



LAWS OF KENYA

FORESTS ACT

CHAPTER 385

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CHAPTER 385

FORESTS ACT

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**CHAPTER 385
FORESTS ACT**

[Date of assent: 18th November, 2005.]

[Date of commencement: 1st February, 2007.]

An Act of Parliament to provide for the establishment, development and sustainable management, including conservation and rational utilisation of forest resources for the socio-economic development of the country

[Act No. 7 of 2005, L.N. 19/2007.]

PART I – PRELIMINARY**1. Short title and commencement**

This Act may be cited as the Forests Act, 2005.

2. Application

This Act shall apply to all forests and woodlands on State, local authority and private land.

3. Interpretation

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 motorised equipment used for cutting wood;

“**concession**” means the right of use granted to an individual or organisation in respect of a specified forest area;

“**consumptive use**” in relation to a forest, means the removal of 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;

“environmental impact assessment” shall have the meaning assigned to it under the Environmental Management and Co-ordination Act, (No. 8 of 1999);

“farm forestry” means the practice of managing trees on farms whether singly, in rows, lines, boundaries, or in woodlots or private forests;

“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 a forest for purposes of livelihood, culture or religion;
- (b) are registered as an association or other organisation engaged in forest conservation;

“forest conservancy area” means an area established by the Board under section 13;

“forest conservation committee” means a committee established in each forest conservancy area or part thereof to advise the Board on all matters relating to the management and conservation of forests in that area;

“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, animal droppings, beeswax, canes, charcoal, creepers, earth, fibre, firewood, frankincense, fruit, galls, grass, gum, honey, leaves, flowers, limestone, moss, murram, myrrh, peat, plants, reeds, resin, rushes, rubber, sap, seeds, spices, stones, timber, trees, water, wax, withies, 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, utilising and protecting forest and tree resources, and includes the processing and use of forest and tree products;

“independent environmental impact assessment” means an Environmental Impact Assessment not carried out by interested parties;

“indigenous forest” means a forest which has come about by natural regeneration of trees primarily native to Kenya, and includes mangrove and bamboo forests;

“**Kenya Forestry College**” means the college of that name operating under the Forest Department;

“**Kenya Forestry Society**” means the registered professional association of forest officers;

“**licence**” means a permit or other written authorisation issued under any of the provisions of this Act;

“**livestock**” means domesticated animals such as cattle, goats, sheep, asses, horses, camels and pigs, and includes the young thereof;

“**local authority forest**” 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 (Cap. 289);
- (b) any arboretum, recreational park or miniforest created under section 30 of this Act;
- (c) any forest established as a local authority forest in accordance with the provisions of section 24;

“**management agreement**” means an agreement between the Service and a local authority or any person or organisation for the purpose of managing a state or local authority forest;

“**management plan**” refers to a systematic programme showing all activities to be undertaken in a forest or part thereof during a period of at least five years, and includes conservation, utilisation, silvicultural operations and infrastructural developments;

“**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 a natural person or a corporate person;

“**plantation forest**” means a forest that has been established through afforestation 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 landowner 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 a 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;

“**station**” means the administrative unit of the Service established under section 13;

“**sustainable management**”, in relation to a forest, means management of the forest so as to permit only such use of it as constitutes sustainable use;

“**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 supporting ecosystems;

“**timber**” means—

- (a) any tree which has been felled or which has fallen; or
- (b) the part of any tree which has been cut off or fallen, and all wood whether sawn, split, hewn, 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 licence from the Government;
- (b) has not been dedicated or set aside for the use of the 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 tall which has come about by natural regeneration.

PART II – ADMINISTRATION

4. Establishment of the Service

(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. Functions of the Service

The functions of the Service shall be to—

- (a) formulate for approval of the Board, policies and guidelines regarding the management, conservation and utilisation 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 this 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 utilisation 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 organisations and communities in the management and conservation of forests and for the utilisation of the 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 this Act and any forestry or land use rules and regulations made pursuant thereto or 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. Forests Board

(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 a 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 a designated representative;
- (d) the Permanent Secretary in the Ministry for the time being responsible for local authorities or a designated representative;
- (e) the Director of the 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 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 organisations 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 (1)(i) shall be appointed 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. Functions of the Board

The functions of the Board shall be to—

- (a) ensure the efficient management of the Service;
- (b) consider and recommend to the Minister the establishment of State forests on un-alienated Government land and any other Government land;
- (c) consider and recommend to the Minister the determination and alteration of boundaries of State forests;
- (d) approve the policies of the Service affecting forestry practice and development;
- (e) formulate policies for the administration and management of the 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, non-governmental organisations and local authorities;
- (h) establish and review policies and rules for marketing of and trade in forest produce;
- (i) co-ordinate 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 the private sector;
- (k) advise the Minister on all matters pertaining to the establishment, development, conservation and utilisation 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. Powers of the Board

(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) co-operate with other organisations undertaking functions similar to its own, whether within Kenya or otherwise.

