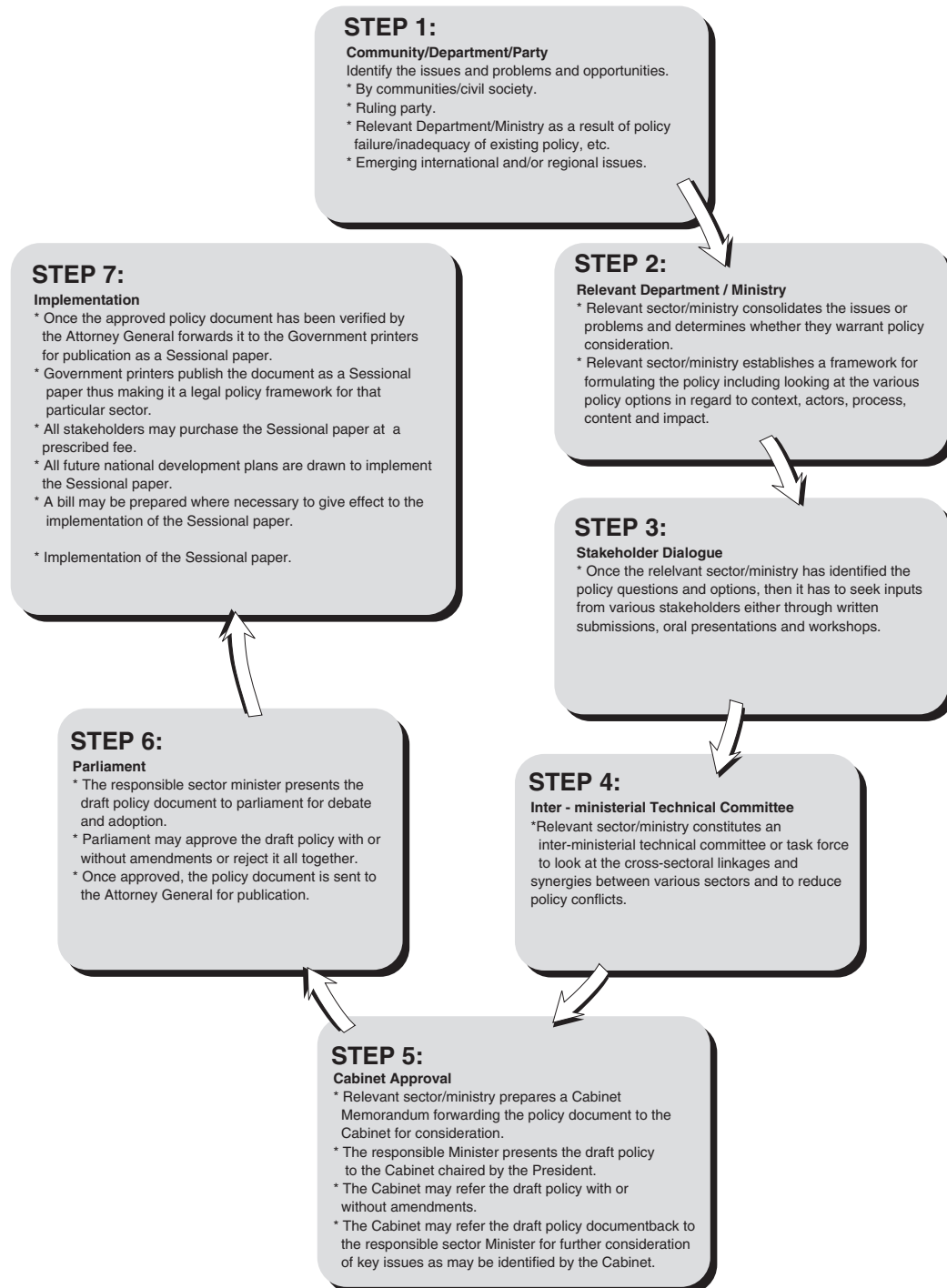
There is increasing concern about the deteriorating state of forests in the country. Natural forest cover is receding; ecological services are declining; there is increasing pressure on forest land and increasing demand on forest products; management capacity is limited and institutional constraints in the sector.

Given these concerns and wider changes which have led Kenya's forest cover to sink to as low as 1.7% way below the internationally recommended 10%, and given the importance of forests for the country and its people, a number of factors underlie the decline in the forest resource base. These include policy deficiencies, market failures, poor regulation, population growth and migration, rural poverty and corruption among the political elite.

Furthermore, the government also recognizes that a very wide range of people have a stake in the forest sector, people whose interests are not being fully addressed, and whose roles and responsibilities need to be defined and coordinated.

This new Forest Policy is designed to respond to the changing context, provide directions for the sustainable development of the forest sector, and enhance sustainable forest conservation by integrating local communities in conservation and management of forest resources.

POLICY MAKING IN KENYA



2.0 POLICY MAKING PROCESS

2.1 What is Public Policy?

A public policy is a statement of the Government guiding principles and goals in addressing a public issue. The policy provides for a means for citizens to hold their Government to account for its actions concerning issues of public interest. A public policy is not a law and cannot be enforced in a court of law.

For a public policy to be enforceable, there must be a law to give effect. Policies can, however exist on their own and vice versa. Examples of public policies include sectoral policies such as the Forest Policy of 1968, Water policy of 1999, and Wildlife Policy of 1975 among others.

2.2 Who formulates Public Policy?

The line Government sector is responsible for initiating and managing the public policy formulation process. Stakeholders including civil society, local communities and professional groups have a right to contribute during the formulation of a public policy after identifying the problem in society that requires Government commitment and direction. The policy formulation begins with the identification of a problem or issue at the grassroots and it will end when the policy document reaches Parliament for discussion and approval as a Sessional Paper.

2.3 Policy making process

2.3.1 Steps of Formulating a Public Policy

2.3.1.1 Step1: Problem Diagnosis

(a) Identification of a problem/issue

At this stage a problem or issue is defined and some background information is given to explain how that problem comes about and attempts to suggest courses of action to avoid disaster or further catastrophe. There are a number of instances in which a problem/issue may be identified. These include:

- (i) in the course of implementing an existing policy during which an issue arises that cannot be effectively handled within the existing policy framework (*evaluation of existing policies/inadequacy or policy failure*);
- (ii) new political and economic dispensation (*economic change and political realignment*);

(iii) pressure of interest groups on a particular issue (*grass root groups, NGOs/CBOs, private sector, professional associations*); and

(iv) new developments arising from bilateral and multilateral instruments e.g. globalization, Millennium Development Goals (MDGs), Johannesburg Plan of Implementation and multilateral environmental agreements (*emerging international and regional instruments*).

(b) Key underlying issues

Thorough analysis of the political, economic and social shortcomings of current policies provides the foundation for constructive discussions of policy options. While good analysis doesn't guarantee good policies, the converse is seldom true. Problem diagnosis involves effective planning to ensure that analytical approaches are credible and the analysis is conducted in a timely manner within resource constraints. The analysis should not only be of the highest quality given resource limitations, but the process of conducting the analysis, vetting the results and communicating the results in appropriate public forums is important in establishing the credibility of the analysis.

(i) Where evaluation ends and problem diagnosis begins: In many cases, evaluation and problem diagnosis are part of the same analytical effort. This may occur where there is widespread agreement that current policies are performing poorly, even if this agreement is based on anecdotal or qualitative evidence. The analysis then might include a rigorous quantitative evaluation to (a) reinforce or affirm the conventional wisdom related to current policies and (b) be a catalyst for serious discussions with policymakers and stakeholders on policy reforms and the problems or obstacles that have to be overcome and (c) identify critical information gaps.

(ii) Having strong analytics: The value of solid analytics in diagnosing problems with current policies is obvious; discussions and subsequent decisions based on good information surpass those based on flawed or incomplete information. While good analysis does not always lead to good policy, constructive policy is more difficult in the absence of reliable information.

(iii) Choosing analytical approaches: The selection of analytical approaches can be important in gaining the support of local agencies and staff for the analysis. The use of analytical models that are widely accepted or that can be provided to research and industry counterparts to carry out additional or follow-up analysis can increase credibility.

(iv) Drawing on local expertise: Involving local experts in analytical work often contributes to greater usefulness, acceptance and impact of a policy, and may also promote replication, both domestically and internationally. The intensive involvement of local experts serves as an important capacity building technique and offers important long term results. Furthermore, maximizing the involvement of key local stakeholders in as many facets of the work as possible usually results in greater acceptance of the results and contributes to a more open dialogue on new policies.

(v) Multidisciplinary perspectives: Solid analysis is needed to identify and include all of the relevant facets of environmental problems and the likely impacts of possible solutions. Frequently, multidisciplinary analysis is required. Physical and biological sciences describe environmental systems' response to pollution; engineering identifies technical problems related to the generation of pollutants; economics can analyze and quantify investments of various stakeholders; institutional analysis helps to determine the roles and responsibilities of government and NGOs; and the social sciences examine human behaviour patterns and interaction as they relate to environmental challenges.

(vi) Information dissemination: Effectively communicating the results of analysis is as important as the analysis itself. If results are poorly communicated and not understood by other policy dialogue participants, the probability of its acceptance and impact are greatly diminished.

(vii) Drawing on experiences in other regions and countries: Before designing a new policy, it may be possible to improve the design by anticipating potential problems. As there may be no current problems in the area covered by the new policy, a surrogate problem diagnosis might involve drawing from analyses in other regions or countries.

2.3.1.2 Step 2: Proposes the policy:

(a) Policy design

The relevant sector / ministry usually establishes either an internal committee or a multi sectoral task force to frame the problem and consider possible policy options. In some instances, a consultant may be hired to undertake an in-depth analysis before recommending policy options to be considered. It is during this stage that sources of information or experience to shape various policy options are teased out. Often this opens up what the basic assumptions are. However, for most policies, trade-offs are inevitable; addressing environmental problems will require a careful specification of the economic and other costs and specific actions to minimize these costs.

(b) Key underlying issues

As steward of the natural resources within a country's boundaries and responsible for environmental protection and natural resources, government is accountable for decisions that contribute to the quality and value of these resources and the environmental services of both national and global importance. Policymaking is a core management function of government. By their nature, policies establish rights of access to resources, conditions and limits of resource use, and grant property rights to the benefits that may be obtained to the holders of these resources.

(i) Macroeconomic linkages and incentives: It is important to take into account of economic realities in designing environmental and natural resource policies. In addition, policies may perform poorly in practice for a number of reasons including the fact that they

provide inadequate incentives (or disincentives) to comply. Invariably, policies will result in certain and predictable directional changes in stakeholder performance. It is therefore important to fully assess the structure of incentives and the factors that may reduce a policy's effectiveness.

(ii) Spatial dimension of environmental problems: Today's major global and local environmental problems-global climate change, loss of biological diversity, unsustainable land use, natural resource depletion, air and water pollution, the demographic resource imbalance-all require an action that cut across national, sectoral and institutional boundaries.

(iii) Appropriate resource pricing and cost recovery: Many opportunities exist to increase efficiency, promote equity and conserve natural resources through appropriate pricing and cost recovery. Appropriate resource pricing creates the opportunity to extend environmental services to poor communities. They also maintain the resilience of the system to allow it to continue in the wake of extreme events. Moreover, the need to cover expenses out of revenues-instead of the central government's budget-inspires system managers to accurately account for costs and encourages efficient design and operation of physical assets.

(iv) Conflicting policies: The effectiveness of environmental and natural resource policies may be diminished because they conflict with other policies. Often, these conflicting policies have been promulgated and justified on economic grounds, resulting in trade-offs between environmental and economic goals.

(v) Taxonomy of implementation barriers: Implementation barriers may decrease the effectiveness of policy reforms. Generally, three players have key roles in policy implementation: government institutions that facilitate implementation, implementing agencies and organizations and stakeholders. Each group can make a significant contribution to the policy process, but each also has the ability to reduce the effectiveness of policy reform. Each group faces potential barriers which must be addressed at the policy design stage.

2.3.1.3 Step 3: Stakeholder dialogue/inputs:

This is the most important stage that opens the policy formulation process to various stakeholders and interest groups. It is useful to remember that 'interests' or practices or stakeholders when looked at under the microscope are just aggregations of individual choices.

At this stage, stakeholders may reinforce the policy option and patterns of interests, but they can also gradually change them. At times stakeholders – understood as both individuals or organizations especially CBOs, NGOs, business associations and professional bodies – can through their choices and strategies make quite a difference on the proposed policy options. They can do this by choosing one option over another or by proposing new options altogether which reconcile contradictory interests.

The best way of informing policy options is to *have a clear and visible success story* to present to policy-makers. Having good documentation of success stories ready can help

when it comes to making policy choices. This is a function that could be played effectively by civil society organizations.

The final document that reflects inputs by the various stakeholders' views is put together by the relevant sector / ministry for presentation to an inter-ministerial committee.

2.3.1.4 Step 4: Review by Inter-Ministerial Technical Committee:

This stage is important in ensuring that there are cross-sectoral inter-linkages between policies to avoid obvious contradictions. It is at this stage that sectoral complexities and uncertainties are addressed to ensure consistency in public policies especially those that traverse crosscutting issues.

2.3.1.5 Step 5: Presentation and Adoption by the Cabinet:

The sector ministry before presenting the Draft Policy for approval by the Cabinet prepares a Cabinet Memorandum outlining the basis upon which the new policy was developed with highlights of key milestones that the new policy aims to achieve. The Cabinet may approve the draft policy in its present form or with amendments or defer it for further enrichment where additional input is required. Where the Cabinet approves the policy document with or without amendments, it paves way for the said draft policy to be prepared for presentation to Parliament by the responsible sector minister for debate and approval. In instances where the Cabinet defers or rejects the draft policy, then the responsible minister shall be compelled to address issues raised by the Cabinet before the same could be taken back to the Cabinet for consideration.

2.3.1.6 Step 6: Presentation and adoption by Parliament:

Once the Cabinet has approved the draft policy, then the responsible sector minister in collaboration with the Attorney General's office will prepare it for presentation in Parliament for debate and adoption. Parliament may approve with or without amendments or reject the policy. Where Parliament adopts the policy it then moves to final stage where it is given a Sessional Paper before being published by the Government Printers. In instances where Parliament rejects the policy then the responsible sector minister will have to wait for a period of six months before the same policy could be brought to Parliament. It is at this stage that parliamentary committees become important tools for closer scrutiny of the draft policy.

2.3.1.7 Step 7: Publication as Sessional Paper:

Once the approved policy has been given a sessional paper number it is published by the Government Printers and made available to members of public and all other stakeholders at a prescribed fee. Once published, the Sessional Paper becomes an important instrument that shall guide the operations in that particular sector. For example the current Forests Policy is a Sessional Paper Number 3 of 1968.

2.3.1.8 Step 8: Policy Implementation:

(a) The quest for policy implementation:

The ultimate test of a policy is its implementation, during which agencies strive to meet the desired goals elaborated in the policy. Even if all stakeholders believe that the policy emerging from the design stage provides optimal incentives to achieve desired environmental or natural resource goals, many things can go wrong during implementation. In many countries including Kenya, local institutions (both government and community) play a larger role in implementing policy than in designing policy. A lack of local support and commitment may derail policies. In addition, effective implementation requires resources and sustained commitment to monitor and enforce policies.

(b) Key underlying issues:

Once policy is approved, all actors should be encouraged to prepare an implementation strategy or plan. Such plans serve a useful role in establishing compliance or implementation schedules and helping implementers identify key gaps in institutional capabilities and funding. Key underlying issues in implementation are:

(i) Capitalizing on the momentum of design: The design stage leading up to approval of a policy is often characterized by intense last minute negotiations and mobilization of legislative support. Practical issues relating to implementation budgets, compliance planning and capacity building are put aside to concentrate efforts on approval of the policy. Once the policy is approved, stewardship for the policy shifts to implementing government agencies and institutions. A challenge for implementing bodies is to capitalize on the support and attention that various decision makers and stakeholders have focused on design. The development of a comprehensive strategy for implementing the policy may aid in focusing attention on resource needs and institutional strengthening requirements.

(ii) Implementation Strategy: Some problems that need to be addressed in developing implementation strategies include the following:

• **Implementer incentives:** One of the major difficulties is providing appropriate incentives for implementing agencies and staff.

• **Lack of transparency and accountability:** The public can be an important ally of agencies in their implementation efforts provided the public has access to information and is allowed to participate in the implementation of policies. By conducting implementation activities openly and transparently and providing public access to information on the performance of the regulated communities, implementers can increase their accountability with the public and legitimize their enforcement role with stakeholders. Mobilizing recipients of policy benefits to make effective demands on policy implementers and to provide feedback to policy monitors is another way to deal with problems of unresponsiveness, sloth and slip-page.

• **Devolution of management responsibility without adequate resources:**

Central authorities have increasingly delegated or decentralized systems for environmental protection and natural resources management to decentralized entities such as districts. Such delegation may be motivated by a desire to reduce demands on central budgets or a recognition of the comparative advantage of local management compared to central management. In many instances, however, the transfer of these responsibilities has not been accompanied by adequate funding to cover local costs.

• **Weaknesses in stakeholder capacity:** A potentially weak link in the implementation process is the limited capacity of stakeholders to respond to incentive structures associated with the new policy. It is therefore critical that before implementing a new policy, appropriate capacity building of stakeholders be undertaken. However, before providing capacity building support to stakeholders, it would be useful to identify barriers that limit their ability to respond effectively to the new challenges posed by the new policy.

2.3.2 Main Actors in Public Policy Formulation Process

2.3.2.1 The Ruling Party

Normally the Government of the day implements the policy of the ruling party. Because of that the ruling party plays a big role in influencing public policy. In fact, most Government policies are made out of the policies of the ruling party. For example, the Economic Recovery Strategy for Employment and Wealth Creation reflects the NARC Manifesto. However, it is important to note that both the public and civil society Organizations including NGOs can influence the public policies through lobbying the various parties to include those interests in their manifestos.

2.3.2.2 Line Ministry

The Line Ministry identifies the problem and issue and sets out to formulate a public policy to help the Government to provide guidance and directions on how the problem or issue ought to be handled.

2.3.2.3 The Cabinet

The Cabinet, which comprises of all ministers under the chairmanship of the President, is the main body that advises the president on all matters of the Government, including public policy. The minister responsible for a particular sector policy normally puts the proposed policy before a cabinet meeting for discussion accompanied by a cabinet memorandum that outlines the major aspects of the policy, its need and envisaged achievements if adopted. The Cabinet may adopt the policy with or without amendments or may reject the proposed policy altogether. Once the Cabinet has approved the policy, the minister responsible for the sector policy then presents the policy to Parliament.

2.3.2.4 Parliament

Parliament has the overall responsibility of adopting a Sessional Paper. The minister responsible for a particular sector policy presents the policy before the House for consideration and adoption. Parliament may have the policy document looked carefully by the relevant Parliamentary Departmental Committee, in this case the Departmental Committee on Agriculture, Lands and Natural Resources. At the Committee stage the stakeholders may suggest areas for improvement.

The Committee then presents its report to the House after which the House may adopt the policy with or without amendments or reject the policy altogether. Upon adoption of the policy by Parliament, the line ministry in collaboration with the Attorney General's Chambers will cause the new public policy to be published as a Sessional Paper by the Government Printers for implementation and distribution.

Once published as a Sessional Paper, any interested party may purchase a copy at a prescribed fee from the Government Printers.

2.3.3 Civil Society Participation in Formulation of Public Policy

Civil society is an important group that can help the government to formulate policies to incorporate the community voice. In this regard, civil society can prepare local communities to identify policy questions that will help address their needs, interests and aspirations for consideration policymakers. Furthermore, civil society organizations are best placed to build human and institutional capacities of local communities to enable them effectively participate in forest policy dialogue and where appropriate management of forest resources.

3.0 FOREST POLICIES

3.1 Background

The first forest policy was written in 1957. It covered reservation, protection of the forest estate and sustainable exploitation of forests. Afforestation and conservation of forests in 'African areas' were to be encouraged, as was proper management of privately owned forests. The value of forests for public amenity and wildlife was also recognized.

The Forests policy was revised with a few modifications after independence in A Forest Policy for Kenya in 1968. The 1968 Forest Policy had a number of objectives; These include:

- (a) reservation of forest areas for catchment protection in terms of soil and water conservation, and to provide timber and other forest produce;
- (b) protection of forests by strict control of fire and grazing, and by exclusion of private rights in gazetted forests;
- (c) management of the forest estate on a sustained yield basis as far as was consistent with the primary aims of forest reservation;
- (d) development of forest industry;
- (e) provision of employment, in particular under the 'shamba' system for reforestation and forest maintenance;
- (f) designation of forest areas to be managed by county councils especially those under trust land;
- (g) establishment of private forest including farm woodlots, for protection as well as production;
- (h) promotion of recreation and the conservation of flora and fauna;
- (i) promotion of research and education; and
- (j) provision of adequate funds for the implementation of the forest policy.

That notwithstanding, the 1968 forest policy focused on catchment management and timber production, with strong government control of the sector.

3.2 Functions of forests

3.2.1 What are the environmental goods and services provided by forests?

Forests contribute diverse goods and services. These include:

(a) Ecological Importance

- Restoration of soil productivity;
- Reduction of pests and weed population;
- Regulation of water flows and quality;
- Reduction of soil erosion and increased wind protection;
- Maintenance of biodiversity;

- Carbon sequestration;
- Enhancement of biodiversity by providing a niche for ecosystems requiring high forests;
- Habitat for multipurpose agro-ecosystems; and
- Agricultural and/or ranching reserve.

(b) Socio-economic and Cultural Importance

- Edible fruits and animal protein;
- Food plants, medicines, stimulants, etc;
- Local building materials, fuel, materials for domestic use;
- Timber of commercial and industrial value, fibres and fuel;
- Germplasm of useful species;
- Grazing and fodder; and
- Cultural sites for local communities.

3.3 Challenges

3.3.1 What are the main challenges that necessitated the formulation and adoption of Forest Policy 2005?

The main challenges that necessitated the formulation and adoption of a new Forest Policy include, but not limited to:

- (a) declining forest cover due to poor management;
- (b) competing land use;
- (c) increasing demand for forest products especially wood fuel, timber etc;
- (d) undervaluation of forest resources for their services;
- (e) unsustainable exploitation practices especially forest plantations;
- (f) demand for community participation in the conservation and management of forest resources;
- (g) developments in international arena for sustainable forest management; and
- (h) intra and inter-generational equity.

3.3.2 What actions are proposed to ameliorate the challenges?

The policy proposes a number of actions to ameliorate the challenges in the forest sector.

These actions include:

- (a) promote the sustainable management of forests for climate amelioration, soil, water and biodiversity conservation as well as wood production;
- (b) carry out inventories and valuation of forest resources and their utilization to generate accurate information for decision making;
- (c) empower local communities to manage forests through community forest associations;
- (d) ensure that forest plantations are sustainably managed to realize their maximum potential;
- (e) support forest management which will embrace preservation of religious and cultural sites, traditional medicinal sources;
- (f) protect and manage water catchments and habitats for endemic and threatened species of flora and fauna;

- (f) support the formulation of criteria and indicators for sustainable forest management; and
- (g) promote good governance in the forest sector.

3.3.3 What are the opportunities?

The opportunities are:

- (a) growing support for community control over natural resources;
- (b) promising markets (including foreign exchange);
- (c) increased farm forestry.
- (d) emerging devolution and decentralization of management of natural resources to the local level ; and
- (e) wealth and employment creation.

3.3.4 What should Government do?

The Government should do the following:

- (a) give communities control over forest resources and encourage their equitable distribution;
- (b) avoid policies that encourage forest destruction;
- (c) provide financial, marketing and technical services for communities and small forest enterprises;
- (d) bring livelihood and landscape approaches into forest conservation efforts;
- (e) address the root causes of conflict; and
- (f) improve the knowledge base and raise awareness.

3.4 Goal, Principles and Objectives of the New Forest Policy, 2005

3.4.1 What is the goal of the Forest Policy, 2005?

The long-term goal of the Forest Policy, 2005 is to “*enhance the contribution of the forest sector in the provision of economic, social and environmental goods and services.*”

3.4.2 What then are the principles underpinning the Forest policy?

The following principles underpin the policy:

- (a) integrated management;
- (b) traditional and cultural values;
- (c) international cooperation;
- (d) stewardship;
- (e) community participation;
- (f) user pays principle;
- (g) intra and intergenerational equity; and
- (h) market value of forest products.

3.4.3 What is the broad objective of the Forest Policy?

The broad objective of the Forests Policy is to “provide continuous guidance to all Kenyans on the sustainable management of forests.”

3.4.4 What are the specific objectives of the Forest Policy?

The specific objectives of the policy are to:

- (a) contribute to poverty reduction, employment creation and improvement of livelihoods through sustainable use, conservation and management of forests and trees;
- (b) contribute to sustainable land use through soil, water and biodiversity conservation and tree planting through sustainable management of forests and trees;
- (c) promote the participation of the private sector, communities and other stakeholders in forest management to conserve water catchment areas, create employment, reduce poverty and ensure the sustainability of the forest sector;
- (d) promote farm forestry to produce timber, wood fuel and to supply wood and non-wood forest products;
- (e) promote dryland forestry to produce wood fuel and to supply wood and non-wood forest products;
- (f) promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches; and
- (g) promote forest research, training and education to ensure a vibrant forest sector.

3.5 Key Elements of the Forest Policy

3.5.1 What are the key elements of the Forest Policy?

The key elements of the policy are:

- (a) expanded mandate in the management of all types of forests;
- (b) involvement of adjacent forest communities and other stakeholders in forest conservation and management;
- (c) ecosystem approach to forest management planning;
- (d) provision of appropriate incentives to promote sustainable use and management of forest resources;
- (e) framework for a forest legislation; and
- (f) establishment of Kenya Forest Service.

3.6 Categories of forests and their management

3.6.1 How many types of forests does the policy recognize?

The policy categorizes Kenya’s forests into six (6) categories. These are:

- (a) indigenous forests;
- (b) farm forests and trees;
- (c) plantations;
- (d) dryland forests;
- (e) local authority forests; and
- (f) private forests.

3.6.1.1 Indigenous Forests

3.6.1.1.1 What actions does the policy propose to enhance sustainable management of indigenous forests?

The policy proposes a number of actions aimed at enhancing sustainable management of indigenous forests. Among the proposed actions include to:

- (a) ensure that all existing indigenous forest reserves on public lands remain reserved;
- (b) determine the status of indigenous forests and take appropriate restoration measures where necessary;
- (c) promote participatory forest management approaches to ensure the participation of communities and other stakeholders in the management of indigenous forests;
- (d) ensure through “user pays principle” that users of benefits derived from indigenous forests contribute to their conservation and management; and
- (e) promote insect farming and other sustainable uses of biodiversity found in the indigenous forests.

3.6.1.2 Farm Forestry

3.6.1.2.1 Why does the policy encourage farm forestry?

The policy recognizes the importance of farm forestry in reducing pressure on indigenous forests. Farm forestry is important as it diversifies farm production and provides both subsistence and incomes through such products as timber / fuel wood and fodder. In addition, farm forestry contributes to soil and water conservation besides soil fertility.

3.6.1.2.2 What actions does the policy provide regarding promotion of farm forestry?

The policy proposes a number of actions aimed at promoting farm forestry. These include:

- (a) ensuring that forests and trees on private lands are established and managed using sound business principles and according to landowners priorities;
- (b) ensuring that landowners are supported through appropriate incentives including partnerships to have sufficient land under tree cover;
- (c) ensuring that there is a conducive environment for processing, pricing and marketing of farm forestry products;
- (d) ensuring that adequate information, education and training on conservation and tree planting is provided; and
- (e) ensuring that there is improvement of planting materials to improve quality and shorter growing rotations.

3.6.1.3 Forest Plantations

3.6.1.3.1 What is the main purpose of forest plantations?

The policy espouses the point that all forest plantations on public lands are primarily for the production of wood and other forest products and services for commercial purposes.

3.6.1.3.2 What actions does the policy propose to promote sustainable management of forest plantations?

The policy proposes a number of actions aimed at promoting sustainable management of forest plantations. These include:

- (a) ensuring that private sector is encouraged to develop and manage plantations through appropriate incentives such as land leases, agreements and concessions;
- (b) ensuring that forest plantations are efficiently managed and operated on a commercial basis; and
- (c) ensuring that the species base is broadened through special consideration of indigenous species as well as the requirement of the market.

3.6.1.4 Dryland Forestry

3.6.1.4.1 Why is dryland forestry important in Kenya?

Arid and semi arid lands in Kenya on which dryland forests are found account for 80% of Kenya's total land surface. These areas are increasingly coming under imminent threat due to population pressure, increased livestock stocks and droughts. In addition, dryland forests are important sources for various types of forests products that are for both local and export markets.

3.6.1.4.2 What are some of the major forest products associated with dryland forests?

There are number of forest products associated with dryland forests. These include:

- (a) gums and resins;
- (b) aloe;
- (c) frankincense;
- (d) indigenous fruits;
- (e) honey;
- (f) timber and
- (g) woodfuel, especially charcoal

3.6.1.4.3 What actions does the policy propose to improve productivity of dryland forests?

In order to improve productivity of dryland forests, the policy proposes a number of actions. These include:

- (a) sustainable management and conservation of dryland forests and other types of woody vegetation in drylands for improved production of wood and non-wood forest products;
- (b) support the establishment of forest based micro-enterprises and community associations;
- (c) support the rehabilitation of degraded and over-exploited dryland forest areas by community forest associations;
- (d) intensify research, technology development, education and training in dryland forestry;

- (e) promote tree planting in the drylands;
- (f) support community forest associations to develop management plans and manage community forests; and
- (g) promote sustainable commercial production of charcoal.

3.6.1.5 Local Authority Forests

3.6.1.5.1 What are local authority forests?

Local authority forests are forests found on trust lands and other lands under the jurisdiction of local authorities including urban forests such as arboreta.

3.6.1.5.2 What measures does the policy provide geared towards enhancing the conservation and management of local authority forests?

The policy outlines a number of measures directed towards enhancing conservation and management of local authority forests. These measures include to:

- (a) ensure sustainable management of forests and other types of woody vegetation on local authority lands to satisfy local forest-based needs and for biodiversity conservation;
- (b) promote close working relationships among local authorities, the Forest Service, regional authorities, local communities, NGOs and other stakeholders;
- (c) support community forest associations to establish and manage community forests;
- (d) enhance capacity of local authorities in forest conservation and management; and
- (e) promote forests in urban areas for aesthetic and recreational values.

