The Forest Conservation and Management Bill, 2015 2659
THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015
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THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015

A Bill for

AN ACT of Parliament to give effect to Article 69 of the Constitution with regard to forest resources; to make provision for the conservation and management of forests; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Forest Conservation and Management Act, 2015, and shall come into force by notice in the Gazette by the Cabinet Secretary.

2. In this Act unless the context otherwise requires—

“benefits” mean quantifiable and non-quantifiable goods and services provided by forest ecosystems;

“Board” means the Board of the Kenya Forest Service;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to forestry;

‘chain of custody’ means the channel through which products are distributed, tracked and monitored from their origin in the forest to their end-use;

“commercial use” means any use of forest products or forest land, other than direct use for personal purposes or infrastructure development and it includes uses involving trade or any other disposition of forest products or forest land for direct or indirect financial benefits;

“community” means a clearly defined group of users of forest land identified on the basis of ethnicity, culture or similar community of interests as provided under Article 63 of the Constitution;

“community forest association” means a group of local persons who have registered as an association or other organization established to engage in forest management and conservation;

“concession agreement” means authorization which is a long term agreement issued by the Service for the management of a specified forest area at a price determined after forest valuation and bidding;
“customary rights” mean the rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit;

“ecosystem” means a dynamic complex of plant, animal micro-organism communities and their non-living environment interacting as a functional unit;

“forest’ means a land area of more than 0.5 hectares, with a tree canopy cover of more than 10%, which is not primarily under agricultural or other specific non-forest land use.

“forestland” means a tract of land, including its flora and fauna, that is devoted to growing trees for the production of timber, wood and other forest products;

“forest community” means a group of persons who have a traditional association with a forest for the purposes of livelihood, culture or religion;

“forest concession” means the right of use granted to an individual or organization in respect to a specific area in a national or county forest by means of a long-term contract for the purpose of commercial forest management and utilization;

“forest industries” means all businesses and organizations whose primary activities include growing, managing, processing or marketing of trees;

“forest manager” means a person responsible for the management of a forest under his or her charge and implementation of this Act including—

(a) in the case of a national forest, the Kenya Forest Service;

(b) in the case of a county forest, the County government;

(c) in the case of community forest, the community land management committee established under the Community Land Act; and

(d) in the case of a private forest, the owner of the private forest.
“forest management plan” means a written document establishing direction and goals for the management, conservation and utilization of a specific forest land area; specifying—

(a) all silvicultural practices and activities necessary to accomplish the merchantable production of a forest product; and

(b) all practices that will minimize adverse environmental effects and improve livelihoods,

“forest officer” includes the professional, technical and disciplined cadre of the Service;

“forest owner” means—

(a) in the case of a national forest, the Kenya Forest Service;

(b) in the case of a community forest, the community; or

(c) in the case of a private forest, an individual, association, institution or body corporate;

“forest resources” means anything of practical, commercial, social, religious, spiritual, recreational, educational, scientific, subsistence, or other potential use to humans that exists in the forest environment, including but not limited to flora, fauna, and microorganisms;

“Fund” means the fund established pursuant to Section 28.

“green zone” trees planted in an urban area covering less than 0.5 ha.

“indigenous forest” means a forest which has come about by natural regeneration of trees primarily native to Kenya;

“Institute’ means the Kenya Forestry Research Institute established under the Science, Technology and Innovation Act, 2013;

“joint management agreement” means authorization where the Service or the County Department responsible for forestry agrees to enter into partnership with other persons for the joint management of a specified forest area, specifying the contribution, rights and obligations of each
party and setting out the methods of sharing the costs and benefits accruing from the forest so managed;

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

“nature reserve” means an area of land declared to be nature reserve under section 38;

“permit” means authorization issued to a person to undertake a specified forestry-related activity or service;

“person” means a natural person, an association, organization or a corporate body;

“private forest” means forest as classified under section 29(4);

“property mark” means a mark placed on a log, timber or other forest produce with a prescribed instrument to denote ownership by the Service or any other person;

“protected tree” means any tree or tree species which has been declared under this Act to be protected;

“provisional forests” means any forest which has been declared a provisional forest by the Cabinet secretary under section 37;

“public forest” means forest as classified under section 29(2);

“Service” means the Kenya Forest Service established under section 6 of this Act;

“special use licence” means authorization issued to a person to undertake an activity whose primary purpose is to yield public benefit in transportation, communication, energy, research or education;

“timber” means any tree that has been felled or which has fallen, and cut wood or logs;

“timber licence” means authorization issued to a person for timber harvesting in a specified forest area;

“wildlife” means all forms of fauna and flora other than domesticated plants and animals.