(2) Subject to this Act, the Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers of the performance of any of the functions or duties of the Board under this Act.

9. Committees of the Board

(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. Appointment of Director of Forest Service

(1) There shall be a Director of the Kenya Forest Service who shall be appointed by the Board in consultation with the Minister, 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 recognised university in the field of forestry or related discipline 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. Officers of the Service

(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 subparagraph (2)(c) of paragraph 1 of the First Schedule; and
- (c) such other employees, agent or servants of the Service,

as may be necessary for the performance of the functions 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. Meetings of the Board

The provisions of the Second Schedule shall have effect with respect to the procedure at the meetings of the Board.

13. Forest conservancy areas and committees

(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 and stations.

(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 utilisation 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 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 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 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 in consultation with the conservancy committees, 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 of the 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 but shall not have voting powers.
- (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. Funds of the Service

(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 money from any other source provided for or donated or lent to the Service.

(2) There shall be paid out of the funds of the Service all sums required to defray the expenditure incurred by the Service in the exercise of its powers and the performance of its functions under this Act.

15. Financial year

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

16. Annual estimates

(1) At least three months before the commencement of each financial year, the 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—

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

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval with the concurrence of the Treasury, and thereafter the Board shall not increase the annual estimates without the consent of the Minister.

17. Accounts and audit

(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, 2003 (No. 12 of 2003).

18. Forest Management and Conservation Fund

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 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.

19. Sources of Fund

(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. Management of the Fund

(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 realisation 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 manner as may be approved by the Treasury.

PART III – CREATION AND MANAGEMENT OF FORESTS*Ownership of Forests and Right to Forest Produce***21. Forests to vest in the State**

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. Customary rights

Nothing in this Act shall be deemed to prevent any member of a forest community from using, 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. Creation of State forests

The Minister may, on the recommendation of the Board, by notice in the *Gazette* declare—

- (a) any un-alienated Government land;
- (b) any land purchased or otherwise acquired by the Government,

to be a State forest.

24. Creation of local authority forests

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—

- (a) the land is an important catchment area, a source of water springs, or is a fragile environment;
- (b) the land is rich in biodiversity or contains rare, threatened or endangered species;
- (c) the forest is of cultural or scientific significance; or

- (d) the forest supports an important industry and is a major source of livelihood for the local community.

25. Private and farm forestry

(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;
- (b) subject to availability of funds, loans from the Fund for the development of the forest, provided that the funds are obtained and utilised 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. Declaration of provisional forest

(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—
 - (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, for a period of three years, which period shall be subject to review and any profits accruing therefrom shall be paid to such owner less the expenses incurred by the Service in managing the forest concerned.

27. Reversion of provisional forests

(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. Variation of boundaries or revocation of State or local authority forests

(1) A notice under this Part which it 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. Exchange of forest area with private land

(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. Arboreta, recreational parks, mini-forests

(1) Every local authority shall 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 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 consults the residents of the area in the jurisdiction within which such arboretum, mini forest or recreational park is situated.

(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. Donations and bequests

(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 organisation 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. Declaration of a nature reserve

(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 valuer appointed by the Board on the recommendation of the relevant professional body.

(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. Special use of nature reserve

(1) Any forest community, or person who is desirous of utilising 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-à-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), a person aggrieved by the decision of the Board may appeal to the National Environment Tribunal established under the National Environmental Management and Co-ordination Act (No. 8 of 1999).

(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. Presidential protection of trees

(1) The President may, on the advice of the Minister, 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 Minister shall cause this information to be disseminated to the public.

(2) Any person who 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) The provisions of subsection (1) shall be reversed when the President is, on the advice of the Minister, satisfied that the protection is no longer necessary.

*Management of Forests***35. Management plans**

(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. Joint management of forests

(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. Management of plantation forests owned by the State

(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 sub-section (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 to determine the true value of such 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 is justified in the circumstances.

38. Management of local authority forests

(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 appropriate 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. Local authority forest management agreements

(1) A local authority may, upon application by a company, government agency, a forest community, a professional association, an educational institution, or non-governmental organisation, a co-operative 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 organisation 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. Concession over state forests

(1) Where the Board is satisfied that utilisation 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 Co-ordination Act (Cap. 387).

(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;
- (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. Management of indigenous forests

(1) All indigenous forests and woodlands shall be managed on a sustainable basis for purposes of—

- (a) conservation of water, soil and biodiversity;
- (b) riverline 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;
- (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. Consent for mining and quarrying

(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 such 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, and consent therefore has been obtained from the Commissioner of Mines.

43. Requirement for re-vegetation

(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 re-vegetation immediately upon the completion of the activity.