3.6.1.6 Private Forests

3.6.1.6.1 What is the role of private forests?

Private forests play a significant role in the provision of forest goods and services besides supplementing wood supply from state forests.

3.6.1.6.2 What measures does the policy propound to promote private forests?

The policy proposes a number of measures aimed at promoting private forests. The measures include:

- (a) determining prices of forest products according to market forces;
- (b) provision of technical advice to private forest owners on appropriate forestry practices and assessment procedures;
- (c) establishment of funding mechanisms for investment in the sector; and
- (d) provision of tax incentives for acquisition of efficient processing technologies.

3.6.1.7 Roadside Tree Planting

3.6.1.7.1 Does the policy encourage roadside tree planting?

Yes, because trees planted along the boundaries of road reserves are important for aesthetic and shade effects to travelers.

3.6.1.7.1 Of what importance are roadside trees?

A belt of amenity trees planted at the interface of road and private lands improves the scenery on both sides of the road besides marking the boundaries between the road reserves and private lands.

3.6.1.6.2 What measures does the policy provide to enhance roadside tree planting in Kenya?

The policy proposes a number of strategies and actions to enhance sustainable and efficient production of wood fuel. This includes to establish an amenity belt of appropriate tree species on both sides of the road reserves.

3.7 Forests Products and Industries

3.7.1 What strategies are embodied in the policies that are geared towards self-sufficiency in timber and other wood products?

The policy underscores efficient production and utilization in wood-based industries.

3.7.2 Of what significance is wood fuel in the lives of Kenyans?

More than 70% of Kenyans depend on wood fuel especially charcoal as source of energy. Much of the charcoal sold is produced through unsustainable and inefficient methods.

3.7.3 What measures does the policy provide to enhance sustainable and efficient production of wood fuel?

The policy proposes a number of strategies and actions to enhance sustainable and efficient production of wood fuel. These include to:

- (a) promote sustainable production and efficient utilization of wood fuel;
- (b) promote efficient wood energy technologies and the use of alternative forms of energy; and
- (c) regulation of the production and marketing of charcoal.

3.7.4 Of what importance are non-wood forest products to the livelihoods of the people?

Non-wood forest products are important sources of food and income to rural communities.

3.7.5 What are the examples of non-wood forest products?

Some of the examples of non-wood forest products include:

- (a) gums and resins;
- (b) honey;
- (c) essential oils;
- (d) frankincense;
- (e) myrrh;
- (f) fibres;
- (g) medicinal and aromatic plants; and
- (h) dye and tanning materials.

3.7.6 What measures and strategies does the policy provide to enhance sustainable use of non-wood products?

The policy prescribed a number of measures and strategies which if implemented would ensure sustainable use of non-wood forest products. The measures and strategies are to:

- (a) promote sustainable production and utilization of non-wood forest products;
- (b) encourage rural communities to establish non-wood based forest product enterprises and processes; and
- (c) intensify research and training in non-wood forest products with the aim of domesticating commercially viable species and increasing their ecological range.

3.7.7 Does the forestry sector related industries contribute to the national economy?

Yes. Forest industries contribute to the provision of products such as construction timber, paper, transmission poles and fuel wood. These products greatly contribute to the country's economy, accounting for more than 2% of G.D.P. They also provide employment opportunities in various sectors thereby contributing to improved income and livelihoods of most Kenyans.

3.7.8 What measures and strategies does the policy put in place to improve the efficiency of forests industries?

The policy proposes a number of measures and strategies all aimed at improving efficiency of forest industries. These are to:

- (a) promote efficient forest-based industries to guarantee high quality products so as to satisfy domestic demands and contribute to the export earnings; and
- (b) encourage wood based industries to manufacture diverse finished products for local and export market to take advantage of the country's regional position and good infrastructure development.

3.7.9 To what extent does the forestry sector contribute to wealth creation?

The policy identifies areas where the forestry sector contributes to wealth creation. These include:

- (a) through tree growing which improves soil and water conservation and soil fertility contributing to increased agricultural production and hence increased income;
- (b) development of forest-based industries and promotion of eco-tourism;
- (c) intensified farm forestry, commercial production of non-wood products and out-grower tree schemes support forest industries and enhance industrialization and employment creation; and
- (d) increased seedling production creates employment opportunities for many youth and women groups.

3.7.10 What strategies does the policy put in place to enhance wealth creation from the forestry sector?

To enhance the contribution of forest sector to economic development and wealth creation, the policy proposes a number of strategies. These include to:

- (a) promote forest-based industries that contribute to the national economy;

- (b) develop recreation and eco-tourism facilities;
- (c) promote creation of out-grower tree schemes through appropriate funding mechanisms;
- (d) develop industries through appropriate investment incentives that encourage efficient use of raw materials, efficient technologies and the protection of the environment; and
- (e) liberalize the production of seedlings.

3.7.11 What opportunities are available for trade in forest products?

The policy identifies trade potential of forest products in domestic and export markets.

These products include:

- (a) timber;
- (b) paper products;
- (c) carvings;
- (d) gums and resins;
- (e) charcoal; and
- (f) medicines.

3.7.12 What measures and strategies are embodied in the policy to strengthen domestic and regional trade in forest products?

The policy proposes a number of measures and strategies that would strengthen domestic and international trade in forest products. These measures and strategies include:

- (a) promoting value added forest products;
- (b) developing the necessary infrastructure for non-extractive uses of forests; and
- (c) promoting forests products certification and labeling for wide market accessibility.

3.8 Community Participation

3.8.1 What is the role of local communities in the conservation and management of forests?

The policy recognises the interdependence of local communities' livelihoods on forests for spiritual, cultural and material benefits. Some of the benefits include water, medicinal herbs, wood carving, honey, fuel wood, construction material and fodder.

3.8.2 What measures and strategies does the policy propose aimed at enhancing community participation in the conservation and management of forests?

In recognition of the central position of forests in livelihoods of the rural communities, the policy proposes a number of measures and strategies. These measures and strategies include:

- (a) support and establishment of community forests through which communities will be able to participate in the conservation and management of forests in their vicinity;
- (b) encourage sustainable use of forest resources by communities;
- (c) protect the traditional interests of local communities customarily resident within and around a forest; and
- (d) recognize cultural practises that are compatible with sustainable forest management.

3.8.3 What provisions does the policy provide to enhance the participation of marginalised groups such as youth and women in forest conservation and management?

The policy recognises the importance of marginalized groups especially youth and women in forest conservation and management. It proposes a number of measures and strategies to redress the problem. These measures and strategies include:

- (a) enhance training and education opportunities in forestry for youth and women;
- (b) endeavour to deliberately involve youth and women in participatory forest management and;
- (c) encourage the youth to take more responsibility in the management of forests to ensure that future generations are catered for when decisions affecting forests are made.

3.9 Cooperative governance in the Forest Sector

3.9.1 Legal and Institutional Arrangements

3.9.1.1 Forest Sector Legal Reforms

3.9.1.1.1 What actions does the government intend to take to achieve reforms in the Forest Sector?

Under the policy, the Government acknowledges the weak legal framework that did not allow the participation of stakeholders especially private sector and communities in the management of forest resources in Kenya. As a consequence, the policy provides enabling framework for sustainable forest management. Critical reform measures proposed by the Government include:

- (a) enactment of appropriate legislation to regulate the forest sector on a sustainable basis;
- (b) monitoring and ensuring the implementation of the new Forest Policy; and
- (c) encourage the establishment of an active and effective forest professional association to self regulate the profession.

3.9.2 Institutional Arrangements

3.9.2.1 Are there provisions in the forest policy for the establishment of an institutional framework to address institutional inadequacies in the 1968 Forest Policy and Legislation?

Yes. The forest policy recognizes the cross-cutting nature of the forest sector especially agriculture, energy, water, industry, wildlife, education and economic development planning. As a consequence, the policy proposes:

- (a) the establishment of Kenya forest service a semi-autonomous government agency that will have overall responsibility of sector coordination; and
- (b) putting in place appropriate institutional arrangements to coordinate and enhance integrated approach to conservation and management of forestry sector.

3.9.3 Funding for Forest Development

3.9.3.1 What funding opportunities are envisaged to support Forest Sector development?

The policy recognizes the challenge posed by inadequate funds to support an efficient system to conserve and manage forest resources in Kenya. In this regard, the policy identifies different funding sources in Kenya. These are:

- (a) retention of revenue collected from plantation forests by the forest management authority;
- (b) retention of levies and royalties imposed on services such as water catchment conservation, land leases and concessions;
- (c) funds voted for by the parliament;
- (d) grants from development partners and other agencies; and
- (e) access to funds available through international funding mechanism such carbon sequestration, conservation of biological diversity, protection of water catchments and combating desertification.

3.9.4 Linkages with other Sectors

3.9.4.1 Co-ordination with related Sectors

3.9.4.1.1 Is there a need for integrated approach to conservation and Management of forests in Kenya?

Yes. There are a number of institutions whose mandate also covers forests. Such institutions include:

- a) National Environmental Management Authority (NEMA);
- b) Kenya Wildlife Service (KWS);
- c) National Museums of Kenya (NMK);
- d) Local Authorities; and
- e) Kenya Forest Research Institute (KEFRI) among others.

Regrettably, there is relatively little coordination or exchange of information among these institutions.

3.9.4.1.2 What mechanisms are proposed to monitor and enhance intergrated approach to the conservation and management of forests in Kenya?

The policy encourages a sector-wide / ecosystem approach to planning which ensures that cross-sectoral programmes programmes and initiatives especially in such areas as agriculture, energy, wildlife, environment, mining, water and fishing.

Complement initiatives in the forest sector in this regard, the policy outlines the following actions:

- (a) establishment of an inter ministerial committee that will bring together all the forest-related sectors.
- (b) putting in place appropriate institutional arrangements to coordinate and support the forest sector and hence the establishment of Kenya Forest Service.

(c) monitoring to ensure the effective implementation of the Forest Policy.

(d) encouraging forest professionals to form an association to self regulate the profession.

3.10 Forest Research and Monitoring

3.10.1 Does the Forest Policy recognize the importance of Research and Monitoring in Forest Sector Management?

The policy recognizes the central position of research in forestry development. Research and monitoring provides the requisite information necessary for informed decision-making process at various levels.

3.10.2 What measures and strategies does the Forest Policy provide geared towards promoting Research in Forestry?

The policy outlines a number of measures and strategies that would promote forestry research. These measures and strategies include:

- a) provision of incentives to support forestry research in priority areas;
- b) encouraging private sector to participate in forestry research;
- c) developing effective mechanisms that link forestry research and users;
- d) incorporating indigenous knowledge in forest conservation and management into forestry research and education; and
- (e) reviewing and updating forestry research programmes from time to time in consultation with stakeholders.

3.11 Education and awareness

3.11.1 What Measures and Strategies does the Forest Policy provide geared towards promoting education and awareness in Forestry?

The policy outlines a number of measures and strategies that would promote education and awareness in the forestry sector. These measures and strategies include to:

- a) review and update forestry education curricula from time to time in consultation with stakeholders; and
- b) support public awareness creation with regard to forest conservation, management and utilization.

3.12 Forest user Rights and Livelihoods

3.12.1 To what extent does the Forest Policy recognize traditional user rights of communities living adjacent to Forest areas?

The policy recognizes the relationship of local communities living adjacent to forest areas with forest resource in terms of material benefits as well as for medicinal and spiritual purposes. It further recognizes the centrality of these resources in poverty reduction amongst the rural poor. In this regard the policy proposes the following actions:

- a) encouraging sustainable use of forest resources by communities;
- b) protecting the traditional interests of local communities customarily resident within and around a forest; and
- c) respecting cultural practices that are compatible with sustainable forest management.

3.12.2 What measures and strategies does the Forest Policy propose aimed at improving the livelihoods of communities who depend on Forests?

In recognition of the central position of forests in livelihoods of the rural communities, the policy proposes a number of measures and strategies. These measures and strategies include to:

- a) encourage sustainable use of forest resources by communities;
- b) protect the traditional interests of local communities customarily resident within and around a forest; and
- c) recognize cultural practices that are compatible with sustainable forest management.

3.13 International obligations

3.13.1 Does the Forest Policy recognize International obligations in matters relating to Forestry?

Yes. The policy recognizes the fact that increasingly international instruments especially conventions relating to biological diversity, desertification, climate change to which Kenya is a contracting party influence the overall forest conservation and management strategies.

3.13.2 What measures and strategies does the policy espouse to realize the international obligations?

The policy prescribes a number of measures and strategies aimed at implementing multilateral environmental agreements for sustainable management of forests. These measures and strategies include:

- (a) promote tree planting and land rehabilitation for carbon registration.
- (b) explore opportunities available in carbon trade for conservation and management of forests.

3.12 Gender and Youth Issues

3.12.1 What provisions does the Forest Policy provide to enhance the participation of Marginalized groups such as youth and Women in Forest Management?

The policy recognizes the importance of marginalized groups especially youth and women in forest conservation and management. It proposes a number of measures and strategies to redress the problem. These measures and strategies include to:

- a) enhance training and education opportunities in forestry for youth and women;
- b) endeavour to deliberately involve youth and women in participatory forest management; and
- c) encourage the youth to take more responsibility in the management of forests to ensure that future generations are catered for when decisions affecting forests are made.

3.15 Non-State Actors

3.15.1 Does Kenya have non-governmental organizations working in the Forest Sector?

Yes. Kenya currently has a rich assortment and diversity of environmental NGOs that focus on forestry matters. The international (e.g. WWF, IUCN, AWF etc), regional (e.g. EAWLS, FAN etc) and national (e.g. CREEL, KFWG, Nature Kenya etc) NGOs together with CBOs among many others are not only playing critical role at the national level but also at the international level especially at the multilateral environmental agreements (MEAs) such as the Convention on Biological Diversity (CBD).

3.15.2 What is the role of non-state actors in the conservation and management of Forests in Kenya?

NGOs and CBOs are increasingly becoming the only voice of the local communities. NGOs (often with donor backing) can be decisive in making sure that local self-help efforts aimed at enhancing the conservation and management of forests are not throttled by undue government interference, or by inappropriate commercial interference. In this regard, non-state actors especially NGOs and donors may:

- (a) build capacities of local communities to effectively participate in the forest conservation and management initiatives;
- (b) provide technical and financial support to government and local community initiatives;
- (c) serve as intermediaries between official bodies and between those bodies and the communities concerned; and
- (d) with support of the government undertake forest related development activities.

3.16 HIV-Aids

3.16.1 How does the Forest Policy address the issue of HIV-Aids?

The policy acknowledges the impact of HIV/AIDS pandemic on forestry development. Some of the impacts can be seen in loss of skilled and unskilled staff thereby undermining forestry activities and increased cost on health bill and associated absenteeism among others. In this regard, the policy reiterates the importance of mainstreaming of HIV/AIDS in all forest programmes and projects. More specifically, the policy proposes the following actions:

- (a) mainstream the fight against HIV/AIDS in all forest programmes and projects; and
- (b) adapt and promote workplace initiatives to support people with HIV/AIDS.

**PART 2
FORESTS ACT, 2005**

vContent

PART II

2.0 ADMINISTRATION	15
2.1 Establishment of Kenya Forest Service	17
2.2 Functions of the Service	17
2.3 Kenya Forest Service Board	17
2.4 Powers of the Board	17
2.5 Committees of the Board	
2.6 Proceedings of the Board	25
2.7 Appointment of Director and Officers of the Service	25
2.8 Appointment of Honorary Foresters	25
2.9 Establishment of Forest Conservancy Areas and Committees	26
2.10 Funds of the Service	26
2.11 The Financial Year of the Service	27
2.12 Annual Estimates	27
2.13 Records of Account and Audit	
2.14 Forest Management and Conservation Fund	28

PART III

3.0 CREATION AND MANAGEMENT OF FORESTS	28
3.1 Ownership and management of forests	29
3.2 Creation of State forest	29
3.3 Private and Farm Forestry	30
3.4 Declaration of provisional forest	30
3.5 Reversion of the provisional forest	31
3.6 Exchange of forest area with private land	31
3.7 Arboreta, Recreational Parks, Mini-forests	31
3.8 Donations and Bequests	31
3.9 Declaration of of nature reserve	32
3.10 Special use of nature reserve	32
3.11 Presidential protection of trees	33
3.12 Management plans	33
3.13 Joint management of forests	33
3.14 Protection and management local authority forests	33
3.15 Protection and management of indigenous forests and woodlands	34

PART IV	
4.0 COMMUNITY PARTICIPATION	34
4.1 Establishment of Community Forest Associations	34

PART V	
5.0 ENFORCEMENT	34
5.1 Powers of a Forest Officer	34
5.2 Use of firearms	35
5.3 Prohibited activities in forests	35
5.4 Offences relating to counterfeiting or unlawfully fixing marks	35
5.5 Other offences	36
5.6 Operating a saw mill	36
5.7 Capturing or killing of an animal	36
5.8 Offences relating to grazing livestock in a forest without authority	36
5.9 Offences relating to introducing invasive species and dumping of wastes	37
5.10 Compensation for loss or damage	38
5.11 Prosecutorial powers	38
5.12 General penalty	39

PART VI	
6.0 MISCELLANEOUS	39
6.1 Binding to Government	39
6.2 Making of rules	40
6.3 Maintenance of Registers	40
6.4 Obligations under relevant multilateral environmental agreements	41
6.5 Protection and management of cross border forests and forest produce	41
6.6 Application for environmental impact assessment	41

PART VII	
7.0 TRANSITIONAL PROVISIONS	42
7.1 Repeal of the Forests Act, Cap 385	42
7.2 Vesting of assets and transfer of liabilities	43
7.3 Transfer of employees	43

INTRODUCTION

The genesis of the New Forests Act, 2005 can be traced back in 1979, when the Beijer Institute report was published. The key feature of this report was its alarming forecast, that by the year 2000, there would be no tree left in Kenya, based on the then rate of felling of trees. The report compelled such dramatic actions to be taken that were to later change the scenario in forest management in Kenya.

Following the report, the Government initiated the formulation of Kenya Forestry Master Plan (KFMP) was in 1992 that would guide the development of forestry sector in the next 25 years. The KFMP was adopted in 1994. Some of the salient issues identified for special attention, *inter alia*, include the need to overhaul the then existing Forest Policy and Forests Act (Cap 385). At the same time, the Kenya National Environment Action Plan (KNEAP) was adopted in 1994 which also identified, *inter alia*, the need for new policy and legal framework for sustainable forest management.

Initial efforts to formulate a new forest legal and institutional framework began in 1996. The Draft Forest Policy which was developed with input from Price WaterHouse Coopers was a departure from the conventional centralized authority, thus, *inter alia*, proposing a shift in the management of plantation state forests as well as the indigenous forests. It proposed the establishment of a semi-autonomous institution to be responsible for the protection and management of indigenous forests. A major shortcoming in the said draft policy was its insufficiency in proposing an inclusive framework for community participation in the protection, conservation and utilization of forests.

Unfortunately, the period between 1996 and 2001 as the worst period when Kenya lost much of its forests through political patronage. A number of forests such as Mt Elgon, Mau forest and others were opened for settlement schemes. In the process, there was rush by foresters to make the most out of the forests, and indeed, a number of them carved out big shanks of land for themselves and friends. The politicians were not exempted, and many of them would collude with the Forest Department and Commissioner of Lands for personal benefit at the expense of forests. In addition, corruption became rampant during this period as exhibited by loss of revenue generated from forest royalties and sale of timber never reached the Treasury. Because of lack of political will the Kenya Indigenous Forests Conservation Programme (KIFCON) with support from development partners and which championed stoppage of forest excisions for political expediency was discontinued in 1995.

Following concerted efforts by civil society and development partners Forest Bill, 1999 was developed. In order to sensitize communities on the effect of the proposed law on their lives, civil society such as Kenya Forests Working Group (KFWG) and Forest Action Network (FAN) with financial support from the UK Department for International Development

(DfID) undertook the process of community sensitization on the Bill. Arising from the community consultative meetings, the Forests Bill 1999 was revised giving rise to Forests Bill 2000. The new Forests Bill 2000 had a specific chapter dealing with community participation.

At the same time, in November 1999, the Government declared a 90 day suspension on timber harvesting in all 120,000 hectares of plantation state forests in the country. The aim was to allow auditing of the industrial forest plantations following concerns that harvesting and management practices were unsustainable and a threat to sustainable forest management and environmental conservation in general. Immediately after the suspension was lifted, an indefinite presidential ban on timber harvesting was imposed in March 2000 and remains in force to date.

Most of the stakeholders felt that to a great extent, the Draft Forests Bill, 2000 had accommodated their views. However, it was felt that the fines proposed in the Bill were too high. In spite of this contentious issue, many stakeholders were eager to have the Bill enacted into law without further delays, having taken long enough time already to have it the way it was. The civil society vigorously campaigned for the Bill to be tabled in parliament. Due to lack of political will the Forests Bill, 2000 was never presented to Parliament.

It was not until 2003 that work on the Bill resumed and given due attention by the government, presumably because the new government elected on the platform of performance, wanted to act on the standing issues as per its promises to the electorate. In 2003, Forests Bill 2000 was republished as Forests Bill, 2003 and presented to the Cabinet for approval. The Cabinet recommended further revision of the Forests Bill, 2003 and formulation of Forest Policy. In particular, the Cabinet sort the policy and Bill to address issues relating to riverine forests, charcoal and capacity building. At the same time, during the 2003 UNEP-Ministerial meeting in Nairobi, some delegates were flown over various forests. During these excursions, they flew over Chinga Forest, Nyeri District, and observed widespread cultivation in and around forests attributed to failure in shamba system. This led to the banning of shamba system as a way of stopping further forest degradation. In addition, foresters were sent on compulsory leave.

In January 2004, the Ministry of Environment and Natural Resources, in collaboration with the National Assembly with support from conservation NGOs and development partners held a consultative meeting with the Members of Parliament in Mombasa. The aim of the meeting was to sensitize members of parliament on the salient provisions of the proposed Forest Policy and Forests Bill, and solicit their support to pass the Bill when presented to Parliament. Members of parliament raised a number of issues for consideration. Some of the issues include recognition of the shamba system, leasing of plantation state forests and an effective framework for community participation in forest management.

In June 2004, a new version Forests Bill, 2004 was taken to parliament. It had minimal changes compared with the Forests Bill, 2003. Among other features, it provided for concession as a viable option in the management of plantation forests. It was not, however, clear with regard to Non-Residential Cultivation (NRC)/shamba system. Unfortunately, the Members of Parliament, ostensibly for political reasons voted against the Bill. This necessitated a fresh look at the Bill with the aim of incorporating as much as possible the issues raised by Members of parliament when they rejected the Bill. This gave rise to the Forests Bill, 2005, which was finally presented to parliament for enactment in July 2005. Parliament subsequently approved the Bill.

PART II – ADMINISTRATION

The purpose of this part of the Act is to provide for the establishment of governance structures that enhance participatory forest management in Kenya. In this regard, it provides for the establishment of the Kenya Forest Service as the implementing institution; Forest Conservancy Areas and Committees, being decentralized administrative structures; and establishes various funds of the Service for effective implementation of the Act.

2.1 Main object of the Forests Act, 2005

2.1.1 What is the main object of the New Forests Act, 2005?

The main purpose for which the new Forests Act, 2005 was formulated and enacted is to provide for the establishment, development and sustainable management (including conservation and rational utilization) of forest resources for the socio-economic development of the country.

2.1.2 What informed the formulation and enactment of the new Forests Act, 2005?

The following salient characteristics formed the basis of putting in place a legal framework that would enhance sustainable management of forest resources in Kenya. These include:

(a) recognition that forests:

- (i) play a vital role in the stabilization of soils and ground water, thereby supporting the conduct of reliable agricultural activity;
- (ii) play a crucial role in protecting water catchments in Kenya and moderating climate by absorbing green house gases; and
- (iii) provide the main locus of Kenya's biological diversity and a major habitat for wildlife.

(b) acknowledgement that forests:

- (i) are the main source of domestic fuel wood for the Kenyan people; and
- (ii) provide essential raw materials for wood based industries and a variety of non-wood forest products.

(c) commitment to:

- (i) inter-sectoral development and sustainable use of forestry resources; and
- (ii) obligations under international conventions and other agreements to promote the sustainable management, conservation and utilization of forests and biological diversity.

2.2 Establishment of the Kenya Forest Service

2.2.1 What institution is established to oversee the protection, conservation and sustainable management of forests in Kenya?

The institution established under the Act to be responsible for the protection, conservation and sustainable management of forests in Kenya is the Kenya Forest Service.

2.2.2 What is the legal status of Kenya Forest Service?

Kenya Forest Service is a body corporate with perpetual succession and a common seal and has the power, in and by its corporate name to :-

- a) sue and be sued;
- b) acquire, hold, charge and dispose of movable and immovable property; and
- c) do or perform all such other things or acts for the proper discharge of its functions under the Act.

2.2.3 Where shall the Kenya Forest Service be based?

The headquarters of the Service shall be based in Nairobi.

2.2.4 What are the powers and duties of the Kenya Forest Service?

The powers and duties of the Service are:

- (a) formulate policies and guidelines regarding the management, conservation and utilization of all types of forests in Kenya for approval by the Board;
- (b) manage all state forests;
- (c) manage all provisional forests in consultation with the forest owners;
- (d) protect forests in Kenya in accordance with the provisions of the Act;
- (e) promote forestry education and training;
- (f) collaborate with individuals and private and public research institutions in identifying research needs and applying research findings;
- (g) draw or assist in drawing up management plans for all indigenous and plantation state, local authority, provisional and private forests in collaboration with the owners or lessees, as the case may be;
- (h) provide forest extension services by assisting forest owners, farmers and Associations in the sustainable management of forests;
- (i) enforce the conditions and regulations pertaining to logging, charcoal making and other forest utilization activities;
- (j) collect all revenue and charges due to the Government in regard to forest resources, produce and services;
- (k) develop programmes and facilities in collaboration with other interested parties for tourism, and for the recreational and ceremonial use of forests;
- (l) collaborate with other organizations and communities in the management and conservation of forests and for the utilization of biodiversity therein;
- (m) promote the empowerment of associations and communities in the control and management of forests;
- (n) manage forests on water catchment areas primarily for purposes of water and soil conservation, carbon sequestration and other environmental services;
- (o) promote national interests in relation to international forest related conventions and principles;
- (p) enforce the provisions of the Act and any forestry or land use rules and regulations made under this Act or any other written law; and

(q) in consultation with the Attorney General, train prosecutors from among the forest officers for purposes of prosecuting court cases under this Act in accordance with any other law relating to the prosecution of criminal cases.

2.3 Establishment of the Board

2.3.1 Who will be responsible for the management of the Service?

The Board shall be responsible for the management of Kenya Forest Service.

2.3.2 Who sits on the Board of the Service?

The Kenya Forest Service Board shall consist of:

- (a) the Permanent Secretary in the Ministry for the time being responsible for matters relating to forestry, or his/her designated representative;
- (b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to water, or a designated representative;
- (c) the Permanent Secretary in the Ministry for the time being responsible for finance, or his/her designated representative;
- (d) the Permanent Secretary in the Ministry for the time being in charge of local authorities or his/her designated representative;
- (e) the Director, Kenya Wildlife Service;
- (f) the Director General, National Environment Management Authority;
- (g) the Director, Kenya Forestry Research Institute;
- (h) the Director, Kenya Forestry Service, who shall be the secretary; and
- (i) eight other persons who shall not be public servants, appointed by the Minister.

2.4 Selection of the Board members

2.4.1 What criteria shall be used in the selection of non-public service Board members?

In making appointments to the Board of non-public servants, due regard shall be made to the following:

- (a) At least one who has knowledge of and at least ten (10) years experience in matters relating to security and law enforcement.
- (b) At least one representative of the Kenya Forestry Society
- (c) The remainder shall be appointed based on the educational qualifications expertise in forestry or the forestry industry or in a related scientific or educational field; or are members of NGOs dealing with environmental or natural resource matters; or persons who are associated with or with an area that has one or more forest communities, and who have shown special or outstanding interest in the field of conservation, environment and natural resources.

2.4.2 What other considerations shall determine the composition of the Board?

The appointment of the members of the Board shall take into account the principle of gender and regional representation.

2.4.3 How shall the chairman of the Board be appointed?

The President shall appoint one of the non-public service board members as the chairman of the Board.

2.4.4 For how long shall the Board Chairman hold office?

The chairman of the Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

2.4.5 For how long shall other members of the Board hold office?

Apart from the ex-officio members, a member of the Board shall hold office for a period of not more than three years on such terms and conditions as may be specified in the instrument of appointment and shall be eligible for re-appointment for one further term of three years.

2.4.6 How shall members of the Board be appointed?

The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office fall at different times.

2.4.7 Are members of the Board eligible to receive any remuneration, fees or allowances?

Yes. The Chairman and members of the Board shall be eligible to receive such remuneration, fees or allowances for expenses as the Minister may determine.

2.5 Functions of the Board

2.5.1 What are the functions of the Board?

The functions of the Board shall be to:

- (a) ensure the efficient management of the Service;
- (b) consider and make recommendations to the Minister on the establishment of state forests on un-alienated Government land and any other Government land;
- (c) consider and make recommendations to the Minister regarding the determination and alteration of boundaries of state forests;
- (d) approve policies of the Service affecting forestry practice and development;
- (e) formulate policies for the administration and management of Kenya Forestry College;
- (f) consider all management agreements, including the granting of management licences for state plantation forests;
- (g) negotiate for financial and other incentives for the advancement of the forestry-related activities of private persons, companies, communities, NGOs and local authorities;
- (h) establish and review policies and rules for marketing of and trade in forest produce;
- (i) coordinate and monitor inter-agency forestry activities in Kenya;

- (j) develop modalities and guidelines for joint management of forests between the Service, local authorities, forest communities, government agencies and other private sectors;
- (k) advise the Minister on all matters pertaining to the establishment, development, conservation and utilization of forests in Kenya;
- (l) consider applications for the undertaking of activities within forest areas;
- (m) prescribe criteria for access to assistance for owners of private forests;
- (n) establish forest conservancy areas for purposes of conservation and management; and
- (o) approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons who exploit wood and non-wood forest products sustainably.