3. This Act shall apply to all forests on public, community and private lands.

4. The principles of this Act shall be—

(a) good governance in accordance with Article 10 of the Constitution;
(b) public participation and community involvement in the management of forests;

(c) consultation and co-operation between the national and county governments; and

(d) the values and principles of public service in accordance with Article 232 of the Constitution.

5. (1) The Cabinet Secretary shall, in consultation with the relevant stakeholders, develop a national forest management policy for the sustainable use of forests and forest resources.

(2) At least once in every five years, the Cabinet Secretary shall cause the national forest management policy to be reviewed.

PART II—ADMINISTRATION

6. (1) There is established a service to be known as the Kenya Forest Service, which shall be the successor to the Kenya Forest Service established under the Forests Act, 2005.

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

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;

(c) entering into contracts; and

(d) undertaking or performing all other activities necessary for the proper performance of its functions under this Act that may lawfully be done or performed by a body corporate.

7. The functions of the Service shall be to—

(a) conserve, protect and manage all public forests in accordance with the provisions of this Act;

(b) prepare and implement management plans for all public forests and, where requested, prepare management plans for community forests or private forests in consultation with the relevant owners;
(c) receive and consider applications for licenses or permits in relation to forest resources or management of forests or any other relevant matter in accordance with this Act;

(d) establish and implement benefit sharing arrangements in accordance with the provisions of this Act;

(e) assist county governments to build capacity in forestry and forest management in the counties;

(f) in consultation with relevant stakeholders, develop programmes for tourism and for recreational and ceremonial use of national forests;

(g) promote forestry education and training;

(h) register and maintain a register of all forest management plans prepared for public and county forests;

(i) collaborate with relevant persons in identifying research needs and applying research findings in relation to forests and forestry;

(j) manage water catchment areas in relation to soil and water conservation, carbon sequestration and other environmental services in collaboration with relevant stakeholders; and

(k) prepare—

(i) once every two years, a Forest Status Report for the Cabinet Secretary; and

(ii) once every five years, a Resource Assessment Report for the Cabinet Secretary;

(iii) consider and recommend to the Cabinet Secretary the establishment of public forests on un-alienated public land or any other public land;

(iv) consider and recommend to the Cabinet Secretary the determination and alteration of boundaries of public forests;

(v) formulate policies for the administration and management of the Kenya Forestry College;

(vi) establish forest conservancy areas for purposes of conservation and management; and
(vii) approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons for the sustainable exploitation of wood and non-wood forest products.

8. (1) The Service shall be managed by a Board of Directors which shall comprise of—

(a) a chairperson, appointed by the President from among the members of the Board;

(b) the Principal Secretary responsible for forestry or a designated representative;

(c) the Principal Secretary responsible for National Treasury or a designated representative;

(d) The Director-General who shall be the secretary to the Board but shall not have a vote; and

(e) four other persons appointed by the Cabinet Secretary, of whom—

(i) one shall be nominated by the Forestry Society of Kenya;

(ii) one shall be nominated by a national body representing community forest associations;

(iii) one shall represent the forest industry; and

(iv) one shall represent the civil society working in forest conservation.

(2) The members of the Board under subsection (1)(a) and (1)(e) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.

(3) The appointment of the chairperson and the members appointed under subsection (1)(e) shall be by name and by notice in the Gazette.

(4) All appointments made under this section shall be in accordance with the provisions of the Constitution.

9. The Board shall have all the powers necessary for the proper performance of the functions of the Service under this Act and, in particular, the Board shall have power to—
(a) invest any moneys of the Service not immediately required for the purposes of this Act;

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

(c) set aside land for forestry research;

(d) offer services to any person upon such terms as the Board may from time to time determine.