(2) Re-vegetation shall be undertaken in consultation with the Service, which shall determine the seeds and seedlings proposed to be used in such re-vegetation.

44. Offences in relation to mining, quarrying or re-vegetation

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 and shall be liable on conviction to imprisonment for a term of not less than six months, or to a fine of not less than one hundred thousand shillings, or to both such fine and imprisonment.

45. Activities outside management plans

(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. Application for community participation**

(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 (Cap. 108).

(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:

Provided that no application under this subsection shall be made where there is an existing prior agreement or licence.

(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. Functions of a forest association

(1) An association approved by the Director under section 46 to participate in the management or conservation of a forest or part of such 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 act that is necessary for the efficient conservation and management of the forest.

(2) The management agreement between the Director and the association shall 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 subsection (2)(h), the non-resident shall be allowed to cultivate in the forest for a period not exceeding three years.

48. Assignment of forest user rights

(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. Termination or variation of a management agreement

(1) The Director may terminate a management agreement with an association or withdraw a particular user right where—

- (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.

(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 days' notice to show cause why the management agreement should not be so terminated or the user right 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. Powers of officers

(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 suspected to have been taken from such 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:

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;
- (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 rights of the proprietor;

- (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.

(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 (Cap. 75) and section 20 of the Police Act (Cap. 84).

51. Use of firearms

(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 authorised 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. Prohibited activities in forests

(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 recognised road or footpath, or is in occupation of a building authorised 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 or allow any 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;
- (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 of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

53. Counterfeiting or unlawfully affixing 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 un-alienated 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 of not less than two hundred thousand shillings, or to imprisonment for a term of not less than three years, or to both such fine and imprisonment.

54. Other offences

(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 or is found in possession of charcoal in a state, local authority or provisional forests, in private forest or farmland without a licence or permit of the owner as the case may be,

commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than one year, or to both such fine and imprisonment.

(2) A person who wilfully 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 of not less than five hundred thousand shillings, or to imprisonment for a term of not less than three 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 sub paragraph shall be deemed to prohibit the capturing or killing of an animal in accordance with the conditions of a valid license or permit issued under the Wildlife (Conservation and Management) Act (Cap. 376).

(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 section 50(1) shall be auctioned at the expiry of seven days if the owner does not reclaim it and the proceeds of such auction shall be paid to the Service.

(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 of not less than three million shillings or to imprisonment for a term of not less than ten years, or to both such fine and imprisonment.

55. Compensation for loss or damage

(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. Prosecutorial powers

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. General penalty

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 of not less than ten thousand shillings or to imprisonment for a term not exceeding three months.

58. Restraint of breaches of the Act

(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, or 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 subsection (1) shall state—

- (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.

(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 that 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. Rules

(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 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 for 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 the 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 and management 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 such 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 (Cap. 2) shall not apply to rules made under this section.

60. Director to maintain registers

(1) The Director shall maintain registers 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. International obligations

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

62. Co-operation regarding 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.

63. Environmental Impact Assessment

(1) The provisions of Part VI and Part XII of the Environmental Management and Co-ordination Act (Cap. 387) 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 Co-ordination 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. Repeal of Cap. 385

The Forests Act is repealed.

65. Savings

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, with the approval of the Minister, 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. Vesting of assets and transfer of liabilities

(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 with the approval of the Minister, and, 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, with the approval of the Minister, remain vested in the Government and may be enforced by or against the Government.

67. Transfer of employees

(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

[Section 11.]

PART I – PROVISIONS RELATING TO THE OFFICERS OF THE SERVICE**1. Officers of the Service**

(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 Officer I
Forest Officer II

(b) *Technical Cadre*

Chief Forester
Assistant Chief Forester
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. Disciplinary Code of Regulations

(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 sub-paragraph (1)—

- (a) dismissal from the Service;
- (b) reduction in rank;
- (c) confinement for not more than fourteen days in a 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;
- (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. Insubordinate behaviour

(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 a 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. Desertion and absenteeism

(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. Prohibition from joining trade unions

(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 or regulations made under this Act.

(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. Definition

In this Part, “**disciplined officer**” means an officer specified in subparagraph (2)(c) of paragraph 1.

PART II – OATH OF ALLEGIANCE

SECOND SCHEDULE

[Section 12.]

PROVISIONS RELATING TO THE CONDUCT
OF BUSINESS AND AFFAIRS OF THE BOARD**1. Tenure of office and conduct of business of the Board**

(1) 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) 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 re-appointment 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 terms 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. Meetings of the Board

(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 the 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 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.

(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. Disclosure of interests

(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. Board may regulate procedure

Save as provided in this Schedule, the Board may regulate its own procedure.

THIRD SCHEDULE

[Section 28.]

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 1(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.
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