2.6 Powers of the Board

2.6.1 What are the powers of the Board?

The Board shall have powers necessary for the performance of its functions including the power to:

- (a) approve and ratify the policies of the Service;
- (b) manage, control and administer the assets of the Service in such a manner and for such purposes as are best to promote the purposes for which the Service is established;
- (c) receive any gifts, grants, donations or endowments made to the Service;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the service;
- (e) open the banking accounts for the funds of the Service;
- (f) invest any moneys of the Service not immediately required for the purposes of the Act;
- (g) determine and issue the terms and conditions for the appointment and enlistment of personnel to the Service; and
- (h) cooperate with other organizations undertaking functions similar to its own, whether within and outside Kenya.

2.6.2 Can the Board delegate any of its powers?

Yes. The Board may by resolution, either generally or in any particular case, delegate any of its powers or the performance of its functions or duties to any of its:

- committees; or
- members, officers, employees or agents of the Board.

2.7 Proceedings of the Board

2.7.1 How often shall the Board meet?

The Board shall meet at least four times in a year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

2.7.2 Who shall chair the Board meetings?

The chairman shall preside over all meetings of the Board in which he is present, but in his absence, the vice chairman shall preside and in the absence the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

2.7.3 How shall the vice chairman be elected?

At the first meeting of the Board, the members shall elect a vice chairman, not being a public servant, from among its members.

2.7.4 Can the Chairman call a special Board meeting?

Yes. The chairman may call a special meeting of the Board at any time where he deems it expedient for the transaction of the business of the Board.

2.7.5 How many members are required to be present for Board meeting to proceed?

The quorum for the Board meeting shall be half the members.

2.7.6 How shall Board decisions be made?

The decisions of the Board shall, unless a unanimous decision is reached, be by a majority vote of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

2.7.7 How shall the Board operate?

The Board may from time to time establish committees for the better carrying out of its functions.

2.7.8 Can the Board co-opt non-members into the membership of its committees?

Yes. The Board may, with the approval of the Minister co-opt other persons who are not members of the Board but who have knowledge and skills necessary for the functions of the Board to sit on such committees so established.

2.7.9 How shall the meetings of the Board be carried out?

The procedure of the Board meetings shall be in accordance with the provisions of the Second Schedule of the Act.

2.7.10 What shall a Board member do when the Board is discussing any matter or issue in which he or she has an interest?

If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at the meeting of the Board at which the contract, proposed contract or matter is the subject of consideration, he shall, at the meeting and as

soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

2.7.11 What shall happen to such a disclosure?

Such a disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

2.7.12 In what circumstances may a Board member cease to be a Board Member?

A member of the Board a member other than the chairman or an ex-officio member:

(b) at any time resigns from office by notice in writing to the Minister; or

(c) be removed from office by the Minister if the member:

(i) has been absent from three consecutive meetings of the Board without the permission of the chairman; or

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or

(iii) is convicted of an offence involving fraud or dishonesty; or

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or

(v) is incapacitated by prolonged physical or mental illness; or

(vi) is found to have acted in a manner prejudicial to the aims and objectives of this Act; or

(vii) fails to comply with the provisions of this Act relating to disclosure; or

(viii) is otherwise unable or unfit to discharge his functions as a member of the Board.

2.8 Appointment of the Director of the Service

2.8.1 How will the Director of Kenya Forest Service be appointed?

The Director of Kenya Forest Service shall be appointed by the Board.

2.8.2 Who qualifies to be appointed to the position of Director of the Kenya Forest Service?

The qualifications needed for one to be appointed to the post of the Director of Kenya Forest Service are:

(a) at least a first degree from a recognized university in the field of forestry or related discipline; and

(b) at least fifteen years experience in the relevant field.

2.8.3 What is the role of the Director of the Kenya Forest Service?

The Director of Kenya Forest Service shall be the Chief Executive Officer of the Service and responsible to the Board.

2.9 Appointment of the officers of the Service

2.9.1 How shall the officers of the Service be appointed?

The officers of the Service shall be appointed by the Board

2.9.2 What criteria shall the Board use in appointing the officers of the Service?

Basing on such terms and conditions as it deems fit, the Board shall appoint:

a. *Professional cadre* comprising of:

- Director of Forests;
- Senior deputy Director of Forests;
- Deputy Director of Forests;
- Assistant Director of Forests;
- Senior Forest Officer;
- Forest Officer I;
- Forest Officer II;

b. *Disciplined officers* who shall include:

- Commandant;
- Deputy Commandant;
- Assistant Commandant;
- Senior Superintendent Forest Guard;
- Superintendent Forest Guard;
- Chief Inspector of Forest Guard;
- Inspector of Forest Guard;
- Sergeant Forest Guard;
- Corporal Forest Guard;
- Constable Forest Guard;
- Forest Guard Recruit.

c. *Such other employees, agents or servants* of the Service may be necessary for the performance of the functions and duties of the Service.

2.9.3 How shall the officers of the Service carry out their duties?

The officers of the Service shall in the performance of their duties conform with any lawful instructions, directions or orders which may be given by the Director.

2.9.4 Is the Director empowered to make and issue administrative orders for the general control, direction and information of the officers of the Service?

Yes. The Director may, with the consent of the Board, from time to time make and issue administrative orders to be called Service Standing Orders for the general control, direction and information of the officers of the Service.

2.10 Establishment of Superannuation Scheme

2.10.1 Shall the Service officers be entitled to some benefits?

Yes. The Board shall cause the formulation and approval of a superannuation scheme for the officers of the Service.

2.11 Conduct of Disciplined Officers

2.11.1 How shall persons appointed as disciplined officers carry out their duties?

All Service officers appointed as disciplined officers shall take and subscribe to the Oath of Allegiance.

2.11.2 Does the Director have powers to issue Disciplinary Code of Regulations for disciplined officers of the Service?

Yes. The Director, with the approval of the Board, is obligated to issue a Disciplinary Code for disciplined officers of the Service.

2.11.3 What will such Disciplinary Code for Disciplined officers of the Service contain?

The Disciplinary Code for Disciplined Officers may provide for the following matters:

- (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings;
- (b) disciplinary penalties; and
- (c) any other related matters.

2.11.4 What disciplinary penalties could be included in the Disciplinary Code for infringement of the Code?

The following disciplinary penalties or any combination thereof, may be included in the Disciplinary Code for infringement of the Code:

- (a) dismissal from the Service;
- (b) reduction in rank;
- (c) confinement for not more than fourteen (14) days in a guardroom or restriction to the confines of any camp or other area where a part of the Service is stationed;
- (d) fines;
- (e) surcharge;
- (f) where the offence has occasioned any expense, loss or damage, stoppages of pay or allowances;
- (g) extra drills, parades or fatigues;
- (h) severe reprimand;
- (i) reprimand; and
- (j) admonition.

2.11.5 In what circumstances may a disciplined officer of the Service committing a disciplinary offence be arrested?

A Disciplinary Code may provide for a disciplined officer of the Service committing a disciplinary offence arrested without a warrant by or on the order of an officer senior to him or placed in command over him, who may, if circumstances so warrant, confine that officer

or cause that officer to be confined in a building suitable for the purpose, pending the determination of disciplinary proceedings.

2.11.6 What is the time limit for which a disciplined officer of the Service committing a disciplinary offence can be confined without a warrant of arrest?

A disciplined officer of the Service committing a disciplinary offence shall not be confined for more than five (5) days without a warrant being issued for his arrest.

2.11.7 What constitutes an insubordinate behavior by a disciplined officer of the Service?

Any of the following actions on the part of a disciplined officer of the Service shall amount to an insubordinate behaviour:

- (a) striking or using violence on, or threatening violence to or inciting any other person to use violence on, an officer senior to or placed in command over him or that other person; or
- (b) using threatening or insubordinate language to an officer senior to or placed in command over him.

2.11.8 What is the penalty for insubordinate behaviour by a disciplined officer of the Service?

A disciplined officer of the Service guilty of an offence of insubordinate behaviour shall be liable to imprisonment for a term not exceeding twelve (12) months.

2.11.9 Who has jurisdiction to direct that an offence has been committed by a discipline officer of the Service under the Code?

The Director or an officer of or above the rank of assistant Director of Forests or the Commandant or an officer above the rank of Senior Superintendent Forest Guard with delegated authority by the Director has jurisdiction to direct that an offence has been committed under the Code.

2.11.10 When does a disciplined officer of the Service deemed to have deserted from the force?

A disciplined officer of the Service who absents himself from duty without leave or just cause for a period of more than twenty one (21) days shall, unless he or she proves the contrary, be deemed to have deserted from the force.

2.11.11 What happens to a disciplined officer of the Service who absents himself from duty without leave?

A disciplined officer of the Service who deserts the Service shall:

- (a) forfeit any pay or allowance due to him and all rights in respect of any pension, provident fund or any other scheme operated by the Service and in addition, such member shall be liable to disciplinary action.
- (b) receive no pay or allowance in respect of any day during which he is absent from duty without leave, unless the Director otherwise directs.

(c) be guilty of an offence and liable to imprisonment for a period of not more than six (6) months or a fine of not more than Kenya Shillings five thousand (Kshs. 5,000) or both such imprisonment and fine.

2.11.12 What would happen to a disciplined officer of the Service dismissed from the Service or who deserts from the force and who does not surrender property of the Service?

Any disciplined officer who, upon dismissal from the service or who deserts from the service for a period of twenty one days and does not surrender the property of the Service or the Government within a period of or exceeding seven (7) days from the date of dismissal or desertion, shall be guilty of an offence and liable to imprisonment for one year or a fine of not more than Kenya Shillings ten thousand (Kshs. 10,000) or both such imprisonment and fine.

2.11.13 Is a disciplined officer of the Service eligible to join a trade union or association?

No. A disciplined officer of the Service shall not be eligible to become a member of:

- (a) a trade union or any body association affiliated to a trade union; or
- (b) a body or association the objects or one of the objects of which is to control or influence conditions of employment in a trade or profession; or
- (c) a body or association the objects or one of the objects of which, is to control or influence pay, pension or conditions of the service other than a staff association established and regulated by rules or regulations made under this act.

2.11.14 What would happen to a disciplined officer who joins a trade union or an association other than that established the Act?

A disciplined officer of the Service who joins a trade union or an association other than an association established pursuant to the rules or regulation made under this Act shall be liable to be dismissed from the Service and to forfeit all his rights to pension or gratuity.

2.11.5 How will it be determined as to whether a body is a trade union or an association within the meaning of this Act?

If a question arises as to whether a body is trade union or an association to which the restrictions apply, such question shall be referred to the Minister whose decision shall be final.

2.12 Appointment of Honorary Foresters

2.12.1 Can the Director appoint honorary foresters?

Yes. With the approval of the Board, the Director may appoint persons to be honorary foresters for purposes of assisting in the implementation of the Act.

2.12.2 What criteria shall be used in appointing honorary foresters?

Honorary foresters shall:

- Be appointed by a notice published in the Gazette;
- Shall hold office for a term of five years, subject to the conditions as the Director may prescribe; and
- Carry out such functions as may be prescribed by the rules and procedure made under the Act.

2.13 Establishment of the Forest Conservancy Areas and Committees

2.13.1 How will the Forest Conservancy Area be established?

The Board shall establish the forest conservancy area for proper and efficient management of the forests and may divide such conservancy areas into forest divisions and stations.

2.13.2 Who will manage a Forest Conservancy Area?

The Board shall establish the forest conservation committee to manage each forest conservancy area that is established.

2.13.3 What are the functions of the Forest Conservation Committee?

The functions of the forest conservation committee are to:

- (a) inform the Board on the ideas, desires and opinions of the people within the forest conservancy areas in all matters relating to the conservation and utilization of forests within such areas;
- (b) monitor the implementation of the Act and other forest regulations within the area;
- (c) review and recommend to the Board applications for licences and renewals;
- (d) regulate the management of forests in the relevant conservancy area, including the setting of charges and retention of income;
- (e) in consultation with the Board, assist local communities to benefit from royalties and other rights derived from flora and fauna traditionally used or newly discovered by such communities;
- (f) identify areas of un-alienated Government land or trust land to be set aside for creation of forests;
- (g) recommend to the Board the establishment of forest division conservation committees; and
- (h) Perform such other functions as the Board may require or delegate to it.

2.13.4 What is the composition of the forest conservation committee?

A forest conservation committee shall consist of the following:

- (a) a chairman who shall be appointed by the Board and who shall have at least ten (10) years experience in forestry, forest management or social sciences;
- (b) one representative of the provincial administration;
- (c) the forest officer in charge of the area who shall also be the secretary;
- (d) one member nominated jointly by members of the timber industry operating in the area;
- (e) four persons knowledgeable in forestry matters nominated by forest associations

operating in the area in consultation with the conservancy committees, at least one of whom shall be a woman and one shall be a youth;

(f) an agriculture officer based in the area, who shall be nominated by the Minister responsible for agriculture; and

(g) an environmental officer based within the area, who shall be nominated by the Director General, National Environment Management Authority (NEMA).

2.13.5 Can persons who are not forest conservation committee members attend the committee meetings?

Yes. Persons who are not members of the committee may be invited to attend meetings and take part in the deliberations but such persons shall not have voting powers.

2.13.6 Are forest conservation committee members entitled to an allowance?

Yes. Committee members are entitled to an allowance that shall be determined by the Board with the approval of the Minister.

2.13.7 How shall the forest conservation committees operate?

The Minister, in consultation with the Board may make rules and regulations to govern the procedures and functions of the committees

2.14 Funds of the Service

2.14.1 What shall the funds of the Service comprise of?

The funds of the Service shall comprise of:

- (a) such moneys or assets as may accrue to or vest in the Service in the course of the exercise of its powers or the performance of its functions and approved by Parliament; and
- (b) all moneys from other sources provided for or donated or lent to the Service

2.14.2 How shall the Service meet its expenses?

All funds required to defray the expenditure incurred by the Service in the exercise of its powers and in the course of its duties shall be paid out of the funds of the Service.

2.15 The Financial Year of the Service

2.15.1 When does the financial year of the Service end?

The financial year of the Service shall be a period of twelve months and shall end on the thirtieth of June in each year.

2.16 Annual Estimates

2.16.1 When shall annual estimates of the Service be made?

At least three months before the commencement of each financial year.

2.16.2 Who shall be responsible for the preparation of the annual estimates?

The Board shall cause to be prepared estimates of revenue and expenditure of the Service for each year.

2.16.3 What shall the estimates provide for in particular?

The estimates shall provide for the:

- (a) payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Service and of the forest conservation committees;
- (b) proper maintenance of the buildings and grounds of the Service;
- (c) maintenance, repair and replacement of the equipment and other property of the Service; and
- (d) creation of such reserve funds as the Service may deem appropriate to meet the recurrent expenditure and contingent liabilities of the Service.

2.16.4 Who will approve the annual estimates?

The Board shall approve the annual estimates before the commencement of the financial year to which they relate. This shall then be forwarded to the Minister for approval with the concurrence of the Treasury.

2.16.5 Can the Board increase the annual estimates after the Minister's approval?

No. Once the annual estimates have been approved by the Minister with the concurrence of the Treasury, the Board shall not increase the annual estimates without the consent of the Minister.

2.17 Records of accounts and audit

2.17.1 Who shall be responsible for proper records of accounts, audits and assets of the Service?

The Service shall cause to be kept proper books and other records of accounts of the income, expenditure and assets of the Service.

2.17.2 How often shall the Service prepare or cause to prepare accounts and audit?

Within a period of four months from the end of every financial year, the Service shall submit to the Controller and Auditor General, accounts of the Service in respect of that year.

2.17.3 What shall be the composition of the accounts and audit?

The accounts and audit of the Service shall include the following:

- (a) a statement of the income and expenditure of the Service during that year; and
- (b) a statement of the assets and liabilities of the Service on the last day of the year.

2.17.4 How shall the Service's audits be done?

The accounts of the Service shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

2.18 The Forest Management and Conservation Fund

2.18.1 What fund does the Act establish?

The Act establishes the Forest Management and Conservation Fund.

2.18.2 For what purpose is the Forest Management and Conservation Fund established?

The Forest Management and Conservation Fund is established to be used for the following purposes:

- (a) the development of forests;
- (b) the maintenance and conservation of indigenous forests;
- (c) the promotion of commercial forest plantations;
- (d) the rehabilitation of provisional forests;
- (e) the provision of forest extension services;
- (f) the promotion of community-based forest projects;
- (g) the facilitation of education and research activities;
- (h) the establishment of arboreta and botanical gardens;
- (i) the maintenance and protection of sacred trees and groves and other areas of cultural, ethno-botanical or scientific significance;
- (j) undertaking of surveys and establishment of databases;
- (k) the protection and management of unique trees for biodiversity conservation;
- (l) the establishment of nurseries and production of seedlings;
- (m) silvicultural practices and tree improvement;
- (n) the management and protection of protected trees; and
- (o) such other purposes as may be prescribed by rules made under this Act;

2.18.3 What shall be the source of the Forest Management and Conservation Fund?

The source of the Fund shall consist of:

- (a) monies appropriated by parliament for purposes of the Fund from time to time;
- (b) monies levied upon forest beneficiaries as the Minister may, upon the recommendation of the Board and in consultation with the Minister for Finance, determine;
- (c) income from investments made by the Board; and
- (d) such grants, donations, bequests or other gifts as may be made to the Fund.

2.18.4 How shall all monies due to the Service be collected or received?

All monies due the Service shall be collected or received on behalf of the Board by the Director and, subject to the direction of the Board, paid into a special account of the Fund in line with obtaining financial regulations.

2.18.4 How shall the management of the Fund be effected?

The Fund shall be managed by a Finance Committee appointed and empowered by the Board.

2.18.5 What is the mandate of the Finance Committee?

The Finance Committee shall, with the approval of the Board:

- (a) determine the amounts of money payable in respect of any purpose for which the Fund is established and formulate the conditions for disbursement;
- (b) make necessary investments from the Fund for the realization of the Fund's objectives, in securities approved from time to time by the Treasury; and
- (c) keep and maintain such audited accounts of the Fund and publish such accounts in such manner as may be approved by the Treasury.

PART III

3.0 CREATION AND MANAGEMENT OF FORESTS

This part sets out various categories of forests and procedures for their establishment and management of forests in Kenya. The types of forests include state forests, local authority forests, private and farm forestry, arboreta, recreational parks and mini-parks. In addition, this part provides for presidential protection of trees. It also establishes tools such as management plans, joint management frameworks and management agreements for effective and proper management of forests.

3.1 OWNERSHIP AND MANAGEMENT OF FORESTS

3.1.1 Who owns forests in Kenya?

All forests, other than private and local authority forests are vested in the State, unless otherwise either by user rights or by any written law, where the same may vest in any other person.

3.1.2 Are customary rights recognized under the Act?

Yes. Subject to the conditions as may be prescribed, any member of a forest community may take such forest produce, as it has been the custom of that community, as long as such produce is not for purposes of sale.

3.2 CREATION OF STATE FOREST

3.2.1 How shall State forests be created?

State forests may be created by a Gazette notice by the Minister on recommendation of the Board. Such a Gazette will apply on:

- any unalienated Government land;
- any land purchased or otherwise acquired by the Government.

3.2.2 How shall local authority forests be created?

On the recommendation of the forest conservation committee within which a forest is situated, the local authority and the Board, the Minister shall declare any land under the jurisdiction of the local authority to be a local authority forest, especially where the:

- (a) land is an important catchment area, a source of water springs, or is a fragile environment;
- (b) land is rich in biodiversity or contains rare, threatened or endangered species;
- (c) forest is of cultural or scientific significance; or
- (d) forest supports an important industry and is a major source of livelihood for the local community.

3.3 PRIVATE AND FARM FORESTRY

3.3.1 Can private and farm forests be registered?

Yes. Any person who owns a private forest, or is in the course of establishing a forest on his/her farm may apply to the Service for registration in the manner provided for under the Act.

3.3.2 What shall be the procedure of registering a private or farm forest?

In registering a private or farm forest, the Board shall be guided by the criteria established under the regulations to be made under the Act.

3.3.3 What shall the private or farm forest owner be entitled to upon registration?

Upon registration, private or farm forest owner shall be entitled to:

- (a) technical advice regarding appropriate forestry practices and conservation; and
- (b) subject to availability of funds, loans from the Fund for the development of the forest so long as the funds are obtained and used for promotion of sustainable forest management.

3.3.4 What are the incentives for a person who establishes or owns a private forest?

A person who establishes or owns a private forest may apply to the relevant authorities for exemption from all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.

3.3.5 Are there other forests that fall under the category of private forests?

Yes. Arboreta and recreational parks are also classified as private forests.

3.4 DECLARATION OF PROVISIONAL FORESTS

3.4.1 Can a local authority or private forest be declared provisional forest?

Yes.

3.4.2 Under what circumstances can a local authority or private forest be declared a provisional forest?

When the Board is of the view that a particular local authority forest or private forest is being mismanaged or neglected, it may recommend to the Minister, who shall by order published in the Gazette notice declare such a forest to be provisional forest.

3.4.3 Under what circumstances may such a declaration order for a provisional forest be made?

The declaration order shall be made only where:

- (a) the forest –
 - (i) is an important catchment area or a source of water springs;

- (ii) is rich in biodiversity and contains rare threatened or endangered species;

- (iii) is of cultural or scientific significance; or

- (iv) supports an important industry and is a source of livelihood for the surrounding forest communities; and

- (a) the Director has issued a notice requiring the local authority or private owner to undertake specific silvicultural practices to improve the forest and such notice has not been complied with, or the forest owner is unable to undertake the specified practices.

3.4.4 How shall a provisional forest be managed?

A provisional forest shall be managed by the Service in collaboration with the owner for a period of three (3) years. The period when a particular forest has been declared a provisional forest shall be under review and any profits accruing shall be paid to such owner less the expenses incurred by the Service in managing the forest concerned.

3.5 REVERSION OF THE PROVISIONAL FOREST

3.5.1 Can a provisional forest revert to the owner?

Yes. A provisional forest shall revert to the owner where the Board is satisfied that it has been adequately rehabilitated and the owner has given an undertaking to efficiently manage it.

3.5.2 Can the Board issue conditions upon reversion of the provisional forest to the owner?

Yes. The Board may, upon reversion of a provisional forest, prescribe for observance by the owner such conditions as may be necessary for proper management of the forest concerned.

3.6 VARIATION OF BOUNDARIES OR REVOCATION OF STATE OR LOCAL AUTHORITY FORESTS

3.6.1 Can there be a variation or revocation of State or local authority forests?

Yes. The variation or revocation shall be by notice stating the intention to:

- (a) vary the boundaries of a state or local authority forest; or

- (b) declare that a forest shall cease to be a state or local authority forest.

3.6.2 In what circumstances may such a notice be published?

A notice proposing variation of boundary or cessation of a state or local authority forest shall only be published on the recommendation of the Service. The Service shall make such a recommendation where:

- (a) the proposal has been approved by the forest conservation committee for the area in which the forest is situated;

- (b) it is satisfied that such variation of boundary or cessation of forest proposed by the notice:

- shall not endanger any rare, threatened or endangered species;
- does not adversely affect its value as a water catchment area;
- does not adversely affect its value as a water catchment area; and
- does not prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes;

(c) the proposal has been subjected to an independent Environmental Impact Assessment; and

(d) public consultation has been undertaken and completed in relation to the proposal.

3.6.3 What are the requirements for public participation in such matters?

It is a requirement for effective public participation that the Service or relevant local authority publishes a notice in relation to the proposal to vary the boundary or cessation of a forest in:

- (a) the Gazette
- (b) at least two national newspapers;
- (c) at least one newspaper circulating in the locality to which the proposal relates; and
- (d) at least one Kenyan radio station broadcasting in that locality.

3.6.4 What shall be the contents of the notice?

The notice shall in each case:

- (a) set out a summary of the proposal;
- (b) state the premises at which the details of the proposal may be inspected;
- (c) invite written comments on or objections to the proposal;
- (d) specify the person or body to which any such comments are to be submitted; and
- (e) specify a date by which any such comments or objections are required to be received, which requirement is for a minimum of 60 days after publication of the notice.

3.6.5 How shall members of the public access the relevant documents?

The Service or relevant local authority shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the proposal which are in their possession.

3.6.6 How shall the Service or local authority treat comments from members of the public?

The Service or local authority shall consider any written comments or objections received on or before the specified date and shall also consider any comments, whether in writing or not, received at any public held in relation to the proposal at which it was represented or based on any other invitation to comment.

3.6.7 How shall the members of the public be informed of the final decision on the proposal?

The Service or local authority shall publish, through Kenya Gazette; in at least two national

newspapers; in at least one newspaper circulating in the locality to which the proposal relates; and in at least one Kenyan radio station broadcasting in that locality, notice of the fact that a copy of the decision in writing of the said authority in relation to the proposal and the reasons is available for public inspection at a specified premises.

3.6.8 In what circumstances may the responsible authority cause a public meeting to be held?

Where rules have been established under this Act that require such a public meeting to be held, the responsible authority shall cause a public meeting to be held in relation to a proposal before the responsible authority makes its decision on the proposal.

3.6.9 Is Parliament required to approve such variation of boundary or cessation of a forest?

Yes. For any variation of boundary or cessation of a forest to take effect, Parliamentary approval by resolution is mandatory.

3.7 EXCHANGE OF FOREST AREA WITH PRIVATE LAND

3.7.1 Has the Board got the power to exchange part of a forest area with private land?

Yes. The Board may, with the consent of the owner exchange part of a forest area with private land.

3.7.2 Under what circumstances may the Board exchange part of a forest area with private land?

The Board may exchange a forest area with private land where:

- (a) the exchange enhances the efficient management and protection of the forest;
- (b) the exchange is equitable to the Service and the land owner, according to an independent valuation;
- (c) an independent Environmental Impact Assessment has been conducted and has shown that such exchange shall not adversely affect the environment; and
- (d) The forest area to be exchanged does not contain rare, threatened or endangered species and is not a water catchment area or a source of springs.

3.7.3 Can the Service or local authority purchase land for purposes of establishing a state or local authority forest?

Yes. Subject to approval by the Minister, the Service or a local authority may acquire by purchase any land that is suitable for the establishment of either State or a local authority forest under this Act, respectively.

3.7.4 How shall the acquisition of land for the establishment of a forest be done?

Prior public consultation shall be carried out as prescribed under the Act.

3.8 ARBORETA RECREATIONAL PARKS, MINI-FORESTS

3.8.1 How shall arboreta, recreational parks and mini forests be established?

It is the duty of every local authority to, as far as is practically reasonable, establish and maintain arboreta, mini-forests or recreational parks for the non-consumptive use of persons residing within its area of jurisdiction.

3.8.2 What is required under the law to ensure the establishment of green spaces in housing estates?

Every local authority shall cause housing estate developers within its jurisdiction to make provision for the establishment of mini-forests at the rate of at least 5% of the total land area on any housing estate intended to be developed.

3.8.3 How about establishment of recreational park in market centres?

It is the duty of every local authority to establish and maintain a recreational park in every market centre within its area of jurisdiction.

3.8.4 What is the role of the Service in the establishment and maintenance of mini forests, recreational parks and arboreta?

The Service shall facilitate and initiate the provision of technical assistance in the establishment and maintenance of mini-forests, recreational parks and arboreta established by local authorities.

3.8.5 Can mini-forest, recreational park or arboreta be converted into any other use?

No arboretum, mini-forest or recreational park shall be converted to any other use unless the local authority consults the residents of the area in the jurisdiction within which such arboretum, mini-forest or recreational park is situated.

3.8.6 How shall the local authority determine the tree species to be planted under mini-forest, recreation parks or arboreta?

A local authority may in consultation with the Service prescribe conditions in relation to the species of trees to be planted in a mini-forest, arboretum, or recreational park.

3.9 DONATIONS AND BEQUESTS

3.9.1 Can any person who is a registered proprietor of land donate or bequeath it?

Yes. Any legally registered proprietor of land may donate or bequeath all or part of that land to the state, a local authority, an educational institution, an association or a non-governmental organization for the development of forestry and conservation of biodiversity.

3.9.2 Who shall own such forests developed on land donated or bequeathed?

All forests established on such land that is donated or bequeathed to the state shall be gazetted in accordance with the provisions of the Act and shall be named after the person who made the donation or bequest unless the instrument of bequest states otherwise.

3.9.3 How shall forests developed on land donated or bequeathed be managed?

The forest or land donated or bequeathed shall not be put to any other use except for the purpose of establishment and conservation of forests as originally desired by the previous owner.

3.10 DECLARATION OF A NATURE RESERVE

3.10.1 How shall nature reserves be established?

A nature reserve shall be established where:

- (a) there is a recommendation of the Service; and
- (b) the Minister, in consultation with the Minister responsible for local authorities, puts a Gazette notice, declaring any forest area, woodland or any part thereof, which has a particular environmental, cultural, scientific or other special significance to be a nature reserve for purposes of preserving its biodiversity and natural amenities.

3.10.2 How shall nature reserves on private land be managed?

Where a nature reserve is declared on a private forest, the Minister shall make all relevant arrangements for compensation of the owner of the said forest as may be reasonably decided by an independent valuer appointed by the Board on the recommendation of the relevant professional body.

3.10.3 Are there activities prohibited in being undertaken within a nature reserve?

Yes. Such activities like cutting, grazing, removal of forest produce, hunting, fishing, shall not be allowed within the nature reserve unless they are meant for research and such permission shall be granted by the Director in consultation with other conservation agencies.

3.10.4 How shall revocation of declaration of a forest area or the variation of boundaries of a nature reserve be done?

Any revocation of declaration of a forest area or the variation of boundaries of a nature reserve shall require parliamentary approval by resolution.

3.11 SPECIAL USE OF NATURE RESERVE

3.11.1 Can a forest community or an individual manage a nature reserve?

Yes. Any forest community or person interested in utilizing or conserving any grove or forest which is part of a nature reserve for cultural, religious, educational, scientific or other reasons may apply the Board for consideration.

3.11.2 How shall such application be made?

The application for utilizing or conserving any grove or forest shall be in a prescribed form made to the Board through the forest conservation committee for the area in which the nature reserve occurs.

3.11.3 How shall the Board determine the eligible applicant?

The Board shall make inquiries regarding the application, its authenticity and the suitability of the site in relation to the activities applied for. Based on such inquiry, the Board may within three months of receipt of the application:

- (a) grant the application as requested;
- (b) grant the application on specified terms and conditions; or
- (c) refuse to grant the application, giving reasons for such refusal.

3.11.4 Is the Board's decision to either grant or refuse to grant the application final?

No. Any person aggrieved by the decision of the Board may appeal to the National Environment tribunal established under the Environmental Management and Coordination Act, 1999.

3.11.5 Are sacred groves protected under the Act?

Yes. Sacred groves found in any State forest, nature reserve, local authority forest or private forest shall not be interfered with.

3.11.6 What would happen to any person who interferes with sacred groves?

Any person, who without lawful authority cuts, fells, damages or removes any such grove or tree or regeneration thereof, or biodiversity therein, or who abets in the commission of any such act commits an offence.

3.11.7 What is the penalty?

Any person found guilty of an offence of interfering with sacred groves shall be liable to a fine of not less than ten thousand shillings or to imprisonment for a term of not more than three (3) months.

3.12 PRESIDENTIAL PROTECTION OF TREES

3.12.1 Has the president got powers to protect trees?

Yes. On the advice of the Minister, the president may by order published in the Gazette declare any tree, species or family of tree species to be protected in the whole country or in specific areas thereof.

3.12.2 How shall the protection orders be effected?

The Minister shall cause the information in respect of presidential protection of trees disseminated to the public.

3.12.3 What will happen to a person who violates the presidential protection of trees order?

Any person who, without lawful authority fells, cuts, damages or removes, trades in or exports or attempts to export any protected tree, species or family of trees, or regeneration thereof or abets in the commission of any such act commits an offence.

3.12.4 What is the penalty?

Any person found guilty of an offence of interfering with sacred groves shall be liable to a fine of not less than ten thousand shillings or to imprisonment for a term of not more than three (3) months.

3.12.5 Can the presidential tree protection orders be reversed?

Yes. This may be so where the President on the advice of the Minister is satisfied that such protection is no longer necessary.

3.13 MANAGEMENT PLANS

3.13.1 How shall state forest, local authority forest and provisional forest be managed?

Every state forest, local authority forest and provisional forest shall each have a management plan formulated in accordance with the requirements prescribed by rules made under the Act.

3.13.2 Who shall be responsible for the preparation of the management plan for a state forest and provisional forest?

The Service shall be responsible for the preparation of a management plan with respect to each state forest and provisional forest.

3.13.3 Who shall be responsible for the preparation of local authority forest management plan?

Each local authority shall be responsible for the preparation of the management plan for each local authority forest within its jurisdiction.

3.13.4 Can the Service or local authority prepare a requisite plan or adopt a plan prepared by another person or body?

Yes. The Service or a local authority may discharge its responsibilities by preparing any requisite plan and adopting it or by adopting a plan prepared by another person or body.

3.12.5 How shall the Service or a local authority prepare and adopt a management plan?

The Service or a local authority shall be required to consult with the local forest conservation committee in preparing and adopting any management plan.

3.13.6 How shall the rules governing the management plans be formulated?

The Director may, with the approval of the Minister, make rules in matters relating to the development and implementation of management plans.

3.14 JOINT MANAGEMENT OF FORESTS

3.14.1 How will the joint management of forests be established?

The Director may, with the approval of the Board, enter into an agreement with any person for the joint management of any forests.

3.14.2 What would be the scope of such agreement for the joint management of forests?

The agreement may enable such a person to use or refrain from using such a forest or any part of the forest in a particular manner in order to ensure the conservation of biodiversity. In that regard, the agreement shall contain modalities of payment of compensation to such a person for loss of use to any person whose right of use of such forest and any part of the forest has been curtailed in order to ensure the conservation of biodiversity:

3.14.3 Is the agreement entered into between the Director of Kenya Forest Service and any person in joint management of forests enforceable?

Yes. The agreement entered between the Director of Kenya Forest Service and any person in respect of joint management of forests is enforceable against the person, or his successors in title, assignees or any or all other persons deriving title from him.

3.14.4 What would happen where a conservation agreement entered into between the Director of Kenya Forest Service and any person contravenes any written law?

Any conservation agreement entered into between the Director of Kenya Forest Service and any person which contravenes the provisions of any written law or is inconsistent with any prior agreement relating to the use of such forest and which is binding to the owners, their successors in title or persons deriving title from them shall not be enforceable.

3.15 MANAGEMENT OF PLANTATION FORESTS OWNED BY THE STATE

3.15.1 Who shall be responsible for the management of plantation forests owned by the State?

Kenya Forest Service.

3.15.2 For what purpose shall the plantation forests owned by the State be managed?

All plantation forests owned by the state shall be managed by the Service on a sustainable basis with the primary objective being the production of wood and other forest products and services for commercial purposes.

3.15.3 Can such plantation forest be leased, concessioned or contracted to a third party?

Yes. Where the Board is satisfied that all or part of a state forest which is a plantation forest may be efficiently managed through a licence, concession, contract, joint agreement, it may place an advertisement in two daily newspapers of national circulation calling for applications from interested persons for the management of the same.

3.15.4 What procedure will be followed by the third party (an applicant) in making application for the licence, concession, contract or joint management?

An applicant shall submit to the Board together with his application, a proposed management plan in respect of the forest which is the subject of the application.

3.15.5 What action is the Board supposed to do upon approval of an application to enter into a management agreement in the management of a plantation forest?

Where the Board has approved an application to enter into a management agreement with any person to manage a plantation forest or a part of a plantation forest, it shall publish its intention in two daily newspapers of national circulation at least thirty days before the agreement is due to take effect.

3.15.6 What shall the management agreement entered into by the Board regarding management of plantation forests entail?

The management agreement shall specify the following:

- (a) the duration of agreement;
- (b) the terms and conditions under which the applicant shall manage the forest;
- (c) any charges payable to the Service;
- (d) a management plan to be followed by the applicant;
- (e) the mechanism for settlement of disputes arising in respect of the agreement; and
- (f) the circumstances under which the agreement may be terminated.

3.15.7 What shall the Board be required to do before entering into a management agreement to manage plantation forests?

The Board shall, before entering into an agreement, call for an independent inventory of the forest and other relevant data to enable it determine the true value of such a forest. In addition, the Board may prescribe conditions necessary to govern entering into and/or renewal of such management agreements.

3.15.8 What shall the Board consider before entering into management agreement to manage plantation forests?

Before entering into management agreement to manage plantation forests, the Board shall ensure that:

- a) no part of a state forest which contains rare, threatened or endangered species, or which has particular environmental, cultural or scientific significance or which has been declared a nature reserve under this Act, shall be included in such agreements.

(b) No applicant may assign, exchange, transfer or convey the agreement or any part of his rights or interests therein without the prior written consent of the Board.

3.15.9 In what circumstances may an applicant assign, exchange, transfer or convey the management agreement entered into with the Board?

The applicant may assign, exchange, transfer or convey the agreement only where:-

- (a) the agreement has been in existence for at least six (6) years;
- (b) he has not violated any provisions of this Act, and has complied with the terms and conditions of the agreement;
- (c) the assignee would himself qualify to be an applicant under this section; and
- (d) the Board has approved such assignment, exchange or transfer.

3.15.10 What will happen where the applicant assigns, exchanges or transfers the agreement without the approval of the Board?

Where the applicant assigns, exchanges, or transfers his agreement without the approval of the Board, the agreement shall lapse and the management of the forest shall revert to the Service.

3.15.11 Does an applicant aggrieved by the decision of the Board have any recourse in law?

Yes. Any person aggrieved by the decision of the Board to enter into a management agreement for a plantation forest may, within thirty (30) days, make representations to the Board, and the Board shall consider such objections and take such action as justified in the circumstances.

3.16 PROTECTION AND MANAGEMENT OF LOCAL AUTHORITY FORESTS

3.16.1 Who shall be responsible for the protection and management of all forests and woodlands other than state and private forests?

Each local authority shall, with the assistance of the Service, be responsible for the protection and management of all forests and woodlands under its jurisdiction.

3.16.2 What is expected of local authorities in the protection and management of such forests and woodlands?

Each local authority shall ensure that such forests under their jurisdiction are managed on a sustainable basis in accordance with an approved management plan.

3.16.3 How will indigenous forests situated within the jurisdiction of a local authority be managed?

The provisions contained in this Act regarding the management of indigenous forests shall apply to the management of indigenous forests situated within the jurisdiction of a local authority.

3.16.4 What shall be the role of a forest officer for the area in ensuring that such forests and woodlands are managed sustainably?

A forest officer responsible for the area shall, in consultation with the forest conservation committee, make inspection visits at least twice a year, and shall make a report thereon to the Director as to whether such forests are managed in accordance with the provisions of this Act.

3.16.5 What is the Director expected to do upon receiving a report from the relevant forest officer?

The Director shall report to the Board on a forest officer's report received and the Board may, if it is satisfied that it is in the public interest for a local authority forest to be managed by the Service, make appropriate recommendations to the Minister.

3.16.6 What action can Minister take upon receiving a report from the Board that a particular forest or woodland is not being managed sustainably by the relevant local authority?

The Minister may declare a local authority forest in respect of which a report is received to be a provisional forest.

3.17 LOCAL AUTHORITY MANAGEMENT AGREEMENTS

3.17.1 Is a local authority allowed to enter into a management agreement in respect of forests or woodlands within its jurisdiction?

Yes. A local authority may, with the approval of the Board, upon application by a company, government agency, a forest community, a professional association, an educational institution, or non – governmental organization, a cooperative society or an individual, enter into an appropriate management agreement for all or part of any forest within its jurisdiction.

3.17.2 What shall such management agreement entail?

Such a management agreement shall specify the following:-

- a) the period for which the forest shall be managed;
- b) the terms and conditions under which the applicant shall manage the forest;
- c) any royalties and charges payable to the local authority or the Service;
- d) the mechanism for settlement of disputes arising in respect of the agreement; and
- e) the circumstances under which the agreement may be terminated.

3.17.3 What will happen where the forest in question lies within the jurisdiction of more than one local authority?

Where the forest in question lies within the jurisdiction of more than one local authority, an application shall be made to each of such local authorities, and such local authorities may jointly agree to enter into a management agreement for all or part of such forest pursuant to such application.

3.17.4 Does a management agreement transfer ownership of a local authority forest from the local authority to the person managing it?

No. A management agreement only confers management responsibilities and control and does not in any way transfer or vest in any person, institution, or organization any right of ownership of any land declared to be a local authority forest.

3.17.5 Can a management agreement allow for a local authority forest to be converted into a settlement area?

No. A management agreement shall not allow the conversion of a local authority forest into a settlement area.

3.18 CONCESSION OVER STATE FORESTS

3.18.1 What is the Board expected to do once satisfied that utilization of a forest can be done through the granting of a concession?

Where the Board is satisfied that utilization of a forest can be done through the granting of concessions, the Service may, by licence, grant the same subject to an Environmental Impact Assessment Licence undertaken in accordance with the provisions of the Environmental Management and Coordination Act, 1999.

3.18.2 In addition to undertaking an environmental impact assessment, what other requirements will the grantee be required to observe?

The grantee of a concession shall be required to:-

- (a) comply with the guidelines or management plans as prescribed by the Service;
- (b) protect the concession area from destruction and encroachment by other persons;
- (c) ensure that the forest areas under his management are maintained for the conservation of biodiversity, cultural or recreational use;
- (d) maintain the physical boundaries of the concession;
- (e) take precautions to prevent the occurrence and spread of forest fires in connection with any or all operations within or outside the concession area; and
- (f) ensure that all structures and facilities constructed or operated by and in connection with any activities are maintained according to the conditions of the licence.

3.18.3 What shall the licence granting the concession contain?

The licence granting the concession shall indicate the nature of the concession, including its physical location and boundaries, and the purpose for which it is granted.

3.18.4 Can the Board withdraw a concession once granted?

Yes. The Board may withdraw a concession granted where a grantee breaches any of the prescribed conditions.

3.18.5 Who shall be responsible for any damage or negligence arising under a concession?

A grantee of a concession shall be held personally responsible for any damage, including the negligence of his employees, arising directly from his operations on the land for which the concession has been obtained.

3.19 PROTECTION AND MANAGEMENT OF INDIGENOUS FORESTS AND WOODLANDS

3.19.1 What is the main purpose of protecting and managing indigenous forests and woodlands?

The main purposes for sustainable management of indigenous forests and woodlands include: -

- (a) conservation of water, soil and biodiversity;
- (b) riverine and shoreline protection;
- (c) cultural use and heritage;
- (d) recreation and tourism;
- (e) sustainable production of wood and non-wood products;
- (f) carbon sequestration and other environmental services;
- (g) education and research purposes; and
- (h) habitat for wildlife in terrestrial forests and fisheries in mangrove forests.

3.19.2 Is the Service obligated to prepare a management plan for effective protection and management of indigenous forests?

Yes. In enhancing the protection and management of indigenous forests, the Service shall, in consultation with the forest conservation committee for the area where the indigenous forest is situated, prepare forest management plans.

3.19.3 Can the Board enter into any joint management for the management of any state indigenous forest of part thereof?

Yes. The Board may enter into a joint management agreement for the management of any state indigenous forest or part thereof with any person, institution, government agency or forest association.

3.20 CONSENT FOR MINING AND QUARRYING

3.20.1 In what circumstances may the Board grant its consent for mining and quarrying operations in a forest area?

The Board shall only give its consent for mining and quarrying operations in a forest area where:-

- (a) The area does not contain rare, threatened or endangered species;
- (b) The forest does not have any cultural importance or contain sacred trees or groves;
- (c) Can Independent Environmental Impact Assessment has been carried out;

(d) The miner has undertaken through execution of a bond the value of which will be determined by the Board, to rehabilitate the site upon completion of his operation to a level prescribed by the Board; and

(e) The forest is not an important catchment area or source of springs.

3.20.2 What action should the Minister take in order to regulate mining operations in forest areas?

The Minister may, on the recommendation of the Board, and in consultation with the minister responsible for mining, publish rules to regulate and govern mining operations in forest areas.

3.20.3 Can mining operations that are likely to undermine the rules made under this Act be allowed?

No. The carrying on of the mining and quarrying operations shall not contravene any rules made under this Act.

3.20.4 In what circumstances may mining and quarrying be allowed in a state and local authority forest?

Mining and quarrying may be carried out in a state or local authority forest under the authority of a licence issued by the Service and the local authority.

3.20.5 What is the primary requirement before an applicant can be granted a mining and quarrying licence?

A mining and quarrying licence shall not be issued unless the applicant has implemented safety measures to prevent injury to human beings, livestock and wildlife traversing the forest upon the consent of the Commissioner of Mines.

3.21 REQUIREMENTS FOR RE-VEGETATION

3.21.1 What are the requirements for revegetation of mined areas?

Where the activity concerned is likely to result in the depletion of forest cover in any forest, there shall be included in the licence a condition requiring the licensee to undertake compulsory revegetation immediately upon the completion of the activity.

3.21.2 Under whose direction shall the revegetation be undertaken?

Revegetation shall be undertaken in consultation with the Service, which shall determine the seeds and seedlings proposed to be used in such revegetation.

3.22 ACTIVITIES OUTSIDE MANAGEMENT PLANS

3.22.1 In what circumstances shall activities within a forest area which are not included in a management plan be undertaken?

Any activities within a forest area which are not included in a management plan shall only be undertaken with the consent of the Board.

3.22.2 What should a person intending to undertake an activity not included in the management plan do before the Board could grant the consent?

A person intending to undertake any activity within a forest area which is not included in a management plan shall apply in that behalf to the Board.

3.22.3 What shall accompany such application?

Such application shall be accompanied by the results of an independent Environmental Impact Assessment conducted in respect of the proposed activity.

3.22.4 What action shall the Board take before granting the approval?

Where the Board intends to grant its approval, it shall cause a notice of such intention to be published in the Gazette and in at least two newspapers of national circulation, and posting a notice in such manner as to bring to attention of the persons likely to be directly affected by such activity.

3.22.5 What shall be the period for such a notice?

Such a period shall be of not less than ninety (90) days within which any person may make objections to the Board.

3.22.6 What is the Board expected to do with any objections received or delivered in respect of the notice?

The Board shall deliberate on any objection received and deliver its decision to the objector within a period of sixty days from the date of receipt of the objection.

3.22.7 Can the objector aggrieved by a decision of the Board appeal?

Yes. Any objector aggrieved by a decision of the Board may within sixty days after receipt of such decision appeal to the High Court.

PART IV

COMMUNITY PARTICIPATION

The purpose of this part of the Act is to provide a framework for community participation in sustainable management of forests in Kenya. This part thus establishes community forest associations and confers user rights to local communities in respect to access and control of forest resources in Kenya.

4.1 ESTABLISHMENT OF COMMUNITY FOREST ASSOCIATIONS

4.1.1 If a forest community resident adjacent to a forest area wish to be involved in the management of a state or local authority forest, how should they organize themselves?

A member of a forest community may, together with other members or persons resident in the same area may register a Community Forest Association.

4.1.2 Under what legal regime shall the Community Forest Association be registered?

A Community Forest Association shall be registered under the Societies Act of the Laws of Kenya.

4.1.3 Can a Community Forest Association registered under the Societies Act be involved in the conservation and management of a State or local authority forest?

Yes. A registered CFA may apply to the Director for permission to participate in the conservation and management of a state forest or local authority forest in accordance with the provisions of this Act. However, such application will not be made where there is an existing prior agreement or licence.

4.1.4 In what form shall the application by CFA to be granted permission to participate in the conservation and management of state or local authority forest be?

The application by CFA to the Director shall be in the prescribed form.

4.1.5 What shall be the content of the application?

The application by CFA to the Director for permission to participate in the conservation and management of a state or local authority forest shall contain the following:-

- (a) a list of the members of the association and its address;
- (b) the Constitution of the association;
- (c) the association's financial regulations;
- (d) the area of forest for which the association proposes to undertake conservation and management;

(e) the association's proposals concerning: –

- (i) use of forest resources;
- (ii) methods of conservation of biodiversity;
- (iii) methods of monitoring and protecting wildlife and plant populations and enforcing such protection; and
- (iv) such other information as the Director may require.

4.1.6 What will be required of CFA where a particular forest in question does not have a management plan?

CFA application shall be accompanied by a draft management plan where the forest in question does not have a management plan, or where the association proposes that there be a new management plan.

4.1.7 What provisions shall apply in the development of such draft management plan?

The general provisions regarding management plans shall apply in respect of such draft management plan.

4.1.8 What obligation is conferred to the Director in respect of all associations participating in the conservation or management of forests?

The Director shall cause to be kept an up to date record of all associations participating in the conservation or management of forests.

4.2 FUNCTIONS OF A FOREST ASSOCIATION

4.2.1 What shall be expected from an association approved by the Director to participate in the management or conservation of a forest or part of a forest?

An association approved by the Director to participate in the management or conservation of a forest or part of a forest shall –

- (a) protect, conserve and manage such forest or part thereof in accordance with approved management agreement entered into under this Act and the provisions of the management plan for the forest;
- (b) formulate and implement forest programmes consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria;
- (c) protect sacred groves and protected trees;
- (d) assist the Service in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce;
- (e) with the approval of the Board enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of forests;
- (f) keep the Service informed of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity;

- (g) Help in fire fighting; and
- (h) Do any other act that is necessary for the efficient conservation and management of the forest.

4.2.2 What forest user rights shall be conferred to a CFA through a management agreement with the Director?

The management agreement between the Director and the association may confer on the association all or any of the following forest user rights –

- (a) collection of medicinal herbs;
- (b) harvesting of honey;
- (c) harvesting of timber or fuel wood;
- (d) hress harvesting and grazing;
- (e) collection of forest produce for community based industries;
- (f) ecotourism and recreational activities;
- (g) scientific and education activities;
- (h) plantation establishment through non-resident cultivation;
- (i) contracts to assist in carrying out specified silvicultural operations;
- (j) development of community wood and non-wood forest based industries; and
- (k) other benefits which may from time to time be agreed upon between an association and the Service.

4.2.3 What other considerations shall be considered in conferring the said forest user rights?

The following factors shall be considered:

- (a) None of the specified activities shall be carried out so as to conflict with the conservation of biodiversity;
- (b) The Director may, in consultation with the association, make rules regulating the performance thereof; and
- (c) In the case of plantation establishment, the non-resident shall be allowed to cultivate in the forest for a period not exceeding three years.

4.3 ASSIGNMENT OF FOREST USER RIGHTS

4.3.1 Can the association assign any or all its rights under a management agreement to a third party?

Yes. An association may, with the approval of the Director, assign any or all its rights under a management agreement to a suitably qualified agent on mutually agreed terms.

4.3.2 Can the Director approve an assignment which derogates from the main objectives and purposes set out in the management agreement?

No. The Director shall not approve any assignment which would derogate from the main objectives and purposes set out in the management agreement.

4.3.3 What will be the legal effect upon approval of the management agreement by the Director?

The management agreement shall be deemed to provide that an association shall be liable for all the activities, acts and omissions of the assignees of its rights under the agreement.

4.4 TERMINATION OR VARIATION OF A MANAGEMENT AGREEMENT

4.4.1 Can the Director terminate a management agreement with an association or withdraw a user right?

Yes. The Director may terminate a management agreement with an association or withdraw a particular user right.

4.4.2 In what circumstances may the Director terminate a management agreement with an association or withdraw a particular user right?

The Director may terminate a management agreement with an association or withdraw a particular user right in the following circumstances –

- a) An association breaches the terms and conditions thereof;
- b) He considers such action as necessary for purposes of protecting and conserving biodiversity; or
- c) The association itself so requests.

4.4.3 Is it necessary for the Director to give notice to the affected association before terminating a management agreement or withdrawal of a particular user right?

Yes. Where the Director intends to terminate a management agreement or withdraw a particular user right on either of the grounds as stipulated, he or she shall give the affected association thirty day's notice to show cause why the management agreement should not be so terminated or the user right so withdrawn.

4.4.4 What would happen in instances where a request for termination of a management agreement or the withdrawal of a user right is made by an association?

Where a request for termination of a management agreement or the withdrawal of a user right has been made by an association, the Director shall make inquiries into the grounds for the request, and where he is satisfied that it is in the best interests of the association and of conservation to do so, may grant the request.

4.4.5 Can an aggrieved association appeal against the decision of the Director to terminate a management agreement or the withdrawal of a user right?

Yes. Where an association is aggrieved by the decision of the Director to terminate a management agreement or the withdrawal of a user right, it may, within thirty (30) days after being notified of the decision, appeal to the Board against the decision.

4.4.6 Is the Director limited in any way by the grounds on which to terminate a management agreement?

There is no limit as to the grounds on which, in accordance with the terms of a management agreement, the agreement or any user right may be terminated.

**PART V
ENFORCEMENT**

The purpose of this part of the Act is to provide a framework for the enforcement of the Act. In this regard, this part of the Act deals with the powers of a forest officer, as an authorized officer under the Act; activities permitted in protected forests; and offences under the Act.

5.1 POWERS OF A FOREST OFFICER

5.1.1 What are the powers of a forest officer?

A forest officer may –

- (a) demand from any person the production of an authority or licence for any act done or committed by that person in a state, local authority or provisional forest, or in relation to any forest produce for which a licence is required under this Act or under any rules made thereunder;
- (b) require any person found within or without a state, local authority or provisional forest who has in his possession any forest produce suspected to have been taken from such a forest, to give an account of the manner in which he became possessed thereof, and, where the account given is not satisfactory, arrest and take such person before a magistrate;
- (c) search any person suspected of having committed an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and arrest the person, seize and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or his agent or servant;
- (d) search any vehicle or vessel and seize and detain any forest produce in respect of which there is reason to believe that an offence has been committed, together with any tools, equipments, vessels, vehicles or livestock used in the commission of the offence.
- (e) seize and detain any livestock found in a State, local authority or provisional forest without any person in charge of them; and
- (f) confiscate any equipment or receptacle placed without authority in a State, local authority or provisional forest.

5.1.2 What is expected of the forest officer seizing such property?

The forest officer seizing such property shall forthwith report the seizure to the magistrate having jurisdiction over the area where the offence takes place.

5.1.3 In what circumstances can a forest officer effect an arrest?

A forest officer shall effect an arrest where he has reasonable cause to believe that that person may fail to appear to answer a summons, or where such a person refuses to give his name and address or gives a name and address which there is reasonable cause to believe is false.

5.1.4 What powers does the Director and forest officer?

The Act empowers the Director or any forest officer to:

- (a) enter any registered private forest in order to assess the condition thereof or to perform any such other act which he considers necessary in the circumstances; or
- (b) enter the premises of any forest-based industry or forest produce dealer to inspect any forest produce placed or found within the premises to satisfy himself that the industry or dealer is abiding by the provisions of a licence issued under this Act;
- (c) take all reasonable steps to prevent the commission of an offence under this Act; and
- (d) where qualified to do so, administer oaths and take sworn testimony for the purposes of an investigation conducted under this Act.

5.1.5 What shall the Director and forest officer consider while inspecting premises for forest produce?

During such inspection the Director and forest officer shall have due regard to the proprietary rights of the proprietor.

5.1.6 What powers are conferred to an officer of the Service?

In enforcing the Act, any officer of the Service who is of or above the rank of Sergeant Forest Guard shall have the same powers conferred to relevant officers under sections 22 and 23 of the Criminal Procedure Code and section 20 of the Police Act.

5.2 USE OF FIREARMS

5.2.1 Is the disciplined force of Kenya Forest Service allowed to use firearms?

Yes. The President may, through the Commissioner of Police, make available to the disciplined force of the Service such firearms as may be necessary for the Service to carry out its functions under this Act.

5.2.2 In what circumstances shall the disciplined force of the Service be allowed to use firearms?

A member of the disciplined force, after acquiring the requisite training, and when authorized by the Director, may use firearms for the following purposes:-

- (a) in the course of law enforcement against –
 - (i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody;
 - (ii) any person who, by force, removes or attempts to remove any other person from lawful custody;
 - (vi) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or
 - (vii) any person unlawfully hunting any animal within a forest area or nature reserve.
- (b) for the protection of people and property against any animal causing destruction to human life or property or crops; and

(c) in the course of animal population control.

5.2.3 In what circumstances shall an officer of the disciplined force not resort to the use of firearms?

An officer of the disciplined force of the Service shall not resort to the use of firearms –

- (a) unless the officer concerned has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he is about to use a firearm against him, and the warning is unheeded; or
- (b) unless the officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm, or that he cannot otherwise prevent the removal, or, as the case may be, effect the arrest.

5.3 PROSECUTORIAL POWERS

5.3.1 Can a forest officer prosecute for any offence committed under this Act?

Yes. A forest officer may with the leave of the Attorney General given under the Criminal Procedure Code, conduct any prosecution for any offence committed under this Act.

5.4 RESTRAINT OF BREACHES OF THE ACT

5.4.1 What duty does a citizen of Kenya in ensuring that the provisions of this Act are not violated?

Every citizen of Kenya, and any person who is ordinarily resident in Kenya, who has reason to believe that the provisions of this Act have been, are being or are about to be violated, may petition the High Court.

5.4.2 What orders can the High Court grant?

The High Court may grant the following orders:

- (a) a declaration that the provisions of this Act are being, have been or are about to be contravened;
- (b) an injunction restraining any specified person from carrying out such a contravention;
- (c) the writ of mandamus against any officer or person who has failed to perform any duty imposed by or under this Act; and
- (d) any remedy at law or equity for preventing or enforcing the provisions of this Act.

5.4.3 What shall the petition to the High Court state?

The petition submitted to the High Court shall state the following –

- (a) The particulars of the petitioner;
- (b) The nature of the violation or likely violation;
- (c) The provision(s) of this Act which is or are being violated; and
- (d) The person, agency or body violating or about to violate the said provisions.

5.4.4 In what circumstances may the High Court not issue an order?

The High court shall not issue an order in respect of a proposal by the State or a local authority where such proposal has been duly submitted to public consultation in accordance with the Third Schedule.

5.4.5 What are the exceptions?

Exceptions to the application shall apply which is-

- (a) made within 60 days after publication, in accordance with the Schedule, of the notice of the decision; and
- (b) made by a person –
 - (i) who made a comment or objection concerning the proposal within the time allowed in that Schedule; or
 - (ii) who shows reasonable cause why he did not make such comment or objection.

5.5 OFFENCES

OFFENCES RELATING TO PROHIBITED ACTIVITIES IN FORESTS

5.5.1 What are the prohibited activities in a state, local authority or provisional forest?

Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a state, local authority or provisional forest –

- (a) fell, cut, take, burn, injure or remove any forest produce;
- (b) be or remain therein between the hours of 7 p.m. and 6 a.m. unless he is using a recognized road or footpath, or is in occupation of a building authorized by the Director, or is taking part in cultural, scientific or recreational activities;
- (c) erect any building or livestock enclosure, except where the same is allowed for a prescribed fee;
- (d) smoke, where smo or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax, or enter therein for the purpose of collecting honey and beeswax, or be therein with any equipment designed for the purpose of collecting honey or beeswax;
- (e) de-pasture livestock, or allow livestock to be therein;
- (f) clear, cultivate or break up land for cultivation or for any other purpose;
- (g) enter any part thereof which may be closed to any person;
- (h) collect any honey or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collect any honey or beeswax or enter therein for the purpose of collecting honey and beeswax, or be therein with any equipment, designed for the purpose of collecting honey or beeswax;
- (i) construct any road or path;
- (j) set fire to, or assist any person to set fire to, any grass or undergrowth or any forest produce;
- (k) possess, bring or introduce any chain saw or logging tools or equipment; and
- (l) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, boundary mark, fence notice or notice board.

5.5.5.2 What happens to a person who contravenes provisions relating to prohibited activities in forests?

Any person who contravenes the provisions relating to prohibited activities in forests commits an offence.

5.5.5.3 What is the penalty?

Such a person is liable on conviction to a fine not exceeding fifty thousand shillings (Kshs. 50,000) or to imprisonment for a term not exceeding six (6) months, or to both such fine and imprisonment.

5.5.2 OFFENCES RELATING TO COUNTERFEITING OR UNLAWFULLY FIXING MARKS

5.5.2.1 What offences relate to counterfeiting or unlawfully fixing marks?

Any person who, without lawful authority –

- (a) marks any forest produce, or affixes upon any forest produce, a mark ordinarily used by a forest officer to indicate that the forest produce is the property of the Government, or that it may or has been lawfully cut or removed;
- (b) alters, obliterates, removes or defaces any stamp, mark, sign, licence, permit or other document lawfully issued under the authority of this Act, or removes or destroys any part or a tree bearing the stamp or other mark used by any forest officer;
- (c) covers any tree stump in any state or local authority forest or on any unalienated Government land with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;
- (d) wears any uniform or part of a uniform, or any badge or other mark issued by the Service to be worn by forest officers or other employees of the Service, or who in any other way holds himself out to be an employee of the Service; or
- (e) counterfeits or issues without lawful authority any licence or other document purporting it to be a licence or document issued under this Act or any rules made thereunder.

5.5.2.2 What is the penalty?

Such a person shall be liable on conviction to a fine not exceeding five hundred thousand shillings (Kshs. 500,000) or to imprisonment for a term not exceeding five years (5 yrs) or to both such fine and imprisonment.

5.5.3 OFFENCES RELATING TO OPERATING OF A SAWMILL

5.5.3.1 What happens to a person who operates a sawmill in a manner contrary to the prescribed rules?

Any person who operates a sawmill in a manner contrary to that prescribed in rules made under this act commits an offence.

5.5.3.2 What is the penalty?

Such a person is liable on conviction to a fine of not less five hundred thousand (Kshs. 500,000) or to imprisonment for term of not less than three years (3 yrs), or to both such fine and imprisonment.

5.5.4 OFFENCES RELATING TO CAPTURING OR KILLING OF AN ANIMAL

5.5.4.1 In what circumstances may a person be allowed to capture or kill an animal found in a forest?

Unless under a valid licence or permit issued under the Wildlife (Conservation and Management) Act or under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a forest capture or kill any animal, set or be in possession of any trap, snare, gin or net, or dig any pit, for the purpose of catching any animal, or use or be in possession of any poison or poisoned weapon.

5.5.4.2 What is the penalty?

Such a person is liable on conviction to a general penalty of a fine not exceeding ten thousand shillings (Kshs. 10,000) or to imprisonment for a term not exceeding three months (3 months).

5.5.5 OFFENCES RELATING TO GRAZING LIVESTOCK IN A FOREST WITHOUT AUTHORITY

5.5.5.1 What happens where livestock will be found in a forest without the authority of the Director?

Any livestock found in any forest shall, unless the owner thereof proves to the contrary, be deemed to be there under the authority of the owner as well as the person, if any, actually in charge of the livestock.

5.5.5.2 What would happen to livestock detained having been found in a forest without authority?

Any livestock detained may be auctioned at the expiry of seven days if the owner does not reclaim them, and the proceeds of such auction shall be paid to the Service.

5.5.5.3 Shall the Service or her officers be liable for the injury or death of any livestock that might have been seized or detained?

No. Neither the Service nor any of its officers shall be held liable for the injury, loss or death of any livestock so seized and detained.

5.5.5.4 What is the penalty?

Such a person is liable on conviction to a general penalty of a fine not exceeding ten thousand shillings (Kshs. 10,000) or to imprisonment for a term not exceeding three months (3 months).

5.5.6 OFFENCES RELATING TO INTRODUCING INVASIVE SPECIES AND DUMPING OF WASTES

5.5.6.1 What happens to a person who introduces an invasive species without the authority of the Service, dumps wastes or grows any plant from which narcotic drugs can be extracted?

Any person who, in any forest area (a) introduces any exotic genetic material or invasive

plants without authority from the Service; (b) dumps any solid, liquid, toxic or other wastes; (c) grows any plant from which narcotic drugs can be extracted commits an offence; or (d) extracts, removes or causes to be removed, any tree, shrub or part thereof for export commits an offence.

5.5.6.2 What is the penalty?

Such a person shall be liable on conviction to a fine of not less than three million shillings (Kshs. 3 million), or to imprisonment for a term of not less than ten years, or to both such fine and imprisonment.

5.5.7 OFFENCES RELATING TO FIRE IN THE FOREST

5.5.7.1 What happens to a person who willfully or maliciously sets fire to any private, provisional, local authority or state forest?

Any person who willfully or maliciously sets fire to any private, provisional, local authority or state forest commits an offence.

5.5.7.2 What is the penalty?

Such a person is liable on conviction to a fine of not less than two hundred thousand shillings (Kshs. 200,000) or to imprisonment for a term of not less than one year (1 yr), or to both such fine and imprisonment.

5.5.8 OFFENCES IN RELATION TO MINING, QUARRYING OR RE-VEGETATION

5.5.8.1 Shall a person contravening provisions mining, quarrying or re-vegetation in a forest area be committing an offence?

Yes. Any person who contravenes the provisions of this Act in relation to activities in forest areas relating to mining, quarrying or re-vegetation commits an offence.

5.5.8.2 What shall be the penalty?

If found guilty, such a person shall be liable on conviction to imprisonment to a term of not more than twelve months or to a fine of not more than five hundred thousand shillings (Kshs. 500,000) or to both such imprisonment and fine.

5.5.9 OTHER OFFENCES

5.5.9.1 What are the other offences under the Act?

Any person who –

- (a) commits a breach of, or fails to comply with the provisions of, this Act;
- (b) commits a breach of, or fails to comply with any of, the terms or conditions of a licence issued to him under this Act;
- (c) fails to comply with a lawful requirement or demand made or given by a forest officer;
- (d) obstructs a person in the execution of his powers or duties under this Act;
- (e) willfully or maliciously sets fire to any private, provisional, local authority or state forest; or

(f) makes charcoal in a state, local authority or provisional forest; or in private forest or farmlands without a licence or permit of the owner as the case may be.

5.5.9.2 What is the penalty?

Such a person is liable on conviction to a fine not exceeding one hundred thousand shillings (Kshs.100,000) or to imprisonment for a term not exceeding one year (1 yr), or to both such fine and imprisonment.

5.5.10 GENERAL PENALTY

5.5.10.1 What is the general penalty for an offence against the provisions of this Act for which no specific penalty is provided for?

Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable to a fine not exceeding ten thousand shillings (Kshs. 10,000) or to imprisonment for term not exceeding three months (93 months).

5.6 COMPENSATION FOR LOSS OR DAMAGE

5.6.1 CONVICTED OF AN OFFENCE OF OCCUPYING OR CULTIVATING LAND IN A FOREST

5.6.1.1 What would happen to a person convicted of an offence of occupying or cultivating land in a forest area without a licence?

Where a person is convicted of an offence of occupying or cultivating land in a forest area without a licence, the court may, in addition to any other penalty imposed under this Act, order such person to remove any buildings, enclosures, huts or crops within a period to be specified in the order within the period so specified, the buildings, enclosures, huts or crops shall be deemed to be the property of the state, local authority or forest owner, as the case may be, and may be disposed of as the state, local authority or forest owner may think fit.

5.6.1.2 What will be the consideration?

The expenses incurred as a result of keeping in custody anything seized or detained shall be borne by the person whose property is seized or detained.

5.6.2 CONVICTED OF AN OFFENCE OF DAMAGING, INJURING OR REMOVING FOREST PRODUCE

5.6.2.1 Can the court impose additional penalties on persons convicted of an offence of damaging, injuring or removing forest produce from any forest?

Yes. Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the court may in addition to any other ruling order –

- a) That such person pay to the forest owner, by way of compensation, a sum equal to the determined value of the forest produce so damaged, injured or removed and where the value cannot be estimated, ten thousand shillings for each offence;
- b) If it is proved to the satisfaction of the court that the person so convicted is the agent or

employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default; and

c) The forest produce be removed, and any vessels, vehicles, tools or implements used in the commission of the offence, be forfeited to the Service.

5.6.2.2 What shall be the consideration in giving such orders?

The value of the forest produce shall be either the commercial value of the forest produce or the cost of repairing the damage caused to biodiversity as a result of the activities complained of.

PART VI

MISCELLANEOUS

The purpose of this part of the Act is to deal with matters relating to promulgation of rules for the effective implementation of the Act; implementation of international obligations in respect of forest related multi-lateral environmental agreements; cooperation in the management of cross-border forests and forest produce; and matters relating to environmental impact assessments and maintaining of relevant forest related registers.

6.1 MAKING OF RULES

6.1.1 Does the Act empower the Minister to make rules to enhance effective implementation of the Act?

Yes. The Minister may, on the recommendation of the Board, make rules for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

6.1.2 The Minister may make rules in respect of which areas?

The Minister may make rules in respect of the following areas:-

- (a) controlling the harvesting, collection, sale of land and disposal of forest produce;
- (b) prescribing the amount of royalties or fees payable under this Act generally or in particular cases;
- (c) regulating the use and occupation of state forest land for the purposes of residence, cultivation, grazing, tourism, recreation, camping, picnicking, cultural activities, industrial or any other similar activities;
- (d) the circumstances in which licences, permits, leases, concessions and other agreements may be applied for, granted, varied, refused or cancelled, and the manner in which a person to whom a licence is granted may exercise a right or privilege conferred upon him by the licence;
- (e) regulating the felling, working and removal of forest produce in areas where trees may be felled or removed;
- (f) regulating the entry of persons into a state or provisional forest, the period during which such persons may remain there and conditions under which they may remain;
- (g) closing paths or roads in a state or provisional forest to either human or vehicular traffic or both;
- (h) regulating entry into a nature reserve;
- (i) providing conditions of administration and management of forests and forestry;
- (j) providing for plant inspections and the declaration of insects and fungal pests dangerous to forests and forest produce, and prescribing measures to be taken to control or eradicate such notified pests;
- (k) providing for compulsory use of property marks by the Service, local authorities and owners of private forests for the purpose of identifying wood sold from State, local authority, provisional and private forests;

- (l) regulating or prohibiting the lighting of fires or smoking or carrying, kindling or throwing of any fires or light or inflammable material;
- (m) prescribing the form, duration and other conditions in respect of forest management agreements;
- (n) conditions under which mismanaged or neglected forests may be declared provisional forests and conditions for reverting them to the original owners;
- (o) regulating the establishment of forest-based industries;
- (p) providing for measures that enhance community participation in the conservation of forests at the local level; and
- (q) providing for the establishment of new forest areas.
- (r) regulating the production, transportation and marketing of charcoal and
- (s) prescribing the manner of nomination of representatives of forest associations to forest conservancy committees.

6.1.3 Can such rules empower the Board to issue orders imposing conditions and dates upon, within or before which acts shall be performed or done?

Yes. Such rules made may require acts or things to be performed or done to the satisfaction of the Service, and may empower the Board to issue orders imposing conditions and dates upon, within or before which acts or things shall be performed or done.

6.1.4 In what circumstances may the Minister make rules in respect of local authority forests?

Upon the recommendation of a local authority or forest conservation committee, the Minister may, in consultation with the Board and the Minister for the time being responsible for matters related to local authorities, make rules in respect of any or all local authority forests.

6.1.5 What shall be the penalty for breach of such rules?

Rules may prescribe in respect of a breach thereof a fine not less than ten thousand shillings (Kshs. 10,000) or imprisonment for a term of not less than one month (1 month) or both such fine and imprisonment.

6.1.6 In what circumstances may the provisions of the Interpretation and general Provisions Act apply?

The provisions of section 27 of the Interpretation and General Provisions Act shall not apply to rules made under this section.

6.2 MAINTENANCE OF REGISTERS

6.2.1 Which registers is the Director obligated to maintain?

The Director is obligated to following registers:

- (a) all licences issued under this Act;
- (b) private forests registered under section 25 and the owners thereof;

- (c) local authority forests;
- (d) all associations participating in the conservation and management of forests under this Act; and
- (e) all forest management plans.

6.2.2 Shall such registers be open for inspection by interested parties?

Yes. All registers maintained by the Director shall be open for inspection at the office of the Director by members of the public during official working hours.

6.3 OBLIGATIONS UNDER RELEVANT MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEA's)

6.3.1 To what extent shall the provisions of this Act contribute to the compliance and enforcement of MEAs?

The provisions of this Act shall be carried out in accordance with Kenya's obligations under any treaty or international agreement concerning forests or forest resources to which it is a party.

6.4 PROTECTION AND MANAGEMENT OF CROSS-BORDER FORESTS AND FOREST PRODUCE

6.4.1 In what circumstances may the Director develop management plans and enter into joint management arrangements for the purposes of the proper management of cross-border forests and forest produce?

The Director may, with the approval of the Board, develop management plans and enter into joint management arrangements for the purposes of the proper management of cross-border forests and forest produce.

6.5 APPLICATION FOR ENVIRONMENTAL IMPACT ASSESSMENT

6.5.1 How shall the provisions under the Environmental Management and Coordination Act in respect of an application for environmental impact assessment licence apply?

The provisions of Part VI of the Environmental Management and Coordination Act shall apply, *mutatis mutandis*, to and in respect of a licence under this Act and any Environmental Impact Assessment required under this Act to be undertaken in relation to it.

6.6 SETTLEMENT OF DISPUTES

6.6.1 Shall the provisions of the Environmental Management and Coordination Act regarding the National Environment Tribunal apply?

Yes. The provisions of the Environmental Management and Coordination Act regarding reference to the Tribunal shall apply to the settlement of disputes arising under this Act.

PART VII

7.0 TRANSITIONAL PROVISIONS

The purpose of this part of the Act deals with the transitional mechanisms with the coming into force of this Act. In particular, this part of the Act provides a legal framework on how to deal with assets and liabilities and transfer of employees from the then Forest Department to the newly established Kenya Forest service.

7.1 REPEAL OF THE FORESTS ACT, CAP 385

7.1.1 What is the effect of this Act in relation to the status of the Forests Act, Cap 385?

The Forests Act is repealed.

7.1.2 With the repeal of the Forests Act what happens to the land and property, licences and permits secured under the repealed law?

Notwithstanding the repeal of the Forests Act:-

- a) any land which, immediately before the commencement of this Act, was a forest or nature reserve under that Act, shall be deemed to be a state or local authority forest or nature reserve, as the case may be, under this Act; and
- b) any licences or permits granted under that Act and in force immediately before the commencement of this Act shall be deemed to have been granted under the provisions of this Act, and shall remain in force until revoked in accordance with any terms in that regard set out in the licence, as the case may be, or renewed as a licence under this Act.

7.2 VESTING OF ASSETS AND TRANSFER OF LIABILITIES

7.2.1 Shall all property which immediately before commencement of this Act and which were vested in the Government for the use of the Forest Department pass to the new Service?

Yes. All property, except any such property as the minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Forest Department shall, upon the taking effect of a notice by the Minister published in the Gazette, and without further assurance, vest in the Service, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

7.2.2 In whom shall property, all contracts, debts, obligations and liabilities of the Government attributable to the Forest department immediately before the commencement of this Act vest?

Except as otherwise provided in 7.2.1 (hereinabove) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Forest Department immediately before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

7.3 TRANSFER OF EMPLOYEES

7.3.1 What happens to public officers in service of the Forest Department before the commencement of this Act?

All persons, being public officers, who, before the commencement of this Act are employed by the Government for the purposes of the activities of the Forest Department, shall at the commencement of this Act be, deemed to be on secondment to the Service until they are employed by the Service in accordance with this Act, or their deemed secondment otherwise ceases in accordance with the terms of such secondment.

7.3.2 How about such public officers with pending disciplinary proceedings?

Where, at the commencement of this Act, any penalty, other than dismissal, has been imposed on any employee of the Forest Department pursuant to disciplinary proceedings against him, and the penalty has not been or remains to be served by such employee, such employee shall, on his transfer to the Service, serve, or continue to serve such penalty to its full term as if it had been imposed by the Service.

PART 3 STAKEHOLDER COLLABORATION

INTRODUCTION

Effective implementation of the new Forest Policy and legislation is dependent on a wide and diverse range of stakeholders acting collaboratively. Working independently, government, civil society, private sector and communities cannot by themselves respond adequately to the emerging challenges in forest sector.

One of the greatest challenge is that stakeholder identification. However, what is important to note is that stakeholders are different interest groups (primary and secondary stakeholders, including institutions) with varied stakes in the conservation, management and utilization of forest resources. In some cases stakeholders are easy to identify in those two categories. In other cases, a more in-depth understanding of the issues involved in a particular situation is needed to determine who should be included in each of the two categories.

Primary stakeholders include those who, because of power, authority, responsibilities or claims over the resources, are central to conservation and management of forest resources. As the outcome of any action will affect them directly, their participation is critical. Primary stakeholders can include local community-level groups, private sector interests (forest based industries) and local and national government agencies such as Kenya Forest Service (Formerly Forest Department). Primary stakeholders may also include, by virtue of the power they wield, those who have the capacity to influence collaboration outcomes, but who may not themselves be directly affected by them. This group can include politicians and officials at the local and national levels and international agencies (such as multilateral partners) who control policies, laws or funding resources. Failure to involve primary stakeholders can lead to subsequent implementation, technical or political difficulties in achieving the desired policy objectives.

Secondary stakeholders are those with an indirect interest in the outcome. Depending on the issue, secondary stakeholders may, for example, be the consumer (who is interested in the continuing availability of forest-based products, the company employee (who is concerned about job security in a forest-based industry) or the tourism operator (who wants to know whether an ecotourism destination will continue to be accessible to clients). These stakeholders may need to be involved in collaboration processes, but their role is peripheral to that of primary stakeholders, so they may need to be involved only periodically.

Secondary stakeholders may need to have a role, for example, in identifying the costs and benefits of their interests, yet they may not need to be involved in all aspects of conservation and management of forests. Deliberate actions must be taken to define when and how to include both primary and secondary stakeholders, as well as monitor changes in their interests and influence.

Another group worthy mentioning is the marginalized stakeholders such as women, indigenous people and other impoverished and disenfranchised groups, who may in fact be primary or secondary stakeholders, but may lack the recognition or capacity to participate in collaboration efforts as envisioned under the new forest policy and legislation on an equal basis. Particular effort must always be made to ensure their participation. Strategic foresight is needed to determine the time and support required to enable them to organize themselves and to participate in collaboration process.

2.0 STAKEHOLDER COLLABORATION PROCESS

2.1 DEFINING STAKEHOLDERS

2.1.1 Who is a stakeholder?

A stakeholder is any person, group or institution that – positively or negatively – affects or is affected by a particular issue or outcome.

2.1.2 Are there different types of stakeholders?

Yes. Different interest people, groups or institutions will have different stakes in the conservation and management of forest resources, based on their use of and historical relationship with such resources.

2.1.3 What is the best tool for identifying stakeholders?

Stakeholder analysis is the most appropriate tool. Stakeholder analysis is the process by which the various stakeholders who might have an interest in a specific matter are identified.

2.1.4 What information does stakeholder analysis provide?

A stakeholder analysis generates information about stakeholders and their interests, the relationships between them, their motivations and their ability to influence outcomes.

2.1.5 What is the overall goal of stakeholder analysis?

The goal of stakeholder analysis is to:

- (a) identify the stakeholders (by category);
- (b) develop a strategic view of the situation and the relationship between the different stakeholders and identified objectives;
- (c) guide the design of collaboration approaches, including the strengthening of existing positive relationships and the improvement of confrontational ones; and
- (d) clarify stakeholder interests and roles (including one's own).

2.1.6 What are the critical guiding questions that shall inform the stakeholder analysis process?

The following guiding questions that can be used to identify the stakeholders:

- (a) which stakeholders can effectively identify issues/problems in relation to identified conservation goal in situations where there appears to be little room for negotiation?
- (b) what are the perceptions of these stakeholders about the conditions that need to be met if agreement is to be reached?
- (c) who best represents the interests for each stakeholder group?
- (d) are there marginalized stakeholders who should be involved but need support to participate? What support is required?
- (e) who is directly affected by the issues, and who will be affected by the solutions?
- (f) who can generate the political and institutional will to achieve significant change?
- (g) who controls the resources needed to effectively implement agreed solutions?

2.2 STAKEHOLDER COLLABORATION

2.2.1 What is stakeholder collaboration?

Stakeholder collaboration is a process through which groups, institutions or people with similar or different perspectives can exchange viewpoints and search for solutions that go beyond their own vision of what is possible.

2.2.2 What does stakeholder collaboration entail?

Collaboration goes beyond people participating (passively or actively) in a process. It also extends beyond communication, cooperation and coordination, even though these are key elements in the process. Thus, collaboration refers to a mutually beneficial relationship between two or more parties who work toward common goals by sharing responsibility, authority and accountability for achieving results.

2.2.3 What are the characteristics of a collaboration process?

Collaboration relies on trust, inclusion and constructive engagement to achieve a broad common purpose. It does not use advocacy, exclusion and power over others to achieve its ends. Power and status differences among participants are de-emphasized and ownership of the process is shared. As a consequence, stakeholder collaboration can, in the right circumstances, provide a powerful approach to responding to complex problems that isolated efforts cannot solve.

2.2.4 What are the key characteristics of collaboration?

The seven key characteristics of collaboration are:

- (a) inclusive and non-hierarchical participation;
- (b) participant responsibility for ensuring success;
- (c) a common sense of purpose and definition of the problem;
- (d) participants educating each other;
- (e) the identification and testing of multiple options;
- (f) participants sharing in the implementation of solutions; and
- (g) people being kept informed as situations evolve.

2.2.5 What is the right environment for collaborative processes?

Collaboration is most effective when the objectives, process and roles are clearly defined so that those involved know what to expect. Where initiatives lack a cohesive structure or require unrealistic levels of participation, collaboration may not be a feasible option. It is instructive that, collaborative processes are most likely to succeed when:

- (a) there is room for negotiation;
- (b) stakeholders need each other to achieve both individual and shared goals;
- (c) there is a willingness to participate; and
- (d) the likely results of not collaborating are increased conflict, resource degradation, threats of litigation or worsened relations among interdependent parties.

2.2.6 Are there degrees of collaboration?

Yes. The degree to which stakeholders are involved in collaborative processes can vary from a limited, consultative role in which they have little say in decisions, to shared management and decision-making responsibilities.

2.2.7 Who should be involved and when?

There are no hard and fast rules about who to involve in a collaboration process, how to involve them, or when. Stakeholder involvement is context-specific and what is appropriate in one situation may not be appropriate in another. It is therefore important to understand who the key groups are in relation to particular issues, how those groups are constituted and ultimately how they are structured and function.

2.2.8 Is stakeholder representation important?

Yes. Stakeholder representation is crucial. Determining appropriate representation for different stakeholder groups is an important factor in the manner and form of their participation in any collaborative process. Interest groups will have different leadership structures – ranging from hierarchical, where all decision-making power is vested at the top, to relatively flat organizations, where decision-making is spread across a number of group members. Understanding how different groups reach decisions on representation in public negotiation is important.

2.2.9 How do differences in power affect stakeholder participation?

Power differentials in all forms of social organizations and between social groups. The source of these differences may be based on the hereditary rights that leaders enjoy in certain cultural settings or the power differences earned through channels that economic and political opportunity affords individuals and groups.

2.2.10 How do stakeholders define reasons for collaboration?

One of the very first conversations that needs to take place among stakeholders is how they view the issue, challenge or opportunity that has brought them together. Strikingly different emphases can emerge from this discussion. Nevertheless, any differences in perception and definition of the central goal and objectives need to be identified and addressed before the dialogue can move forward in a meaningful way. This is a key moment, as the stakeholders decide whose objectives will be at the heart of the collaboration venture and whose will be less central. Next, the stakeholders must decide how to frame the central issues and tasks of a collaboration effort. Willingness to be flexible about how the overall task is framed will be key to securing the collaboration of a range of stakeholders. This negotiation toward collaboration can be expected to take some time. It may result in some stakeholders opting out of the collaboration process.

2.2.11 What capacities do stakeholders have?

While many stakeholders may have the desire to participate in a collaboration process, they may lack the necessary capacity. Therefore, an essential step in the collaboration process is determining the actual (or potential) capacity of stakeholder groups to participate actively and effectively in the process. The knowledge base, institutional and operational mechanisms and skills of stakeholders are all capacities that should be assessed at the outset. This assumes that participating groups agree to this. Being aware of a stakeholder organization/group's operational strengths and weaknesses can inform the design and implementation of the obligations under the new forest policy and legislation.

2.2.12 How will capacities of stakeholders be determined?

There are a number of approaches to organizational capacity assessments. These can be used in combination with other methods – most specifically a stakeholder analysis, which can provide the initial profile against which capacities and expectations can be assessed. It is often a good idea to use outside experts to facilitate the assessment process, as they can bring a critical objectivity to the approach that stakeholders acting as convenors normally cannot.

**PART 4
ANNEXES**

ANNEX 1: SESSIONAL PAPER NO. 9 OF 2005 ON FOREST POLICY

FOREWORD

The Forest sector plays vital roles in the livelihood of the Kenyan population through provision of invaluable forest related goods and services. The most significant contribution is in the energy supply for domestic and industrial processes, provision of timber for construction and trees for regulation of water flow. It is estimated that 80% of the population use biomass energy while urban development and hydroenergy rely heavily on water. Forests will continue to provide essential goods and services such as timber, poles, fuelwood, food, medicines, fodder and other non-wood forest products. Forest resources and forestry development activities also contribute significantly to the national economy by supplying raw materials for industrial use and creating substantial employment opportunities and livelihoods.

As important as our forests are to the national economy, their sustainable development and management continues to be hampered by a number of factors, including inadequate financial resources and the lack of an enabling policy and legislation. In addition, the increasing population and poverty continue to exert pressure on the country's forest resources. This pressure is witnessed in the current rampant illegal logging, illegal charcoal making and encroachment for agriculture and settlement. These challenges have undermined the Government's efforts in achieving sustainable forest management.

Kenya is internationally considered to be a Low Forest Cover country as it has less than 10% of its total land area classified as forest. The Government will therefore put in place measures to significantly increase the area under forest cover, with the aim of attaining at least 10% within the next decade. To attain this level of forest cover, the Government will promote farm forestry, intensify dryland forest management, involve the private sector in the management of industrial plantations and also promote community participation in forest management and conservation.

The key elements of the new policy are:

1. A new forest legislation to implement the policy.
2. Expanded mandate in the management of all types of forests.
3. Involvement of forest adjacent communities and other stakeholders in forest management and conservation.
4. Forest management planning will be based on an ecosystem approach.
5. Appropriate incentives will be provided to promote sustainable use and management of forest resources.
6. Proposed institutional transformation of the Forest Department into a semi-autonomous Kenya Forest Service.

This policy will address local and global forestry issues and challenges to ensure fair contribution of the forestry sector in economic development. The implementation of this policy is expected to improve the social welfare of the Kenyan population without compromising environmental conservation.

HON. STEPHEN KALONZO MUSYOKA, EGH, MP
Then MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

INTRODUCTION

Kenya's forests are important for economic development, environmental services, social and cultural values. They provide utility products such as timber, pulp and paper, poles and fuel wood both for industrial and domestic use. Forests are important for conservation of biological diversity, regulation of water supplies, carbon dioxide sequestration and are a major habitat for wildlife. In addition, forests also provide a wide range of non-wood forest products.

The last authoritative statement of Kenya's forest policy is contained in Sessional Paper No. 1 of 1968. Since then significant changes have taken place in the country. These changes include an increase in the country's population and a rise in the forest related activities.

According to the 1999 population census, Kenya's population stood at 28.6 million people and is projected to reach 37.5 million by year 2010. This increase in population will continue to exert pressure on the forest resources through a growing demand for forest products, services and land for alternative uses. The need to conserve the soil, water, wildlife habitats and biological diversity will become even greater.

Further, since 1968, the country has experienced a major decrease in forest cover, which has resulted in reduced water catchment, biodiversity, supply of forest products and habitats for wildlife. At the same time, the forest sector has been beset by conflicts between forest manager and forest adjacent communities over access to forest resources.

Consequently, it is necessary to prepare a New Forest Policy to guide the development of the forestry sector. The broad objective of this new Forest Policy is to provide continuous guidance to all Kenyans on the sustainable management of forests. The Sessional Paper No. 1 of 1968 did not provide for adequate harmonization between resource policies. This policy has taken cognizance of other existing policies relating to land and land use, tenure, agriculture, energy, environment, mining, wildlife and water. Further, this policy stresses the need for greater cooperation and linkage among resource owners, users and resource planners. The policy incorporates the present forest-related values of the people of Kenya, international concerns and represents the national will.

The New Forest Policy will address indigenous forest management, farm forestry, industrial forest development, dryland forestry, forest health and protection, private sector involvement and participatory forest management. It recognizes that there are benefits arising from involvement of local communities and other stakeholders in forest management. The new policy will mainstream the forestry sector in economic recovery and enable it to contribute significantly to poverty alleviation strategies.

Most importantly, the new policy emphasizes the importance of forests for water and biodiversity conservation and for the provision of woodfuel, cost and benefit sharing.

POLICY GOAL

The goal of this policy is to *“enhance the contribution of the forest sector in the provision of economic, social and environmental goods and services.”*

SPECIFIC OBJECTIVES

The specific objectives of this policy are to:

1. contribute to poverty reduction, employment creation and improvement of livelihoods through sustainable use, conservation and management of forests and trees.
2. contribute to sustainable land use through soil, water and biodiversity conservation, tree planting through the sustainable management of forests and trees.
3. promote the participation of the private sector, communities and other stakeholders in forest management to conserve water catchment areas, create employment, reduce poverty and ensure the sustainability of the forest sector.
4. promote farm forestry to produce timber, woodfuel and other forest products.
5. Promote dryland forestry to produce woodfuel and to supply wood and non-wood forest products.
6. promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches and technologies.
7. promote forest research, training and education to ensure a vibrant forest sector.

CHAPTER 1: SUSTAINABLE MANAGEMENT OF FORESTS AND TREES

1.1 General Management Challenges

Forests and trees are renewable resources, which if managed sustainably can meet the demand for raw materials for wood-based industries, fuel wood and a wide range of non wood forest products. In addition, they are important for ecological and socio-cultural values. Forest management has previously emphasized utilization with little regard to sustainability particularly with regard to indigenous forests. Industrial forest plantations, trees on farms and forests on local authority lands are also inadequately managed. A general challenge is the acquisition of information and creation of standards that will enable sustainable forest management to be monitored over time.

Similarly, valuation of resources and products has not reflected the whole range of associated production and replacement costs and the benefits foregone. This is key in providing the necessary data for rational resource allocation and planning in the forestry sector. As a management tool, it has largely been ignored to the detriment of sustainable forest management, particularly against land use changes. While the potential sustainable yields of wood and other forest products and services have not been achieved in various types of forests, the demand for various forest-based products keeps on increasing, especially fuel wood.

Indigenous forests are among the most complex ecosystems that need efficient management. Likewise, challenges presented by fragile and threatened ecosystems, including forests and other woody vegetation types in the arid and semi-arid lands (ASALS), bamboo forests, and mangroves, require special attention. Forest protection against pests, diseases, fires and illegal human activities have been of concern and this will require to be addressed.

Forest management techniques for sustainable production of wood and other tree based products and services and the scientific basis underlying them, are well known, especially for plantation and farm forestry. Efficient application of existing knowledge has the potential to enhance forest production. appropriate planning, management and conservation measures require reliable databases on forest resources and their utilization. Aspects of wildlife management need to be incorporated into forestry management by establishing and strengthening appropriate inter-agency linkages. The current forest policy and institutional arrangement have resulted in a limited achievement of set objectives. Further, this policy was not supported by appropriate legislation. This allowed inappropriate forest management practices to creep in. for more efficient forest management, the new policy will empower local communities to take an active role in forest management through community forest associations. Further, the private sector will be encouraged to invest in commercial forestry activities, through leasing, agreements and concessions.

To overcome the current forest management challenges, the Government will:

Policy Statement 1.1.1: Promote the sustainable management of forests for climate amelioration, soil, water and biodiversity conservation.

Policy Statement 1.1.2: Carry out inventories and valuation of forest resources and their utilization to generate accurate information for decision making.

Policy Statement 1.1.3: Empower local communities to manage forests through community forest associations.

Policy Statement 1.1.4: Ensure that forest plantations are sustainably managed to realize their maximum potential.

Policy Statement 1.1.5: Support forest management, which will embrace preservation of religious and cultural sites, traditional medicinal sources, water catchments and habitats for endemic and threatened species of flora and fauna.

Policy Statement 1.1.6: Support the formulation of criteria and indicators for sustainable forest management.

Policy Statement 1.1.7: Promote good governance in the forest sector.

1.2 Indigenous Forests

Kenya's indigenous forests represent some of the most diverse ecosystems found anywhere in the world. These forests supply important economic, environmental, recreational, scientific, social, cultural and spiritual benefits. However, some of these forests have been subjected to land use changes such as conversion to farmlands, ranches and settlements.

This has reduced the ability of these forests to supply forest products, serve as water catchments, biodiversity conservation reservoirs, wildlife habitats and carbon sinks.

Sustainably managed indigenous forests can supply goods and services to meet the demand of the growing population. These forests will be put under efficient and sustainable multi-purpose management, which combines biodiversity conservation and water catchment functions together with the production of tangible benefits for forest adjacent communities. In doing so, forest principles will be employed to ensure application of science in forest management. Revenues accrued through commercial forest activities will support the management and conservation of indigenous forests.

The indigenous forests multiple functions in biodiversity conservation and provision of goods and services requires that:

Policy Statement 1.2.1: All existing indigenous forest reserves on public lands remain reserved.

Policy Statement 1.2.2: The status of indigenous forests will be determined and appropriate restoration measures taken.

Policy Statement 1.2.3: All reserved forests will be managed on the basis of approved management plans, guided by sound forest management principles.

Policy Statement 1.2.4: Participatory forest management approaches be promoted to ensure the participation of communities and other stakeholders in the management of indigenous forests.

Policy Statement 1.2.5: Users of benefits derived from these forests contribute to their conservation and management through the user pay principle.

Policy Statement 1.2.6: Insect farming and other sustainable uses of biodiversity will be promoted.

1.3 Farm Forestry

Trees are an essential part of diversified farm production, providing both subsistence products and incomes while contributing to soil and water conservation and soil fertility. Products such as fuel wood or fodder from trees, shrubs or grass contribute significantly to the economies of the rural population. Given the growing population, it is not possible to meet all the demands of forest products from state forests. The alternative sources of these products are expected to come from farmlands. Closer linkages between industry and tree farmers could increase earnings from the tree products, harvesting, transport and processing.

Tree cover on farms is increasing, especially in densely populated high potential areas. This demonstrates that rural communities and individual farmers have basic skills and willingness to improve their land management practices through tree planting for their own benefit. In high potential areas, the preferred wood production methods are the various agro-forestry systems as well as woodlots.

The challenge is to promote commercial forestry, improve farm forestry management and enhance efficient utilization and marketing of forestry products by ensuring that:

Policy Statement 1.3.1: Forests and trees on private lands are established and managed using sound business principles and according to landowners' priorities.

Policy Statement 1.3.2: Landowners are supported through appropriate incentives including partnerships to have sufficient land under tree cover.

Policy Statement 1.3.3: Landowners are encouraged and supported to sustainably manage natural and riverine forests in the farmlands, particularly for water and soil conservation.

Policy Statement 1.3.4: There is a conducive environment for processing, pricing and marketing of farm forestry products.

Policy Statement 1.3.5: Adequate information, education and training on conservation, management and tree planting is provided.

Policy Statement 1.3.6: There is improvement of planting materials to improve quality and shorter growing rotations.

1.4 Forest Plantations

All forest plantations on public lands shall be managed on a sustainable basis with the primary objective being the production of wood and other forest products and services for commercial purposes. The country has in the past used fast-growing exotic species for the production of industrial forest products. Reliance on a few exotic species is becoming unsustainable, largely because of the increasing occurrence of exotic pests and diseases. Some indigenous species have shown suitability for plantation establishment and often produce superior timbers as compared to exotic species. Sustainable utilization of forest resources can be enhanced by selecting the most suitable species for plantations and integrating the raw material usage, applying appropriate technology and by aligning wood production according to specific uses.

Indigenous species should be more widely used in plantation forestry, but the choice of species should be closely related to the various wood and non-wood products, as well as the indirect and intangible benefits, which they offer. There is need to improve mechanisms for interaction between plantation management and raw-material users in order to establish long-term raw material requirements.

To enhance the productivity of industrial forest plantations and improve recovery of forest products, mechanisms will be put in place to ensure that:

Policy Statement 1.4.1: The private sector is encouraged to develop and manage plantations through appropriate incentives like land leases, agreements and concessions.

Policy Statement 1.4.2: Forest plantations are efficiently managed and operated on a commercial basis.

Policy Statement 1.4.3: The species base is broadened through special consideration of indigenous species as well as the requirement of the market.

1.5 Dryland Forestry

The country's arid and semi-arid lands (ASALs), which cover about 80% of Kenya's total land surface and hold 25% of the human population, are unique in nature and require special attention to strengthen not only the economic base of the inhabitants but also the national economy. Kenya's drylands, although rich in biodiversity are often stressed by frequent drought. Livestock keeping is the main economic activity of drylands. However, due to population pressure in the high and medium potential areas, there is migration into the dryland areas resulting in depletion of grazing lands; the forest resource and tree cover degradation.

The drylands have the potential to supply marketable commodities on a sustainable basis such as gums and resins, aloe, charcoal, essential oils, silk, edible oil, commercial juices, frankincense, indigenous fruits, honey and timber. These products can go a long way towards improving the livelihoods of Kenyans living in the drylands.

In order to improve productivity:

Policy Statement 1.5.1: Forests and other types of woody vegetation in the drylands will be sustainably managed and conserved for the production of wood and non-wood forest products.

Policy Statement 1.5.2: The establishment of forest based micro-enterprises and community forest associations will be supported.

Policy Statement 1.5.3: Degraded and overexploited areas will be rehabilitated by community forest associations with Government support.

Policy Statement 1.5.4: Research, technology development, education and training in dryland forestry will be intensified.

Policy Statement 1.5.5: Tree planting in the drylands will be promoted.

Policy Statement 1.5.6: Community forest associations will be supported to develop management plans and manage community forests.

Policy Statement 1.5.7: Sustainable commercial production of charcoal will be promoted.

1.6 Local Authority Forests

There exists substantial forest resources on land under local authorities, which if sustainably managed will support a wide range of livelihoods. In the case of urban areas, these forests could serve recreational and aesthetic purposes. However, the land and tree tenure in local authority forests does not encourage sustainable forest management. In addition, the local authorities do not have the capacities to effectively manage these forests, while the necessary information required for their sustainable management is lacking.

To maximize resource utilization, a planning system should be institutionalized to specifically address the related development needs in local authority forests. In addition, participatory forest management should be introduced to ensure that communities and especially the poor have a choice in the management of these forests. This therefore calls for a working mechanism between the local authorities, the Forest Service and other key players in the forestry sector.

In order to manage these forests:

Policy Statement 1.6.1: Forests and other types of woody vegetation on local authority land will be sustainably managed to satisfy local forest-based needs and conserve biological diversity.

Policy Statement 1.6.2: Close working relationships among local authorities, the Forest Service, regional authorities, local communities, NGOs and other stakeholders will be promoted.

Policy Statement 1.6.3: Community forest associations will be supported to establish and manage community forests.

Policy Statement 1.6.4: The capacity of local authorities in forest conservation and management will be enhanced.

Policy Statement 1.6.5: Forests in urban areas will be promoted for aesthetic and recreational values.

1.7 Private Forests

Forests under private ownership play a significant role in the provision of forest goods and services supplementing wood supply from state forests. The increasing demand for timber and wood products in the domestic and international markets can be tapped through involvement of the private sector in industrial wood production and supply. However, in the past, market forces have not been allowed to play their part in the marketing of timber, leading to a distortion of prices. The new policy will ensure that forest product markets function

in a transparent manner. It will also endeavour to promote market forces in pricing of forest products for optimum resource allocation. This will in turn encourage long term investment in private forests.

This will be done through:

Policy Statement 1.7.1: Determining prices of forest products according to market forces.

Policy Statement 1.7.2: Provision of technical advice to private forest owners on appropriate forestry practices and assessment procedures.

Policy Statement 1.7.3: Establishment of funding mechanisms for investment in the sector.

Policy Statement 1.7.4: Provision of tax incentives for acquisition of efficient processing technologies.

1.8 Roadside tree planting

Trees planted along the boundaries of road reserves are important for aesthetic and shade effects to travelers along the highways and other public roads. A belt of amenity trees planted at the interface of road and private lands will improve the scenery on both sides of the road and also mark the boundaries between the road reserves and private lands to avoid encroachment into the road reserves.

To achieve this, the responsible authorities shall in collaboration with landowners adjoining the road reserve:

Policy Statement 1.8.1: Establish an amenity belt of appropriate tree species on both sides of the road reserves.

CHAPTER 2: FORESTS PRODUCTS AND INDUSTRIES

2.1 TIMBER AND WOOD PRODUCTS

The production functions of forests, especially those managed for commercial utilization should be understood within the framework of a holistic view of national needs. Subsistence needs, especially those associated with domestic energy supplies, shelter and fodder should be seen as priority issues in this Forest Policy. Forest resources, especially on-farm and industrial plantations, offer a basis for self reliance in forest products needs. While most of the timber is obtained from industrial plantations, the share of farm-grown wood is increasing.

Strategies will be developed to realize:

Policy Statement 2.1.1: Efficient production and utilization in wood-based industries.

2.2 Woodfuel

A considerable portion of woodfuel, including charcoal, is obtained from indigenous forests, as well as from arid and semi-arid lands (ASALs). In terms of quantity, the most important forest product for the country is wood energy. However, since most woodfuel consumption is for subsistence use, its contribution to the country's economy has not been adequately reflected. The production and transportation of charcoal has remained unregulated yet large quantities are consumed annually. The challenge is to fully commercialize the production and marketing of woodfuel, including charcoal.

Strategies will be developed to realize:

Policy Statement 2.2.1: Sustainable production and efficient utilization of woodfuel.

Policy Statement 2.2.2: The promotion of efficient wood energy technologies and the use of alternative forms of energy.

Policy Statement 2.2.3: The regulation of the production and marketing of charcoal.

2.3 Non-wood Forest Products

Non-wood forest products are of critical importance particularly to the livelihoods of the rural communities and in some situations account for a significant share of household incomes. Some of the non-wood forest products that contribute to sustainable livelihoods include gums and resins, honey, essential oils, frankincense, myrrh, fibres, medicinal and aromatic plants, dying and tanning materials. In addition, some indigenous tree species and plants such as *Prunus africana* and *Aloe* have the potential to earn the country a high income from international markets. In times of drought and food scarcity, some non-wood products are the only source of nutrition for the rural communities.

To ensure continuous supply of these products and community support in conservation there is a need to:

Policy Statement 2.3.1: Promote sustainable production and utilization of non-wood forest products.

Policy Statement 2.3.2: Encourage rural communities to establish non-wood based forest product enterprises and processes.

Policy Statement 2.3.3: Intensify research and training in non-wood forest products with the aim of domesticating commercially viable species and increasing their ecological range.

2.4 Forest Industries

Forest industries contribute to the national economy in the provision of products such as construction timber, paper, transmission poles and fuel wood. They provide employment opportunities in the manufacturing, construction, transport and processing sectors thus contributing to improved livelihoods and incomes.

Wood processing technologies presently used are inefficient and wasteful. Appropriate technologies are available but there is low adoption due to the prohibitive investment costs. Training in industrial processes and low cost efficient technologies is needed to improve the use of raw materials, diversify products and to minimize waste.

In order to ensure increased efficiency and availability of forest products:

Policy Statement 2.4.1: Efficient forest-based industries will be promoted to guarantee high quality products so as to satisfy the domestic demand and contribute to export earnings.

Policy Statement 2.4.2: Wood based industries will be encouraged to manufacture diverse finished products for local and export market to take advantage of the country's regional position and good infrastructure development.

2.5 Forestry and Wealth Creation

Tree growing improves soil and water conservation, and soil fertility, which contribute to increased agricultural production. wealth creation and employment opportunities for improvement of livelihoods are possible, not only from intensified farm production, but also through the development of forest-based industries and promotion of ecotourism.

Intensified farm forestry, commercial production of non-wood products and the promotion of out-grower tree schemes could support forest industries and enhance industrialization and employment creation. This will be enhanced by efficient use of raw materials, appropriate production technology and marketing support.

Further, intensified tree planting will result in increased demand for seedlings. This demand will be met through individual and private initiatives in seedling production. In turn, this will create employment for youth and women groups. To ensure that only good quality seedlings reach the market, appropriate quality control measures will be put in place.

Recognizing the contribution of forestry to socio-economic development and wealth creation:

Policy Statement 2.5.1: Forest-based industries that contribute to the national economy will be promoted.

Policy Statement 2.5.2: Recreation and ecotourism facilities will be developed.

Policy Statement 2.5.3: The creation of out-grower tree schemes through appropriate funding mechanisms will be encouraged.

Policy Statement 2.5.4: Industries will be developed through appropriate investment incentives that encourage efficient use of raw materials, efficient technologies and protection of the environment.

2.6 Trade in Forest Products

Trading in forest products contributes significantly to the national economy. However, this trade is for the most part limited to the national level, and yet opportunities for the export of forest products exist. These products include timber, paper products, carvings, gums and resins, charcoal and medicines. At the international level, forest certification and labeling is increasingly being used to enhance trade in forest products. To access these markets, it is necessary to adopt certification requirements.

Economic returns from trade in forest products will be enhanced through:

Policy Statement 2.6.1: Promotion of value added forest products.

Policy Statement 2.6.2: Development of the necessary infrastructure for non-extractive uses of forests.

Policy Statement 2.6.3: Promotion of forest products certification and labeling for wider market acceptability.

CHAPTER 3: LEGAL AND INSTITUTIONAL ARRANGEMENTS

3.1 Forest Sector Legal Reforms

In the past, the Forest sector was faced with many constraints, which hampered its development. These constraints included a weak legal framework. The legal framework did not allow the participation of the private sector and communities in forest management. Further, it did not allow Forest Department to manage resources outside gazetted forests. Over the past few years, the Government undertook some limited reforms in the forestry sector and is now determined to put in place the necessary reforms to revitalize the sector. These reforms will provide for participation of other stakeholders including the private sector and communities in the management and conservation of forests. In addition, the reforms will provide for the proper management of tree resources outside gazetted forests.

The reforms in the forestry sector should not leave out forest professionals. In the past, professional foresters have not had a professional association to enable them carry out self regulation. A foresters' professional association would enhance the image of the forestry sector as whole.

To achieve these reforms in the forestry sector:

Policy Statement 3.1.1: The Government will enact an appropriate legislation to regulate the forest sector on a sustainable basis.

Policy Statement 3.1.2: The Government will monitor and ensure the implementation of the new forest policy.

Policy Statement 3.1.3: The Government will encourage forest professionals to form an association to self regulate the profession.

3.2 Institutional Arrangements

Since its establishment, the Forest Department has always been an organ of the central government and hence has been characterized by centralized decision making and inadequate funding. This has led to ineffective management, which is best illustrated by the poor condition of the industrial plantations and degradation of indigenous forests. Current thinking and practice is that sustainable forest management would be better carried out by a semi-autonomous entity, the Kenya Forest Service. This new institution will be charged with forest administration, policy development, forest regulation, training, extension and protection of natural forests. In addition, the Service will work closely with the following sectors: agriculture, water, land, energy and tourism.

For efficient management of the forest sector:

Policy Statement 3.2.1: The Government will put in place appropriate institutional arrangements to coordinate and support the forest sector.

Policy Statement 3.2.2: The Government will establish the Kenya Forest Service.

1.3 Funding for Forestry Development

The funding of forestry activities has mainly been from the central government (Treasury) and from development partners. This funding has been inadequate for the efficient management and conservation of the country's forest resource. With the establishment of the Kenya Forest Service it will be necessary to broaden the funding base, including putting in place forest conservation and development trust fund. Existing internal and external funding opportunities will be explored and put into maximum use where available.

Sources of funds to support forestry activities will be through:

Policy Statement 3.3.1: Revenue generated from improved management of plantation forests.

Policy Statement 3.3.2: Levies and royalties imposed on services such as water catchment conservation, land leases and concessions.

Policy Statement 3.3.3: Funds from the Government.

Policy Statement 3.3.4: Funds from development partners and other agencies.

Policy Statement 3.3.5: Funds available at the international level for the sequestration of greenhouse gases, conservation of biological diversity, protection of water catchments and combating desertification.

CHAPTER 4: LINKAGES WITH OTHER SECTORS

4.1 Coordination with Related Policies

Pressures and demands imposed on forest ecosystems and resources are often caused or influenced by factors outside the forest sector. Forests serve as water catchment areas, are sources of wood fuel, habitats for wildlife, may contain mineral deposits and impinge on agricultural activities. For this reason, the policies in these sectors (water, energy, mining, lands, wildlife and agriculture) should have a clear linkage to the Forest Policy. Further, forests are also found on local authority lands and are under pressure for settlement. There is a need to create synergies between policies that govern local authorities as well as land use.

Appropriate mechanisms for achieving harmonization of the various sectoral policies that touch on forestry should be put in place through:

Policy Statement 4.1.1: Establishment of an inter-ministerial committee bringing together forest related sectors.

4.2 Forestry Research and Education

Research and education are essential for forestry development. The main areas of focus for research and education will be indigenous forest management, farm forestry, dryland forestry and commercial forestry development. The current institutional linkage between forestry research, education, administration, resource owners and users is weak. In particular, forestry research and education should be demand driven. Therefore, the private sector will be encouraged to participate actively in forestry research. Forestry research and education will be in line with the national priorities and development programmes.

To promote research and education in forestry for sustainable development:

Policy Statement 4.2.1: The Government will support forestry research and education through provision of incentives in priority areas.

Policy Statement 4.2.2: The private sector will be encouraged to participate in forestry research.

Policy Statement 4.2.3: An effective mechanism linking forestry research and users will be developed.

Policy Statement 4.2.4: Indigenous knowledge in forest conservation and management will be tapped and incorporated into forestry research and education.

Policy Statement 4.2.5: Forestry research programmes and education curricula will be reviewed and updated from time to time in consultation with stakeholders.

Policy Statement 4.2.6: Public awareness creation with regard to forest conservation, management and utilization will be supported.

4.3 Forest User Rights and Livelihoods

Forest adjacent communities derive both spiritual and material benefits from forests. Material benefits include water, medicinal herbs, honey, fuel wood, construction material and fodder. The government recognizes the important role that these benefits play in the livelihoods of forest adjacent communities. However, it is important to note that forest benefits are not limited to forest adjacent communities. For example, some forests are sources of major rivers, which serve populations and are important for economic activities far away from the forests.

In order to improve the livelihoods of all communities who depend on forests:

Policy Statement 4.3.1: The Government will encourage sustainable use of forest resources by communities.

Policy Statement 4.3.2: The traditional interests of local communities customarily resident within or around a forest will be protected.

Policy Statement 4.3.3: Cultural practices that are compatible with sustainable forest management will be respected.

4.4 International Obligations

A number of international agreements, protocols and conventions impact on forestry. These include the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change. Kenya appreciates their positive impacts on sustainable forestry management and will continue to play an active role in their development and implementation. The global implications of forests should therefore be considered in accordance with the regional and international agreements, conventions, protocols and other instruments in which the country has interest. The positive role of natural forests and plantations as carbon sinks is an added asset for the maintenance and increase of tree cover.

To recognize the multiple roles of forestry and tap further investment in the sector from new international arrangements:

Policy Statement 4.4.1: The Government will promote tree planting and land rehabilitation for carbon sequestration.

Policy Statement 4.4.2: The Government will explore opportunities available in carbon trade for conservation and management of forests.

Policy Statement 4.4.3: The Government will endeavour to domesticate as appropriate international forestry related instruments and agreements.

Policy Statement 4.4.4: The Government will foster close collaboration with neighbouring countries to ensure sustainable management of cross-border forests.

4.5 Gender and Youth Issues

Traditional gender roles have inhibited the participation of women and youth in forestry development. In particular, the role of women and youth in forest and tree resource utilization and management, has not been fully recognized. Initiatives by women and youth have convincingly demonstrated the necessary and potential value of their participation in forestry development, especially at the community level.

In order to ensure women and youth are effectively involved in forest management:

Policy Statement 4.5.1: More opportunities for women and youth will be enhanced in forest training and education.

Policy Statement 4.5.2: The Government will endeavour to deliberately involve women and youth in participatory forest management.

Policy Statement 4.5.3: The youth will be encouraged to take on more responsibility in the management of forests to ensure that future generations are catered for when decisions affecting forests are made.

4.6 Non-State Actors

Some non-state actors, including non-governmental organizations (NGOs), professional associations and the private sector have in-depth experience in forest-related matters. Their experiences will be fully utilized through mechanisms to be jointly developed with the government. Collaboration between these actors, government agencies and local authorities will be developed.

Participatory forestry management will be enhanced, by involving concerned non-state actors and local communities in planning and implementation of forest management activities. This approach will be used to plan and implement forestry development plans.

To bring on board other stakeholders in forestry management:

Policy Statement 4.6.1: The Government will support non-state actors and local communities to undertake forest-related development activities.

4.7 HIV/AIDS

The HIV/AIDS pandemic has had far reaching impacts on forestry development. The pandemic has caused a shortage of both skilled and unskilled labour thereby undermining forestry activities. It has also resulted in a drastic decline in resources, both human and financial leaving less for long term investment such as tree planting. The increased cost on account of absenteeism and higher bills for treatment results in reduced investment in forestry as more resources are devoted to health care in combating HIV/AIDS.

The fight against HIV/AIDS will be mainstreamed in all forest programmes and projects. This will entail an evaluation of how the pandemic will affect the implementation of this policy, for example through labour and skill shortages.

To fight the HIV/AIDS pandemic in the forest sector:

Policy Statement 4.7.1: Forest programmes and projects will mainstream the fight against HIV/AIDS as it impacts on their activities.

Policy Statement 4.7.2: Workplace initiatives will be adapted for people with HIV/AIDS.

ANNEX 2: THE FORESTS ACT, 2005

ARRANGEMENT OF CLAUSES

PART 1 – PRELIMINARY

- 1) Short title and commencement.
- 2) Application
- 3) Interpretation

PART II – ADMINISTRATION

- 4) Establishment of the Service
- 5) Functions of the Service
- 6) Forests Board
- 7) Functions of the Board
- 8) Powers of the Board
- 9) Committees of the Board
- 10) Appointment of the Director of Forest Service
- 11) Officers of the Service
- 12) Meetings of the Board
- 13) Forest Conservancy areas and Committees
- 14) Funds of the Service
- 15) Financial year
- 16) Annual Estimates
- 17) Accounts and audit
- 18) Forest Management and Conservation Fund
- 19) Sources of Fund
- 20) Management of the Fund

PART III – CREATION AND MANAGEMENT OF FORESTS

- 21) Forests to vest in the State
- 22) Customary rights
- 23) Creation of State Forests
- 24) Creation of Local Authority Forests
- 25) Private and farm forestry
- 26) Declaration of provisional forests
- 27) Reversion of provisional forests
- 28) Variation of boundaries or revocation of State or local authority Forests
- 29) Exchange of forest area with private land
- 30) Arboreta, Recreational Parks, Mini-forests
- 31) Donations and Bequests
- 32) Declaration of a nature reserve
- 33) Special use of nature reserve
- 34) Presidential protection of trees
- 35) Management plans

- 36) Joint management of forests
- 37) Management of plantation forests owned by the State
- 38) Management of local authority forests
- 39) Local authority forest management agreements
- 40) Concession over state forests
- 41) Management of indigenous forests
- 42) Consent for mining and quarrying
- 43) Requirement for re-vegetation
- 44) Offences in relation to mining, quarrying or re-vegetation
- 45) Activities outside management plans

PART IV – COMMUNITY PARTICIPATION

- 46) Application for community participation
- 47) Functions of a forest association
- 48) Assignment of forest user rights
- 49) Termination or variation of a management agreement

PART V – ENFORCEMENT

- 50) Powers of officers
- 51) Use of firearms
- 52) Prohibited activities in forests
- 53) Counterfeiting or unlawfully affixing marks
- 54) Other offences
- 55) Compensation for loss or damage
- 56) Prosecutorial powers
- 57) General penalty
- 58) Restraint of breaches of the Act

PART VI – MISCELLANEOUS

- 59) Act to bind Government
- 60) Rules
- 61) Director to maintain register
- 62) International obligations
- 63) Cooperation regarding cross-border forests and forest produce
- 64) Environmental impact assessment

PART VII – TRANSITIONAL PROVISIONS

- 65) Repeal of Cap. 385
- 66) Savings

- 67) Vesting of Assets and transfer of liabilities
- 68) Transfer of Employees

First Schedule - Provisions relating to the Officers of the Service

Second Schedule - Provisions relating to the conduct of business and affairs of the Board

Third Schedule - Provisions as to public participation

AN ACT of Parliament to provide for the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socio-economic development of the country:

RECOGNIZING that forests play a vital role in the stabilization of soils and ground water, thereby supporting the conduct of reliable agricultural activity, and that they play a crucial role in protecting water catchments in Kenya and moderating climate by absorbing greenhouse gases;

AND FURTHER recognizing that forests provide the main locus of Kenya's biological diversity and a major habitat for wildlife;

AND ACKNOWLEDGING that forests are the main source of domestic fuel wood for the Kenyan people, and that they provide essential raw materials for wood based industries and a variety of non-wood forest products;

AND WHEREAS Kenya is committed to the inter-sectoral development and sustainable use of forestry resources and is committed under international conventions and other agreements to promote the sustainable management, conservation and utilization of forests and biological diversity:

NOW THEREFORE BE IT ENACTED BY THE PARLIAMENT OF KENYA AS FOLLOWS:

PART 1 – PRELIMINARY

This Act may be cited as the Forests Act, 2005, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

1. This Act shall apply to all forests and woodlands on state, local authority and private land.
2. In this Act, unless the context otherwise requires –

“activity” includes any operations, development, works or conduct;

“afforestation” means the establishment of a tree crop on an area where such trees are absent;

“arboretum” means a botanical garden of trees;

“association” means a community forest association registered in accordance with the provisions of Section 46;

“biodiversity” means the variability among living organisms from all sources, including the ecological complexes of which they are a part and the diversity within and among species, and ecosystems;

“Board” means the Board of the Kenya Forest Service referred to in Section 6;

“catchment area” means any land area drained by a river, stream, or fixed body of water and its tributaries having a common source of surface run-off;

“chainsaw” means a motorized equipment used for cutting wood;

“concession” means the right of use granted to an individual or organization in respect of a specified forest area;

“consumptive use” in relation to a forest, means the removal of a forest produce, “and non-consumptive use” shall be construed accordingly;

“deforestation” means the negative reduction of forest cover from the original status;

“Director” means the person appointed as director of Kenya Forest Service pursuant to section 10;

“Forest Conservation Committee” means a committee established in each forest conservancy area or part thereof to advise the Board on all matters relating to management and conservation of forests in that area;

“environmental impact assessment” shall be the meaning assigned to it under the Environmental Management and Coordination Act;

“farm forestry” means the practice of managing trees on farms whether singly, in rows, lines, boundaries, or in woodlots or private forests;

“forests” refers to any land containing a vegetation association dominated by trees of any size, whether exploitable or not, capable of producing wood or other products, potentially capable of influencing climate, exercising an influence on the soil, water regime, and providing habitat for wildlife, and includes woodlands;

“forest area” means any land declared to be a forest land under this Act;

“forest community” means a group of persons who-

- a) have a traditional association with forest for purposes of livelihood, culture or religion;
- b) are registered as an association or other organization engaged in forest conservation;

“forest officer” includes the Director, a forester, a disciplined officer of the service, or an honorary forester;

“forest owner” means-

- a) in the case of state forests, the Kenya Forest Service;
- b) in the case of local authority forests, a local authority;
- c) in the case of private forests, an individual, association, institution or body corporate;

“forest produce” includes bark, bat droppings, beeswax, canes, charcoal, creepers, earth, fibrewood, frankincense, fruit galls, grass, gum, honey, leaves, flower, limestone, moss, murrum, myrrh, peat, plants, reeds, resin, rushes, rubber, sap, seeds, spices, stones, timber, trees, water, waxwithies and such other things as may be declared by the Minister to be forest produce for the purpose of this Act;

“forestry” refers to the science of establishing, tending and protecting forest and tree resources, and includes the processing and use of forests and tree products;

“indigenous forest” means a forest which has come about by natural regeneration of trees primarily native to Kenya, and includes mangrove and bamboo forests;

“independent environmental impact assessment” means an environmental impact assessment not carried out by interested parties;

“Kenya Forestry College” means the college of that name operating under the forest department;

“Kenya Forestry Society” means the registered professional association of the forest officers;

“licence” means a permit of other written authorization issued under any of the provisions of this Act;

“livestock” means domesticated animals such as cattle, goats, sheep, assess, horses, camels and pigs and includes the young ones thereof;

“local authority” means:-

- a) any forest situated on trust land which has been set aside as a forest by a local authority pursuant to the provisions of the Trust Land Act;
- b) any arboretum, recreational park or mini-forest created under section 30 of this Act;
- c) any forest established as a local authority forest in accordance with the provisions of section 20;

“management agreement” means an agreement between the service and a local authority or any person or organization for the purpose of managing a state or local authority forest;

“management plan” refers to a systematic programme showing all activities to be undertak-

en in a forest or part thereof during a period of at least five years, and includes conservation, utilization silvicultural operations and infrastructural development;

“mini- forest” refers to a group of trees occupying less than ten hectares of land;

“nature reserve” means an area of land declared to be a nature reserve under section 32;

“non-consumptive use” in relation to a forest means non-extractive use of forest;

“person” means natural person or a corporate person;

“plantation forest” means a forest that has been established through forestation or reforestation for commercial purposes;

“private forest” refers to any forest owned privately by an individual, institution or body corporate;

“property mark” means a mark placed on a log, timber or other forest produce with a prescribed instrument to denote ownership by the government, local authority or any other owner;

“protected tree” means any tree or tree species which have been declared under section 34 to be protected;

“provisional forest” means any forest which has been declared a provisional forest by the Minister under section 26;

“responsible authority” in relation to a forest area means the Service, in the case of a state or provisional forest, the local authority concerned in the case of a local authority forest and the private land owner in the case of private forests;

“sacred grove” means a grove with religious or cultural significance to a forest community;

“sawmill” means a set of machinery used to process and convert wood into saw timber;
“service” means the Kenya Forest Service established under section 4;

“state forest” means any forest –

- a) declared by the Minister to be central forest, a forest area or nature reserve before the commencement of this Act and which has not ceased to be such a forest or nature reserve or;
- b) declared to be a state forest in accordance with the provisions of section 23;

“sustainable use”, in relation to a forest, means the use of a forest and any of its natural resources in a manner and to an extent which does not compromise the capacity of the forest and its use by future generations, and does not degrade the carrying capacity of its supporting ecosystems;

“sustainable management”, in relation to a forest, means management of the forest so as to permit any such use of it as constitutes sustainable use;

“timber” means –

- a) any tree which has fallen; or
- b) the part of any tree which has been cut off or fallen, and all wood whether sawn, split, hews or otherwise fashioned;

“tree” means any timber producing plant, or shrubs, bush of any kind, and includes a seedling, sapling or reshoot of any age, or any part thereof;

“unalienated government land” means land for the time being vested in the Government which –

- a) is not the subject of any conveyance, lease or occupation license from the Government;
- b) has not been dedicated or set aside for the use of public, and includes out-pans; and
- c) has not been declared to be a State Forest;

“wildlife” means all forms of fauna and flora other than domesticated plants and animals;

“woodland” means an open stand of trees less than ten metres which has come about by natural regeneration.

PART II – ADMINISTRATION

4 (1) There is hereby established a Service to be known as the Kenya Forest Service.

(2) The Service shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act.

(3) The headquarters of the Service shall be in Nairobi.

5 The functions of the Service shall be to –

- (a) formulate for approval of the Board, policies and guidelines regarding the management, conservation and utilization of all types of forest areas in the country;
- (b) manage all state forests;
- (c) manage all provisional forests in consultation with the forest owners;
- (d) protect forests in Kenya in accordance with the provisions of the Act;
- (e) promote capacity building in forest management;
- (f) collaborate with individuals and private and public research institutions in identifying research needs and applying research findings;
- (g) draw or assist in drawing up management plans for all indigenous and plantation state, local authority, provisional and private forests in collaboration with the owners or lessees, as the case may be;
- (h) provide forest extension services by assisting forest owners, farmers and Associations in the sustainable management of forests;
- (i) enforce the conditions and regulations pertaining to logging, charcoal making and other forest utilization activities;

(j) collect all revenue and charges due to the Government in regard to forest resources, produce and services;

(k) develop programmes and facilities in collaboration with other interested parties for tourism, and for the recreational and ceremonial use of forests;

(l) collaborate with other organizations and communities in the management and conservation of forests and for utilization of biodiversity therein;

(m) promote the empowerment of associations and communities in the control and management of forests;

(n) manage forests on water catchment areas primarily for purposes of water and soil conservation, carbon sequestration and other environmental services;

(o) promote national interests in relation international forest related conventions and principles; and

(p) enforce the provisions of the Act and any forestry and land use rules and regulations made pursuant to any other written law.

(q) In consultation with the Attorney General, train prosecutors from among the forest officers for purposes of prosecuting court cases under this Act in accordance with any other law relating to the prosecution of criminal cases.

6. (1) The management of the service shall be carried out by a Board, which shall consist of: –

(a) the Permanent Secretary in the Ministry for the time being responsible for matters relating to forestry, or his designated representative;

(b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to water, or a designated representative;

(c) the Permanent Secretary in the Ministry for the time being responsible for Finance, or his designated representative;

(d) the Permanent Secretary in the Ministry for the time being in charge of Local Authorities or his designated representative;

(e) the Director of Kenya Wildlife Service;

(f) the Director General of the National Environment Management Authority;

(g) the Director of the Kenya Forestry Research Institute;

(h) the Director of Kenya Forest Service, who shall be the secretary, and

(i) eight other persons, not being public servants, appointed by the Minister.

(2) Of the members appointed under subsection (1) (i) –

(a) one shall be a person who has knowledge of, and at least ten years' experience in, matters relating to security and law enforcement;

(b) one shall be a representative of the Kenya Forestry Society; and

(c) the remaining members shall be persons –

(i) who have expertise in relation to forestry or the forestry industry or in a related scientific or educational field, or who are members of non-governmental organizations dealing with environmental or natural resource matters; or

(ii) who are associated with, or with an area that contains, one or more forest communities, and who have shown special or outstanding interest in the field of conservation, environment and natural resources.

(3) One of the members appointed under subsection (2) (c) shall be designated by the President to be the Chairman of the Board.

(4) The appointment of the members of the Board shall take into account the principle of gender and regional representation.

(5) There shall be paid to the chairman and members of the Board such remuneration, fees or allowances for expenses as the Minister may determine.

7 The functions of the Board shall be to –

(a) ensure the efficient management of the Service;

(b) consider and make recommendations to the Minister on the establishment of state forests on un-alienated Government land and any other Government land;

(c) consider and make recommendations to the Minister regarding the determination and alteration of boundaries of state forests;

- (d) approve policies of the Service that affects forestry practice and development;
- (e) formulate policies for the administration and management of Kenya Forestry College;
- (f) consider all management agreements including granting of management licences for state plantation forests;
- (g) negotiate for financial and other incentives for advancement of the forestry-related activities of private persons, companies, communities, non-governmental organizations and local authorities;
- (h) establish and review policies and rules for marketing of trade in forest produce;
- (i) coordinate and monitor inter-agency forestry activities in the country;
- (j) develop modalities and guidelines for joint management of forests between the service, local authorities, forest communities, government agencies and other private sectors;
- (k) advice the Minister on matters pertaining to establishment, development, conservation and utilization of forests in Kenya;
- (l) consider applications for the undertaking of activities within forest areas;
- (m) prescribe criteria for access to assistance for owners of private forests;
- (n) establish forest conservancy areas for purposes of conservation and management; and
- (o) approve the provision of credit facilities and technical training for community based forest industries, and the provision of incentives to persons who exploit wood and non-wood forest products sustainably.

8 (1) The Board shall have all the powers necessary for the performance of its functions under this Act, and, in particular but without prejudice to the generality of the foregoing, the Board shall have power to –

- (a) approve and ratify the policies of the Service;
- (b) manage, control and administer the assets of the Service in such manner and for such purposes as are best to promote the purposes for which the Service is established;
- (c) receive any gifts, grants, donations or endowments made to the Service;

(d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Service;

(e) open a banking account or banking accounts for the funds of the Service;

(f) invest any moneys of the Service not immediately required for the purposes of this Act;

(g) determine and issue the terms and conditions for the appointment and enlistment of personnel to the Service; and

(h) cooperate with other organizations undertaking functions similar to its own, whether within Kenya or otherwise.

9 (1) The Board may from time to time establish committees for the better carrying out of its functions.

(2) The Board may, with the approval of the Minister, co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Board.

10 (1) There shall be a Director of the Kenya Forest Service who shall be appointed by the Board and who shall hold office on such terms and conditions as may be specified in the instrument of his appointment.

(2) No person shall be appointed under subsection (1) unless such a person holds a degree from a recognized university in the field of forestry and has had at least fifteen years' experience in the relevant field.

(3) The Director shall be the chief executive officer of the Service and responsible to the Board.

11 (1) The Board may, on such terms and conditions as it deems fit, appoint –

(a) such officers of the Service as are specified in subparagraph (2)(a) and (b) of paragraph 1 of the First schedule; and

(b) such disciplined officers as are specified in paragraph (2)(c) of paragraph 1 of the First Schedule; and

(c) such other employees, agents or servants of the Service.

(2) Every person appointed under subparagraph (b) of subsection (1) shall take and subscribe to the oath of allegiance set out in Part II of the First Schedule.

(3) The provisions of the First Schedule shall have effect with respect to the officers of the Service.

(4) The Board shall within a reasonable time provide for a staff superannuation scheme to determine service for the employees of the Service.

(5) The Director may, with the approval of the Board, appoint suitable persons to be honorary foresters for the purpose of assisting the carrying into effect the provisions of this Act.

(6) An honorary forester shall –

(i) be appointed by notice published in the Gazette;

(ii) hold office, subject to such conditions as the Director may prescribe, for a period of five years; and

(iii) have such functions as may be prescribed by rules made under this Act.

12 The provisions of the Second schedule shall have effect with respect to the procedure at the meetings of the Board.

13 (1) The Board shall establish forest conservancy areas for the proper and efficient management of forests and may divide such conservancy areas into forest divisions.

(2) There shall be established a forest conservation committee in respect of each conservancy area established under subsection (1).

(3) The functions of the committee shall be to -

(a) inform the Board on the ideas, desires and opinions of the people within the forest conservancy areas in all matters relating to the conservation and utilization of forests within such area;

(b) monitor the implementation of this Act and other forest regulations within the area;

(c) review and recommend to the Board applications for licences and renewals thereof;

(d) regulate the management of forests at the local level, including the setting of charges and retention of income;

(e) in consultation with the Board, assist local communities to benefit from royalties and other rights derived from flora or fauna traditionally used or newly discovered by such communities;

(f) identify areas of un-alienated Government land or trust land to be set aside for the creation of forests;

(g) recommend to the Board the establishment of forest division conservation committees; and

(h) perform such other functions as the Board may require or delegate to it.

(4) A forest conservation committee shall consist of -

(a) a Chairman appointed by the Board, who shall have at least ten years' experience in forestry, forest management or social sciences;

(b) one person to represent the provincial administration;

(c) the forest officer in charge of the area who shall be the secretary;

(d) one member nominated jointly by members of the timber industry operating in the area;

(e) four persons knowledgeable in forestry matters nominated by forest associations operating in the conservancy area, at least one of whom shall be a woman and one shall be a youth;

(f) an agricultural officer based in the area, who shall be nominated by the Minister responsible for agriculture; and

(g) an environmental officer based in the area, who shall be nominated by the Director General, National Environment Management Authority.

(5) Persons who are not members of the committee may be invited to attend meetings of the committee and take part in its deliberations.

(6) A member of a forest conservation committee shall be entitled to be paid such allowances as the Board may, with the approval of the Minister, determine.

(7) The Minister may, in consultation with the Board, make rules and regulations governing the procedures and functions of the committees.

14. (1) The funds of the Service shall comprise –

(a) such moneys or assets as may accrue to or vest in the Service in the course of the exercise of its powers or the performance of its functions under this Act or any other written law and approved by Parliament; and

(b) all moneys from any other source provided for or donated or lent to the Service.

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

16. (1) At least three months before the commencement of each financial year, Board shall cause to be prepared estimates of revenue and expenditure of the Service for that year.

(2) The annual estimates shall make provision for the estimated expenditure of the Service for the financial year and in particular, the estimates shall provide for the –

(a) payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Service and of the forest conservation committees;

(b) proper maintenance, repair and replacement of the equipment and other property of the Service;

(c) maintenance, repair and replacement of the equipment and other property of the Service;

(d) creation of such reserve funds as the Service may deem appropriate to meet the recurrent expenditure and contingent liabilities of the Service.

17. (1) The Service shall cause to be kept all proper books and other records of accounts of the income, expenditure and assets of the Service.

(2) Within a period of four months from the end of each financial year, the Service shall submit to the Controller and Auditor-General or an auditor appointed under subsection (3), the accounts of the Service in respect of that year together with –

(a) a statement of the income and expenditure of the Service during the year; and

(b) a statement of the assets and liabilities of the Service on the last day of the year.

(3) The accounts of the Service shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

18 There is hereby established a Forest Management and Conservation Fund, which shall be used for the following purposes –

(a) the development of forests;

(b) the maintenance and conservation of indigenous forests;

(c) the promotion of commercial forest plantations;

(d) the rehabilitation of provisional forests;

(e) the provision of forest extension services;

(f) the promotion of community-based forest projects;

(g) the facilitation of education and research activities;

(h) the establishment of arboreta and botanical gardens;

(i) the maintenance of sacred groves and other areas of cultural, ethno-botanical or scientific significance;

(j) undertaking of surveys and establishment of databases;

(k) the management of unique forests for biodiversity conservation;

(l) the establishment of nurseries and production of seedlings;

(m) silvicultural practices and tree improvement; and

(n) the management and protection of protected trees and;

(o) such other purposes as may be prescribed by rules made under this Act.

19. (1) The Fund shall consist of –

a) monies from time to time appropriated by Parliament for purposes of the Fund;

b) moneys levied upon forest beneficiaries in such manner as the Minister may, upon the recommendation of the Board and in consultation with the Minister for Finance, determine;

c) income from investments made by the Board; and

d) such grants, donations, bequests or other gifts as may be made to the Fund.

(2) All moneys due to the Service shall be collected or received on behalf of the Board by the Director and, subject to the direction of the Board, paid into a special account of the Fund in line with obtaining financial regulations.

20. (1) The Fund shall be managed by a Finance Committee appointed and empowered in that behalf by the Board.

(2) The Finance Committee shall, with the approval of the Board –

a) determine the amounts of money payable in respect of any purpose for which the Fund is established and formulate the conditions for disbursement;

b) make necessary investments from the Fund for the realization of the Fund's objectives, in securities approved from time to time by the Treasury; and

c) keep and maintain audited accounts of the Fund and publish such accounts in such a manner as may be approved by the Treasury.

PART III – CREATION AND MANAGEMENT OF FORESTS

21. All forests in Kenya other than private and local authority forests are vested in the state, subject to any rights of user in respect thereof, which by or under this Act or other written law, have been or are granted to any other person.

22. Nothing in this Act shall be deemed to prevent any member of a forest community from taking, subject to such conditions as may be prescribed, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.

23. The Minister may, on the recommendation of the Board, by notice in the Gazette declare –

(a) any unalienated Government land,

(b) any land purchased or otherwise acquired by the Government, to be state forest.

24. Upon the recommendation of the forest conservation committee for the area within which a forest is situated, the local authority and the Board, the Minister shall declare any land under the jurisdiction of a local authority to be a local authority forest where the –

(a) land is an important catchment area, a source of water springs, or is a fragile environment;

(b) land is rich in biodiversity or contains rare, threatened or endangered species;

(c) forest is of cultural or scientific significance; or

(d) forest supports an important industry and is a major source of livelihood for the local community.

25. (1) A person who owns a private forest, including a forest in the course of establishment, on land owned by the person may apply to the Service for registration under this section.

(2) The Board shall register a forest under subsection (1) where the forest meets the criteria prescribed in regulations made under this Act.

(3) Upon registration under subsection (2), the owner of a private forest shall be entitled to receive from the Service:

(a) technical advice regarding appropriate forestry practices and conservation; and

(b) subject to availability of funds, loans from the Fund for the development of the forest, provided that the funds are obtained and utilized in accordance with the procedures set out by the Service.

(4) A person who establishes or owns a private forest may apply to the relevant authorities for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.

(5) In this section, "private forest" includes arboreta and recreational parks.

26 (1) Upon the recommendation of the Board, the Minister may, by order published in the Gazette, declare any local authority forest or private forest, which in the opinion of the Board is mismanaged or neglected, to be a provisional forest.

(2) A declaration under subsection (1) of this section shall only be made where:

(a) the forest is –

(i) is an important catchment area or a source of water springs;

(ii) is rich in biodiversity and contains rare, threatened or endangered species;

(iii) is of cultural or scientific significance; or

(iv) supports an important industry and is a source of livelihood for the surrounding forest communities; and

(b) the Director has issued a notice requiring the local authority or private owner, as the case may be, to undertake specific silvicultural practices to improve the forest, and such notice has not been complied with, or the forest owner is unable to undertake the specified practices.

(3) A provisional forest shall be managed by the Service in collaboration with the owner thereof, and any profits accruing therefrom shall be paid to such owner less the expenses incurred by the Service in managing the forest concerned.

27 (1) A provisional forest shall revert to the owner where the Board is satisfied that it has been adequately rehabilitated and the owner has given an undertaking to efficiently manage it.

(2) The Board may, upon reversion of a provisional forest, prescribe for observance by the owner such conditions as may be necessary to ensure compliance with the provisions of this Act.

28 (1) A notice under this Part which is proposed: -

a) to vary the boundaries of a state or a local authority forest; or

b) to declare that a forest shall cease to be a state or local authority forest

shall only be published where the proposal is recommended by the Service in accordance with subsection (2) and is subsequently approved by resolution of Parliament.

(2) The Service shall not recommend any such proposal unless:-

a) it has been approved by the forest conservation committee for the area in which the forest is situated;

b) it is satisfied that such variation of boundary or cessation of forest proposed by the notice:-

i) shall not endanger any rare, threatened or endangered species;

ii) does not adversely affect its value as a water catchment area; and

iii) does not prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes.

(c) the proposal has been subjected to an independent Environmental Impact Assessment; and

(d) public consultation in accordance with the Third Schedule has been undertaken and completed in relation to the proposal.

29. (1) Subject to section 29(2), the Board may exchange part of a forest area with private land with the consent of the owner of such land where –

(a) the exchange enhances the efficient management and protection of the forest;

(b) the exchange is equitable to the Service and the land owner, according to an independent valuation;

(c) an independent Environmental Impact Assessment has been conducted and has shown that such exchange shall not adversely affect the environment; and

(d) the forest area to be exchanged does not contain rare, threatened or endangered species and is not a water catchment area or a source of springs.

(2) The Service or a local authority may, with the approval of the Minister, acquire by purchase any land suitable to be declared a state or local authority forest under this Act.

(3) No purchase or exchange shall be transacted under this section unless prior public consultation is carried out in accordance with the Third Schedule.

30. (1) Every local authority shall, as far as is reasonably practicable, establish and maintain arboreta, mini-forests or recreational parks for the non-consumptive use of persons residing within its area of jurisdiction.

(2) For the purposes of subsection (1), every local authority shall cause housing estate developers within its jurisdiction to make provision for the establishment of mini-forests at the rate of at least five percent of the total land area of any housing estate intended to be developed.

(3) Every local authority shall, as far as reasonably practicable, establish and maintain a recreational park in every market centre within its area of jurisdiction.

(4) The Service shall facilitate and initiate the provision of technical assistance in the establishment and maintenance of mini-forests, recreational parks and arboreta by local authorities.

(5) No arboretum, mini-forest or recreational park shall be converted to any other use unless the local authority, in the manner prescribed by rules made under this Act, seeks for and obtains the approval of a majority of the persons residing within its area of jurisdiction for such conversion.

(6) For purposes of this section, a local authority may in consultation with the Service prescribe conditions as to the species of trees to be planted in a mini-forest, arboretum or recreational park.

31. (1) Any person who is registered as proprietor of land in accordance with the provisions of any written law may donate or bequeath all or part of that land to the state, a local authority, an educational institution, an association or a non-governmental organization for the development of forestry and the conservation of biodiversity.

(2) The forest established on the land so donated or bequeathed to the state shall be gazetted in accordance with this Act and named after the person who has made the donation or bequest unless the instrument of bequest states otherwise.

(3) The forest or land so donated or bequeathed shall not be used for any purpose other than the establishment and conservation of forests as originally desired by the previous owner.

32. (1) Upon the recommendation of the Service, the Minister may, in consultation with the Minister responsible for local authorities where appropriate, by notice in the Gazette declare any forest area, or woodland or any part thereof, which has a particular environmental, cultural, scientific or other special significance, to be a nature reserve for the purpose of preserving its biodiversity and natural amenities thereof.

(2) Where a nature reserve declared as such under subsection (1) occurs within a private forest, the Minister shall make such arrangements for compensation to the owner of such forest as may be arrived at by an independent valuation.

(3) No cutting, grazing, removal of forest produce, hunting or fishing, shall be allowed in a nature reserve except with the permission of the Director granted in consultation with other conservation agencies, which permission shall only be given with the object of facilitating research.

(4) The provisions of this Part with respect to the revocation of declaration of a forest area or the variation of boundaries thereof shall apply with respect to a nature reserve.

33. (1) Any forest community, or person who is desirous of utilizing or conserving any grove or forest which is part of a nature reserve for cultural, religious, educational, scientific or other reasons shall submit an application, in the prescribed form, to the board through the forest conservation committee for the area in which the nature reserve occurs.

(2) Upon receipt of the application referred to in subsection (1), the Board shall make inquiries regarding the application, including the authenticity of the application and the suitability of the site vis-a-vis the activities for which the application is made, and, based on such inquiry, the Board may within three months of receipt of the application –

(a) grant the application as requested;

(b) grant the application on specified terms and conditions; or

(c) refuse to grant the application, giving reasons for such refusal.

(3) Where an application has been submitted under subsection (1) the decision of the Board either to grant the application or refuse to grant the application shall be final.

(4) Sacred groves found in any state forest, nature reserve, local authority forest or private forest shall not be interfered with and any person who, without lawful authority, fells, cuts,

damages or removes any such grove or tree or regeneration thereof, or biodiversity therein, or abets in the commission of any such act commits an offence.

34 (1) The President may, on the advice of the Board, by order published in the Gazette, declare any tree, species or family of tree species to be protected in the whole country or in specific areas thereof, and the Board shall cause this information to be disseminated to the public.

(2) Any person who fells, cuts, damages or remove, trades in or exports or attempts to export any protected tree, species or family of trees or regeneration thereof or abets in the commission of any such act commits an offence.

(3) The provisions of subsection (1) shall be reversed when the Board is satisfied that the protection is no longer necessary.

35. (1) Every state forest, local authority forest and provisional forest shall be managed in accordance with a management plan that complies with the requirements prescribed by rules made under this Act.

(2) The Service shall be responsible for the preparation of a management plan with respect to each state forest and provisional forest.

(3) A local authority shall be responsible for the preparation of a management plan with respect to each local authority forest within its jurisdiction.

(4) The Service or a local authority may discharge its responsibilities under this section by preparing any requisite plan and adopting it or by adopting a plan prepared by another person or body.

(5) In preparing and adopting a management plan, the Service or the local authority shall consult with the local forest conservation committee.

(6) The Director may, with the approval of the Minister, make rules to give effect to the provisions of management plans.

36. (1) The Director may, with the approval of the Board, enter into an agreement with any person for the joint management of any forests.

(2) The agreement referred to in subsection (1) may enjoin such person to use or refrain from using such forest or any part thereof in a particular manner in order to ensure the conservation of biodiversity:

Provided that where an agreement enjoins such person to use or refrain from using the forest in any particular manner, it shall contain modalities of payment of compensation to such person for any loss incurred thereby.

(3) Where any person enters into an agreement with the Director in accordance with subsection (1) of this section, the agreement shall be enforceable against such person or his successors in title, assignees or any or all other persons deriving title from him.

(4) Nothing in this section shall render enforceable any conservation agreement entered into under subsection (1) where the use of such forest in accordance with such agreement contravenes the provisions of any law for the time being in force, or is inconsistent with any prior agreement relating to the use of such forest and which is binding on such owners, their successors in title or persons deriving title from them.

37. (1) All plantation forests owned by the state shall be managed by the Service on a sustainable basis with the primary objective being the production of wood and other forest products and services for commercial purposes.

(2) Where the Board is satisfied that all or part of a state forest which is a plantation forest may be efficiently managed through a licence, concession, contract, joint agreement, it may place an advertisement in two daily newspapers of national circulation calling for applications from interested persons for the management of the same.

(3) An applicant under subsection (2) shall submit to the Board together with his application, a proposed management plan in respect of the forest which is the subject of the application.

(4) Where the Board approves an application submitted under subsection (3) and intends to enter into a management agreement as specified under subsection (2), it shall publish its intention in two daily newspapers of national circulation at least thirty days before the agreement is due to take effect.

(5) A management agreement entered into by the Board with the successful applicant shall specify among other things:-

(a) the duration of agreement;

(b) the terms and conditions under which the applicant shall manage the forest;

(c) any charges payable to the Service;

(d) a management plan to be followed by the applicant;

(e) the mechanism for settlement of disputes arising in respect of the agreement; and

(f) the circumstances under which the agreement may be terminated.

(6) The Board shall, before entering into an agreement, call for an independent inventory of the forest and other relevant data to enable it determine the true value of such a forest.

(7) Management agreements may be entered into or renewed subject to such conditions as may be prescribed by the Board:

Provided that:

(a) no part of a state forest which contains rare, threatened or endangered species, or which has particular environmental, cultural or scientific significance or which has been declared a nature reserve under this Act, shall be included in such agreements.

(b) no applicant may assign, exchange, transfer or convey the agreement or any part of his rights or interests therein without the prior written consent of the Board.

(8) The applicant may assign, exchange, transfer or convey the agreement only where:-

a) the agreement has been in existence for at least six (6) years;

b) he has not violated any provisions of this Act, and has complied with the terms and conditions of the agreement;

c) the assignee would himself qualify to be an applicant under this section; and

d) the Board has approved such assignment, exchange or transfer.

(9) Where the applicant assigns, exchanges, or transfers his agreement without the approval of the Board, the agreement shall lapse and the management of the forest shall revert to the Service.

(10) Any person aggrieved by the decision of the Board to enter into a management agreement for a plantation forest under this section may, within the period specified in subsection (4), make representations to the Board, and the Board shall consider such objections and take such action as justified in the circumstances.

38. (1) Each local authority shall, with the assistance of the Service, be responsible for the protection and management of all forests and woodlands under its jurisdiction, and shall ensure that such forests are managed on a sustainable basis in accordance with an approved management plan.

(2) The provisions contained in this Act regarding the management of indigenous forests shall apply to the management of indigenous forests situated within the jurisdiction of a local authority.

(3) A forest officer responsible for the area shall, in consultation with the forest conservation committee, make inspection visits at least twice a year, and shall make a report thereon to the Director as to whether such forests are managed in accordance with the provisions of this Act.

(4) The Director shall report to the Board on a forest officer's report received under subsection (3), and the Board may, if it is satisfied that it is in the public interest for a local authority forest to be managed by the Service, make recommendations to the Minister.

(5) The Minister may declare a local authority forest in respect of which a report is received under this section to be a provisional forest.

39. (1) A local authority may, upon application by a company, government agency, a forest community, a professional association, an educational institution, or non – governmental organization, a cooperative society or an individual, and after approval by the Board has been obtained, enter into an appropriate management agreement for all or part of any forest within its jurisdiction.

(2) A management agreement entered into under subsection (1) shall specify:-

(a) the period for which the forest shall be managed;

(b) the terms and conditions under which the applicant shall manage the forest;

(c) any royalties and charges payable in respect thereof to the local authority or the Service;

(d) the mechanism for settlement of disputes arising in respect of the agreement; and

(e) the circumstances under which the agreement may be terminated.

(3) Where the forest referred in subsection (1) lies within the jurisdiction of more than one local authority, an application shall be made to each of such local authorities, and such local authorities may jointly agree to enter into a management agreement for all or part of such forest pursuant to such application.

(4) Nothing in this section shall be deemed to transfer or to vest in any person, institution, or organization any right of ownership of any land declared to be a local authority forest, other than the privilege of management and control.

(5) No management agreement shall convert a local authority forest into a settlement area.

40. (1) Where the Board is satisfied that utilization of a forest can be done through the granting of concessions, the Service may, by licence, grant the same subject to an Environmental Impact Assessment Licence in accordance with the Environmental Management and Coordination Act, 1999.

(2) In addition to subsection (1), the grantee of a concession shall:-

- (a) comply with the guidelines or management plans prescribed by the Service;
- (b) protect the concession area from destruction and encroachment by other persons;
- (c) ensure that the forest areas under his management are maintained for the conservation of biodiversity, cultural or recreational use;
- (d) maintain the physical boundaries of the concession;
- (e) take precautions to prevent the occurrence and spread of forest fires in connection with any or all operations within or outside the concession area; and
- (f) ensure that all structures and facilities constructed or operated by and in connection with any activities are maintained according to the conditions of the licence.

(3) The licence shall indicate the nature of the concession, including its physical location and boundaries, and the purpose for which it is granted.

(4) The Board may withdraw a concession granted under this section where a grantee breaches any of the conditions prescribed under subsection (2).

(5) A grantee of a concession under this section shall be held personally responsible for any damage, including the negligence of his employees, arising directly from his operations on the land for which the concession has been obtained.

41. (1) All indigenous forests and woodlands shall be managed on a sustainable basis for purposes of: -

- (a) conservation of water, soil and biodiversity;
- (b) riverine and shoreline protection;

(c) cultural use and heritage;

(d) recreation and tourism;

(e) sustainable production of wood and non-wood products;

(f) carbon sequestration and other environmental services;

(g) education and research purposes; and

(h) habitat for wildlife in terrestrial forests and fisheries in mangrove forests.

(2) In pursuance of subsection (1), the Service shall, in consultation with the forest conservation committee for the area where the indigenous forest is situated, prepare forest management plans.

(3) The Board may enter into a joint management agreement for the management of any state indigenous forest or part thereof with any person, institution, government agency or forest association.

42 (1) The Board shall only give its consent for mining and quarrying operations in a forest area where:-

(a) the area does not contain rare, threatened or endangered species;

(b) the forest does not have any cultural importance or contain sacred trees or groves;

(c) an Independent Environmental Impact Assessment has been carried out;

(d) the miner has undertaken through execution of a bond the value of which will be determined by the Board, to rehabilitate the site upon completion of his operation to a level prescribed by the Board;

(e) the forest is not an important catchment area or source of springs:

Provided that the Minister may, on the recommendation of the Board, and in consultation with the minister responsible for mining, publish rules to regulate and govern mining operations in forest areas; and

(f) the carrying on of the mining and quarrying operations shall not contravene any rules made under this Act.

(2) Subject to subsection (1), mining and quarrying may be carried out in a state or local authority forest under the authority of a licence issued by the Service and the local authority.

(3) A licence under subsection (2) shall not be issued unless the applicant has implemented safety measures to prevent injury to human beings, livestock and wildlife traversing the forest.

43. (1) The conditions on which a licence for mining and quarrying, or any other activity carried out in the forest, shall, where the activity concerned is likely to result in the depletion of forest cover in any forest, include a condition requiring the licensee to undertake compulsory revegetation immediately upon the completion of the activity.

(2) Revegetation shall be undertaken in consultation with the Service, which shall determine the seeds and seedlings proposed to be used in such revegetation.

44. Any person who contravenes the provisions of this Act in relation to activities in forest areas relating to mining, quarrying or revegetation commits an offence and shall be liable on conviction to imprisonment to a term not exceeding twelve months or to a fine of not exceeding five hundred thousand shillings or to both such fine and imprisonment.

45. (1) Any activities within a forest area which are not included in a management plan shall only be undertaken with the consent of the Board granted in accordance with this section.

(2) A person intending to undertake any activity referred to in subsection (1) within a forest area shall apply in that behalf to the Board and the application shall be accompanied by the results of an independent Environmental Impact Assessment conducted in respect of the proposed activity.

(3) Where the Board intends to grant its approval under this section, it shall cause a notice of such intention to be published in the Gazette and in at least two newspapers of national circulation, and posting a notice in such manner as to bring to attention of the persons likely to be directly affected by such activity, and giving a period of not less than ninety days within which any person may make objections to the Board.

(4) The Board shall deliberate on any objection received and deliver its decision to the objector within a period of sixty days from the date of receipt thereof.

(5) Any objector aggrieved by a decision of the Board under this section may within sixty days after receipt of such decision appeal to the High Court.

PART IV – COMMUNITY PARTICIPATION

46. (1) A member of a forest community may, together with other members or persons resident in the same area, register a community forest association under the Societies Act.

(2) An association registered under subsection (1) may apply to the Director for Permission to participate in the conservation and management of a state forest or local authority forest in accordance with the provisions of this Act.

(3) The application referred to in subsection (2) shall be in the prescribed form and shall contain –

(a) a list of the members of the association and its address;

(b) the Constitution of the association;

(c) the association's financial regulations;

(d) the area of forest for which the association proposes to undertake conservation and management;

(e) the association's proposals concerning –

(i) use of forest resources;

(ii) methods of conservation of biodiversity;

(iii) methods of monitoring and protecting wildlife and plant populations and enforcing such protection; and

f) such other information as the Director may require.

(4) Where there is no management plan in respect of the area, or where the association proposes that there be a new management plan, the application shall be accompanied by a draft management plan.

(5) The provisions of this Act regarding management plans shall apply in respect of the draft management plan submitted under subsection (4).

(6) The Director shall cause to be kept an up to date record of all associations participating in the conservation or management of forests.

47. (1) An association approved by the Director under section 46 to participate in the management or conservation of a forest or part of a forest shall –

(a) protect, conserve and manage such forest or part thereof pursuant to an approved management agreement entered into under this Act and the provisions of the management plan for the forest;

(b) formulate and implement forest programmes consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria;

(c) protect sacred groves and protected trees;

(d) assist the Service in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce;

(e) with the approval of the Board enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of forests;

(f) keep the Service informed of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity;

(g) help in fire fighting; and

(h) do any other that is necessary for the efficient conservation and management of the forest.

(2) The management agreement between the Director and the association may confer on the association all or any of the following forest user rights –

(a) collection of medicinal herbs;

(b) harvesting of honey;

(c) harvesting of timber or fuel wood;

(d) grass harvesting and grazing;

(e) collection of forest produce for community based industries;

(f) ecotourism and recreational activities;

(g) scientific and education activities;

(h) plantation establishment through non-resident cultivation;

(i) contracts to assist in carrying out specified silvicultural operations;

(j) development of community wood and non-wood forest based industries; and

(k) other benefits which may from time to time be agreed upon between an association and the Service:

Provided that:

(i) none of the activities specified in this subsection shall be carried out so as to conflict with the conservation of biodiversity; and

(ii) the Director may, in consultation with the association, make rules regulating the performance thereof.

(iii) in the case of plantation establishment under paragraph (2) (h), the non-resident shall be allowed to cultivate in the forest for a period not exceeding three years.

48. (1) An association may, with the approval of the Director, assign any or all its rights under a management agreement to a suitably qualified agent on mutually agreed terms.

(2) The Director shall not approve any assignment which would derogate from the main objectives and purposes set out in the management agreement.

(3) The management agreement shall be deemed to provide that an association shall be liable for all the activities, acts and omissions of the assignees of its rights under the agreement.

49 (i) The Director may terminate a management agreement with an association or withdraw a particular user right where –

a) an association grossly breaches the terms and conditions thereof;

b) he considers such action as necessary for purposes of protecting and conserving biodiversity; or

c) the association itself so requests.

(2) Where the Director intends to terminate a management agreement or withdraw a particular user right on either of the grounds stipulated in subsection (1) (a) or (b) of this section, he shall give the affected association thirty day's notice to show cause why the management agreement should not be so terminated or the user so withdrawn.

(3) Where an association is aggrieved by the decision of the Director under this section, it may, within thirty days after being notified of the decision, appeal to the Board against the decision.

(4) Nothing in this section shall be construed to limit the grounds on which, in accordance with the terms of a management agreement, the agreement or any user right may be terminated.

PART V – ENFORCEMENT

50. (1) A forest officer may –

(a) demand from any person the production of an authority or licence for any act done or committed by that person in a state, local authority or provisional forest, or in relation to any forest produce for which a licence is required under this Act or under any rules made thereunder;

(b) require any person found within or without a state, local authority or provisional forest who has in his possession any forest produce, to give an account of the manner in which he became possessed thereof, and, where the account given is not satisfactory, arrest and take such person before a magistrate;

(c) search any person suspected of having committed an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and arrest the person, seize and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or his agent or servant:

Provided that no person shall be arrested under this section unless the forest officer has reasonable cause to believe that that person may fail to appear to answer a summons, or unless that person refuses to give his name and address or gives a name and address which there is reasonable cause to believe is false;

(d) search any vehicle or vessel and seize and detain any forest produce in respect of which there is reason to believe that an offence has been committed, together with any tools, equipments, vessels, vehicles or livestock used in the commission of the offence:

Provided that the forest officer seizing such property shall forthwith report the seizure to the magistrate having jurisdiction over the area where the offence takes place;

(e) seize and detain any livestock found in a State, local authority or provisional forest without any person in charge of them; and

f) confiscate any equipment or receptacle placed without authority in a State, local authority or provisional forest.

(2) The Director or any forest officer may –

a) enter any private forest registered under section 25(1) in order to assess the condition thereof or to perform any such other act which he considers necessary in the circumstances; or

(b) enter the premises of any forest-based industry or forest produce dealer to inspect any forest produce placed or found within the premises to satisfy himself that the industry or dealer is abiding by the provisions of a licence issued under this Act:

Provided that during such inspection due regard shall be had to the property rights of the forest owner.

(c) take all reasonable steps to prevent the commission of an offence under this Act; and

(d) where qualified to do so, any officer of the Service who is of or above the rank of Sergeant Forest Guard shall have the same powers conferred to relevant officers under sections 22 and 23 of the Criminal Procedure Code and section 20 of the Police Act.

(3) in enforcing this section, any officer of the service who is of or above the rank of Sergeant Forest Guard shall have the same powers conferred to relevant officers under sections 22 and 23 of the Criminal Procedure Code and section 20 of the Police Act.

51. (1) The President may, through the Commissioner of Police, make available to the disciplined force of the Service such firearms as may be necessary for the Service to carry out its functions under this Act.

(2) A member of the disciplined force, after acquiring the requisite training, and when authorized by the Director, may use firearms for the following purposes:-

(a) in the course of law enforcement against –

(i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody;

(ii) any person who, by force, removes or attempts to remove any other person from lawful custody;

(iii) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or

(iv) any person unlawfully hunting any animal within a forest area or nature reserve.

(b) for the protection of people and property against any animal causing destruction to human life or property or crops; and

(c) in the course of animal population control.

(3) Notwithstanding the foregoing, an officer of the disciplined force of the Service shall not resort to the use of firearms –

(a) under paragraph (a)(i) of subsection (2), unless the officer concerned has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he is about to use a firearm against him, and the warning is unheeded;

(b) under paragraph (a)(ii) or (iii) of subsection (2), unless the officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm, or that he cannot otherwise prevent the removal, or, as the case may be, effect the arrest.

52. (1) Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a state, local authority or provisional forest –

(a) fell, cut, take, burn, injure or remove any forest produce;

(b) be or remain therein between the hours of 7 p.m. and 6 a.m. unless he is using a recognized road or footpath, or is in occupation of a building authorized by the Director, or is taking part in cultural, scientific or recreational activities;

(c) erect any building or livestock enclosure, except where the same is allowed for a prescribed fee;

(d) smoke, where smoking is by notice prohibited, or kindle, carry or throw down any fire, match or other lighted material;

(e) de-pasture livestock, or allow livestock to be therein;

(f) clear, cultivate or break up land for cultivation or for any other purpose;

(g) enter any part thereof which may be closed to any person;

(h) collect any honey or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax, or enter therein for the purpose of collecting honey and beeswax, or be therein with any equipment designed for the purpose of collecting honey or beeswax;

(i) construct any road or path;

(j) set fire to, or assist any person to set fire to, any grass or undergrowth or any forest produce;

(k) possess, bring or introduce any chain saw or logging tools or equipment; and

(l) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, boundary mark, fence notice or notice board.

(2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

53 Any person who, without lawful authority –

(a) marks any forest produce, or affixes upon any forest produce, a mark ordinarily used by a forest officer to indicate that the forest produce is the property of the Government, or that it may or has been lawfully cut or removed;

(b) alters, obliterates, removes or defaces any stamp, mark, sign, licence, permit or other document lawfully issued under the authority of this Act, or removes or destroys any part or a tree bearing the stamp or other mark used by any forest officer;

(c) covers any tree stump in any state or local authority forest or on any unalienated Government land with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;

(d) wears any uniform or part of a uniform, or any badge or other mark issued by the Service to be worn by forest officers or other employees of the Service, or who in any other way holds himself out to be an employee of the Service; or

(e) counterfeits or issues without lawful authority any licence or other document purporting it to be a licence or document issued under this Act or any rules made thereunder,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

54. (1) Any person who –

(a) commits a breach of, or fails to comply with the provisions of, this Act;

(b) commits a breach of, or fails to comply with any of, the terms or conditions of a licence issued to him under this Act;

(c) fails to comply with a lawful requirement or demand made or given by a forest officer;

(d) obstructs a person in the execution of his powers or duties under this Act;

(e) makes charcoal in a state, local authority or provisional forest; or in private forest or farmlands without a licence or permit of the owner as the case may be:

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) Any person who willfully or maliciously sets fire to any private, provisional, local authority or state forest commits an offence and is liable to a fine of not less than two hundred thousand shillings, or to imprisonment for a term of not less than one year or to both such fine and imprisonment.

(3) Any person who operates a sawmill in a manner contrary to that prescribed in rules made under this act commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for term not exceeding ten years, or to both such fine and imprisonment.

(4) Save under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a forest capture or kill any animal, set or be in possession of any trap, snare, gin or net, or dig any pit, for the purpose of catching any animal, or use or be in possession of any poison or poisoned weapon:

Provided that nothing in this paragraph shall be deemed to prohibit the capturing or killing of an animal in accordance with the conditions of a valid licence or permit issued under the Wildlife (Conservation and Management) Act.

(5) Any livestock found in any forest shall, unless the owner thereof proves to the contrary, be deemed to be there under the authority of the owner as well as the person, if any, actually in charge of the livestock.

(6) The livestock detained under paragraph 50(1)(e) may be auctioned at the expiry of five days if the owner does not reclaim them, and the proceeds of such auction shall be paid to such owner, less the amount incurred by the Service in the care of such livestock, and neither the Service nor any of its officers shall be held liable for the injury or death of any livestock so seized and detained.

(7) Neither the Service nor any of its officers shall be liable for the injury, loss or death of any livestock seized or detained under section 50(1).

(8) Any person who, in any forest area –

(a) introduces any exotic genetic material or invasive plants without authority from the Service;

(b) dumps any solid, liquid, toxic or other wastes;

(c) grows any plant from which narcotic drugs can be extracted; or

(d) extracts, removes or causes to be removed, any tree, shrub or part thereof for export,

commits an offence and is liable on conviction to a fine not less than three million shillings or to imprisonment for a term not less than ten years, or to both such fine and imprisonment.

55. (1) Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the court may in addition to any other ruling order –

(a) that such person pay to the forest owner, by way of compensation, a sum equal to the determined value of the forest produce so damaged, injured or removed and where the value cannot be estimated, ten thousand shillings for each offence;

(b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;

(c) the forest produce be removed, and any vessels, vehicles, tools or implements used in the commission of the offence, be forfeited to the Service:

Provided that the value of the forest produce shall be either the commercial value of the forest produce or the cost of repairing the damage caused to biodiversity as a result of the activities complained of.

(2) Where a person is convicted of an offence of occupying or cultivating land in a forest area without a licence, the court may, in addition to any other penalty imposed under this Act, order such person to remove any buildings, enclosures, huts or crops within a period to be specified in the order, and if the person so convicted fails to comply with an order within the period so specified, the buildings, enclosures, huts or crops shall be deemed to be the property of the State, local authority or forest owner, as the case may be, and may be disposed of as the State, local authority or forest owner may think fit:

Provided, however, that expenses incurred as a result of keeping in custody anything seized or detained under this section shall be borne by the person whose property is seized or detained.

56. A forest officer may with the leave of the Attorney General given under the Criminal Procedure Code, conduct any prosecution for any offence committed under this Act.

57. Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for term not exceeding three months.

58. (1) Every citizen of Kenya, and any person who is ordinarily resident in Kenya, who has reason to believe that the provisions of this Act have been, are being or are about to be violated, may petition the High Court for-

(a) a declaration that the provisions of this Act are being, have been or are about to be contravened;

(b) an injunction restraining any specified person from carrying out such a contravention;

(c) the writ of mandamus against any officer or person who has failed to perform any duty imposed by or under this Act; and

(d) any remedy at law or equity for preventing or enforcing the provisions of this Act.

(2) the petition submitted under subsections (1) shall state –

(a) particulars of the petitioner;

(b) nature of the violation or likely violation;

(c) provision(s) of this Act which is or are being violated; and

(d) person, agency or body violating or about to violate the said provisions.

(3) Notwithstanding subsection (1), the court shall not issue an order under subsection (1) in respect of a proposal by the State or a local authority where such proposal has been duly submitted to public consultation in accordance with the Third Schedule, except an application which is-

(a) made within 60 days after publication, in accordance with the Schedule, of the notice of the decision; and

(b) made by a person –

(i) who made a comment or objection concerning the proposal within the time allowed in that Schedule; or

(ii) who shows reasonable cause why he did not make such comment or objection.

PART VI – MISCELLANEOUS

59. (1) The Minister may, on the recommendation of the Board, make rules for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the foregoing, rules may be made under this section for–

(a) controlling the harvesting, collection, sale of land and disposal of forest produce;

(b) prescribing the amount of royalties or fees payable under this Act generally or in particular cases;

(c) regulating the use and occupation of state forest land for the purposes of residence, cultivation, grazing, tourism, recreation, camping, picnicking, cultural activities, industrial or any other similar activities;

(d) the circumstances in which licences, permits, leases, concessions and other agreements may be applied for, granted, varied, refused or cancelled, and the manner in which a person to whom a licence is granted may exercise a right or privilege conferred upon him by the licence;

(e) regulating the felling, working and removal of forest produce in areas where trees may be felled or removed;

(f) regulating the entry of persons into a state or provisional forest, the period during which such persons may remain there and conditions under which they may remain;

(g) closing paths or roads in a state or provisional forest to either human or vehicular traffic or both;

(h) regulating entry into a nature reserve;

(i) providing conditions of administration and management of forests and forestry;

(j) providing for plant inspections and the declaration of insects and fungal pests dangerous to forests and forest produce, and prescribing measures to be taken to control or eradicate such notified pests;

(k) providing for compulsory use of property marks by the Service, local authorities and owners of private forests for the purpose of identifying wood sold from State, local authority, provisional and private forests;

(l) regulating or prohibiting the lighting of fires or smoking or carrying, kindling or throwing

of any fires or light or inflammable material;

(m) prescribing the form, duration and other conditions in respect of forest management agreements;

(n) conditions under which mismanaged or neglected forests may be declared provisional forests and conditions for reverting them to the original owners;

(o) regulating the establishment of forest-based industries;

(p) providing for measures that enhance community participation in the conservation of forests at the local level;

(q) providing for the establishment of new forest areas;

(r) regulating the production, transportation and marketing of charcoal;

(s) prescribing the manner of nomination of representatives of forest associations to forest conservancy committees.

(3) Rules made under this section may require acts or things to be performed or done to the satisfaction of the Service, and may empower the Board to issue orders imposing conditions and dates upon, within or before which acts or things shall be performed or done.

(4) Upon the recommendation of a local authority or forest conservation committee, the Minister may, in consultation with the Board and the Minister for the time being responsible for matters related to local authorities, make rules in respect of any or all local authority forests.

(5) The provisions of section 27 of the Interpretation and General Provisions Act shall not apply to rules made under this section.

60. (1) The Director shall maintain register of:-

(a) all licences issued under this Act;

(b) private forests registered under section 25 and the owners thereof;

(c) local authority forests;

(d) all associations participating in the conservation and management of forests under this Act; and

(e) all forest management plans;

(2) All registers maintained under this section shall be open for inspection at the office of the Director by members of the public during official working hours.

61. The provisions of this Act shall be carried out in accordance with Kenya's obligations under any treaty or international agreement concerning forests or forest resources to which it is a party.

62. The Director may, with the approval of the Board, develop management plans and enter into joint management arrangements for the purposes of the proper management of cross-border forests and forest produce.

63. (1) The provisions of Part VI of the Environmental Management and Coordination Act shall apply, *mutatis mutandis*, to and in respect of a licence under this Act and any Environmental Impact Assessment as well as reference to the National Environment Tribunal required under this Act.

(2) The provisions of the Environmental Management and Coordination Act regarding reference to the Tribunal established under that Act shall apply to the settlement of disputes arising under this Act.

PART VII – TRANSITIONAL PROVISIONS

64. The Forests Act is repealed.

65. (1) Notwithstanding the repeal of the Forests Act:-

(a) any land which, immediately before the commencement of this Act, was a forest or nature reserve under that Act, shall be deemed to be a state or local authority forest or nature reserve, as the case may be, under this Act; and

(b) any licences or permits granted under that Act and in force immediately before the commencement of this Act shall be deemed to have been granted under the provisions of this Act, and shall remain in force until revoked in accordance with any terms in that regard set out in the licence, as the case may be, or renewed as a licence under this Act.

66. (1) All property, except any such property as the minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Forest Department shall, upon the taking effect of a notice by the Minister published in the Gazette, and without further assurance, vest in the Service, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Forest Department immediately before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

67. (1) All persons, being public officers, who, before the commencement of this Act are employed by the Government for the purposes of the activities of the Forest Department, shall at the commencement of this Act be, deemed to be on secondment to the Service until they are employed by the Service in accordance with this Act, or their deemed secondment otherwise ceases in accordance with the terms of such secondment.

(2) Where, at the commencement of this Act, any penalty, other than dismissal, has been imposed on any employee of the Forest Department pursuant to disciplinary proceedings against him, and the penalty has not been or remains to be served by such employee, such employee shall, on his transfer to the Service, serve, or continue to serve such penalty to its full term as if it had been imposed by the Service.

FIRST SCHEDULE

PART I

PROVISIONS RELATING TO THE OFFICERS OF THE SERVICE

1.(1) The officers of the Service shall hold the ranks specified in subparagraph (2).

2. The ranks of the officers of the Service referred to in subparagraph (1) in order of seniority shall be as follows:-

(a) Professional Cadre

Director of Forests

Senior Deputy Director of Forests

Deputy Director of Forests

Senior Assistant Director of Forests

Assistant Director of Forests

Senior Forest Officer

Forest Office I

Forest Officer II

(b) Technical Cadre

Chief Conservator

Assistant Chief Conservator Senior Forester

Forester I

Forester II

Forester III

(c) Disciplined Officers Cadre

Commandant

Deputy Commandant

Assistant Commandant

Senior Superintendent Forest Guard

Superintendent Forest Guard

Chief Inspector Forest Guard

Inspector Forest Guard

Sergeant Forest Guard

Corporal Forest Guard

Constable Forest Guard

Forest Guard Recruit

(3) The officers of the Service shall, in the performance of the duties conferred upon them under this Act and any other written law, conform with any lawful instructions, directions or orders which may be given by the Director.

(4) The Director may, with the consent of the Board, from time to time make and issue administrative orders to be called Service Standing Orders for the general control, direction and information of the officers of the Service.

2. (1) The Director shall, with the approval of the Board, issue a Disciplinary Code for Officers of the Service, which shall apply to the disciplined officers of the Service and which may provide for the following matters-

(a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings;

(b) disciplinary penalties; and

(c) any other related matters.

(2) The following disciplinary penalties, or any combination thereof, may be included in the Disciplinary Code for infringement of the Code issued under subparagraph (1)-

(a) dismissal from the Service;

(b) reduction in rank;

(c) confinement for not more than fourteen days in guard room or restriction to the confines of any camp or other area where a part of the Service is stationed;

(d) fines;

(e) surcharge;

f) where the offence has occasioned any expense, loss or damage, stoppages of pay or allowances;

(g) extra drills, parades or fatigues;

(h) severe reprimand;

(i) reprimand; and

(j) admonition.

(3) A Disciplinary Code issued under this paragraph may provide that a disciplined officer of the Service committing a disciplinary offence may be arrested without a warrant by or on the order of an officer senior to him or placed in command over him, who may, if the circumstances so warrant, confine that officer or cause that officer to be confined in a building suitable for the purpose, pending the determination of disciplinary proceedings: Provided that no person shall be confined for more than five days without a warrant being issued for his arrest.

3 (1) A disciplined officer of the Service who –

(a) strikes, or otherwise uses violence on, or threatens violence to or incites any other person to use violence on, an officer senior to or placed in command over him or that other person; or

(b) uses threatening or insubordinate language to an officer senior to or placed in command over him,

shall be guilty of an offence and liable to imprisonment for term not exceeding one year.

(2) The Director or an officer of or above the rank of Assistant Director of Forests, or the Commandant or an officer above the rank of Senior Superintendent Forest Guard to whom power so to do has been delegated by the Director of Forests, may direct that an offence committed under this paragraph be dealt with under the Code.

4. (1) A disciplined officer of the Service who absents himself from duty without leave or just cause for a period of or exceeding twenty-one days shall, unless he proves the contrary, be deemed to have deserted from the force.

(2) A disciplined officer who deserts the Service shall forfeit any pay or allowance due to him, and all rights in respect of any pension, provident fund or any other scheme operated by the Service, and in addition, such member shall be liable to disciplinary action.

(3) No pay or allowance shall be paid to a disciplined officer in respect of any day during which he is absent from duty without leave, unless the Director otherwise directs.

(4) Any disciplined officer who deserts from the Service for a cumulative and successive period of or exceeding twenty one days shall be guilty of an offence and liable to imprisonment for a period not exceeding six months or a fine not exceeding five thousand shillings or both.

(5) Any disciplined officer who, upon being dismissed from the Service, or who deserts from the Service for a period of twenty one days and does not surrender the property of the Service or the Government within a period of or exceeding seven days from the date of dismissal or desertion, shall be guilty of an offence and liable to imprisonment for one year or a fine not exceeding ten thousand shillings or both.

5. (1) No disciplined officer of the Service shall be or become a member of –

(a) a trade union or any body or association affiliated to a trade union;

(b) a body or association the objects or one of the objects of which is to control or influence conditions of employment in a trade or profession or

(c) a body or association the objects, or one of the objects of which, is to control or influence pay, pension or conditions of the service other than a staff association established and regulated by rules and regulations.

(2) A disciplined officer of the Service who contravenes subparagraph (1) shall be liable to be dismissed from the Service and to forfeit all his rights to pension or gratuity.

(3) If a question arises as to whether a body is a trade union or an association to which this paragraph applies, such question shall be referred to the Minister whose decision thereon shall be final.

6. In this Part, “disciplined officer” means an officer specified in subparagraph (2) (c) of paragraph 1.

PART II

OATH OF ALLEGIANCE

I.....do hereby swear (or do hereby solemnly and sincerely affirm) that I shall be faithful and bear true allegiance to the President and to the republic of Kenya; that I shall at all times, as required and authorized by law, do my utmost to preserve the peace and prevent offences against the same; and that I shall, to the best of my skill and knowledge, discharge all the duties of Forest Guard faithfully according to the law; and that during my tenure in the Kenya Forest Service, I shall obey all such lawful orders as may be given to me and shall observe all Acts, Regulations and Orders relating to the Kenya Forest Service which may from time to time be in force.

(So help me God)

.....

Signature of Declarant

Personal Number:.....

Sworn/Affirmed before me.....

On the.....

SECOND SCHEDULE

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

(1) The chairman of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

(2) Other than ex-officio members, a member of the Board shall, subject to the provisions of this section, hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for reappointment for one further term of three years.

(3) The members of the Board shall be appointed at different times so that the respective expiry dates of their term of office fall at different times.

(4) A member other than the chairman or an ex-officio member may –

(a) at any time resign from office by notice in writing to the Minister;

(b) be removed from office by the Minister if the member-

(i.) has been absent from three consecutive meetings of the Board without the permission of the Chairman; or

(ii.) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or

(iii.) is convicted of an offence involving fraud or dishonesty; or

(iv.) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or

(v.) is incapacitated by prolonged physical or mental illness; or

(vi.) is found to have acted in a manner prejudicial to the aims and objectives of this act; or

(vii.) fails to comply with the provisions of this act relating to disclosure; or

(viii.) is otherwise unable or unfit to discharge his functions as a member of the Board.

2 (1) The Board shall meet not less than four times in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairman may call a special meeting of the Board at any time where he deems it expedient for the transaction of the business of the Board.

(2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the secretary.

(3) The quorum for the conduct of business of the Board shall be half of the members' and unless a unanimous decision is reached, decisions shall be a majority vote of the members present, and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(4) The chairman shall preside over all meetings of the Board in which he is present, but in his absence, the vice chairman shall preside, and in his absence the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(5) At the first meeting of the Board, the members shall elect a vice chairman, not being a public servant, from among its members.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at the meeting of the Board at which the contract, proposed contract or matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

4. Save as provided in this Schedule, the Board may regulate its own procedure.

THIRD SCHEDULE

PROVISIONS AS TO PUBLIC CONSULTATION

1. Where this Act imposes a requirement for public consultation, the responsible authority shall publish a notice in relation to the proposal –

(a) in the Gazette;

(b) in at least two national newspapers;

(c) in at least one newspaper circulating in the locality to which the proposal relates; and

(d) in at least one Kenyan radio station broadcasting in that locality.

(2) The notice shall in each case –

(a) set out a summary of the proposal;

(b) state the premises at which the details of the proposal may be inspected;

(c) invite written comments on or objections to the proposal;

(d) specify the person or body to which any such comments are to be submitted; and

(e) specify a date by which any such comments or objections are required to be received, not being a date earlier than 60 days after publication of the notice.

2. The responsible authority shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the proposal which are in the possession of the responsible authority.

3. The responsible authority shall consider –

(a) any written comments or objections received on or before the date specified under paragraph 2(2) (e); and

(b) any comments, whether in writing or not, received at any public meeting held in relation to the proposal at which the responsible authority was represented, or pursuant to any other invitation, to comment.

4. The responsible authority shall publish, through the same media as were employed pursuant to paragraph 1, notice of the fact that a copy of the decision in writing of the responsible authority in relation to the proposal, and of the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2) (b).

5. Where rules made under this Act so require, the responsible authority shall cause a public meeting to be held in relation to a proposal before the responsible authority makes its decision on the proposal.



Ministry of Environment
and Natural Resources

Ministry of Environment and Natural Resources

The Ministry of Environment and Natural Resources mission is to develop, conserve, protect and sustainably manage the environment, forests and mineral resources for national development.

*Permanent Secretary
Ministry of Environment and Natural Resources
Ngong Road - Maji House
P.O. Box 49720
Nairobi, Kenya
Telephone: 2716103*



Forest Action Network (FAN)

Forest Action Network is a regional Non Governmental Organisation with its headquarters in Nairobi. FAN: Mission is to facilitate stakeholders in the Eastern AFRICAN Region to participate in the sustainable Management of their natural resources and to influence policy especially where it relates to forests and watersheds.

*Forest Action Network (FAN)
P.O. Box 380, Uhuru Gardens
Nairobi, Kenya
Phone: 254-20-891907, 891035
Fax: 254-20-891035
Email: fanefanworld.org; URL: www.fanworld.org*



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WWF - Global Conservation Organisation - Headquartered in Gland, Switzerland has a global network active in over 90 countries. WWF's mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by:- conserving the world's biological diversity; ensuring that the use of renewable natural resources is sustainable; promoting the reduction of pollution and wasteful consumption.

*WWF Eastern Africa Regional Programme Office, ACS Plaza,
5th Floor Lenana Road. P.O. Box 62440 Nairobi, Kenya
Tel: 254-020-577355; 254-020-572630/1
Fax: 254-020-577389
Email: info@wwfeapro.org URL: www.panda.org*



CREEL

THE CENTER FOR ENVIRONMENTAL LEGAL RESEARCH AND EDUCATION (CREEL)

The Center for Environmental Legal Research and Education (CREEL) is a not-for-profit expert membership organisation. CREEL's mission is to promote and ensure sustainable environmental management. To realise this goal, CREEL has the following basic objectives; to promote the development of high quality, par excellence, internationally recognised research in environmental policy and law, training in environmental policy and law and for advocacy and networking in the field of environmental policy and law.

*Center for Environmental Legal Research and Education (CREEL)
Fatima Court, Marcus Road,
off Argwings Kodhek Road (Yaya Center)
P.O. Box 45801 - 00100, Nairobi
Telephone: 2731299
Email: creel9@hotmail.com*

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