10. (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 Cabinet Secretary, 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.

(3) 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 Board or the performance of any of the functions or duties of the Board.

11. The business and affairs of the Board shall be conducted in accordance with the First Schedule to this Act.

12. A member of the Board shall be paid such remuneration or allowances, as the Salaries and Remuneration Commission may recommend.

13. (1) There shall be a Director-General of the Service who shall be publicly and competitively recruited and appointed by the Board with the approval of the Cabinet Secretary.

(2) A person shall be qualified for appointment as the Director General of the Service if the person—

(a) is a citizen of Kenya;

(b) satisfies the requirements of Chapter six of the Constitution;

(c) possesses a first degree in forestry from a university recognized in Kenya; and
(d) has at least ten years professional experience in the relevant field at management level.

(3) The Director General shall hold office for a term of four years, and be eligible for re-appointment for a further term of four years.

(4) The Director-General shall, subject to the direction of the Board, be responsible for the day to day management of the Service.

(5) The Director-General shall, subject to the direction of the Board, be responsible for the direction of the affairs and transactions of the Service and the exercise, discharge and performance of its objectives, functions and duties.

14. The Board may appoint such officers and other staff of the Service as are necessary upon such terms and conditions of service as the Board, on the recommendation of the Salaries and Remuneration Commission, may determine.

15. (1) The Board may, on the recommendation of the Cabinet Secretary responsible for matters related to internal security, designate a specific cadre of the staff of the Service to be a uniformed and disciplined force.

(2) The Board may prescribe a disciplinary code for the cadre of staff designated under this section to be a uniformed and disciplined force.

(3) In the performance of their functions and the exercise of their powers, the rights of the cadre of staff designated under this section may be limited in accordance with the provisions of Article 24(5) of the Constitution.

16. (1) There is hereby established a college to be known as the Kenya Forestry College that shall—

(a) provide forestry education;

(b) provide vocational and technical training courses in forest conservation, and the management and sustainable utilization of forests; and

(c) provide training in the protection of forests and allied natural resources.

(2) The College shall develop training programmes from certificate to diploma level in forest management and utilization.
The College shall, in consultation with stakeholders, design training programmes to support apprenticeship and vocational training in the forest sector including short courses for communities, private forest owners and forest industries.

(4) The Board shall establish a standing Committee to supervise the functioning of the College.

17. (1) The Cabinet Secretary may, on recommendation of the Board, appoint suitable volunteers to be honorary foresters.

(2) An honorary forester shall—

(a) be appointed by notice in the Gazette;

(b) hold office, subject to such conditions as the Cabinet Secretary may prescribe, for a period of three years;

(c) have such functions as may be prescribed by rules made under this Act;

(d) make recommendations to the relevant forest officer in relation to sound forest management;

(e) report to the relevant forest officer any act of mismanagement of forest resources; and

(f) where practicable, provide technical advice to the relevant forest officer.

18. (1) No matter or thing done by any member of the Board, officer, employee or agent of the Service shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Service, render the member, officer, employee, agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall if the court holds that such act was done in good faith, be paid out of the funds of the Service, unless such expenses are recovered by him or her in such suit or prosecution.

(3) For the avoidance of doubt, nothing in this section shall exempt a member of the Board, officer, employee or
agent of the Service from individual responsibility for unlawful or criminal acts committed by that member of the Board, officer, employee or agent of the Service.

19. (1) The Board shall establish forest conservation areas for the proper and efficient management of forests and may divide such conservation areas into ecosystems.

(2) There shall be established a forest conservation committee in respect of each forest conservation area.

(3) The functions of a forest conservation committee shall be to—

(a) make recommendations to the Board and to the relevant county government in relation to the conservation and utilisation of forests;

(b) identify and recommend areas to be set aside for the creation of public forests; and

(c) perform any other function that may be assigned to it by the Board.

(4) A forest conservation committee shall consist of—

(a) a chairman appointed by the Board;

(b) the relevant county executive committee member responsible for forestry or their designated representative;

(c) the relevant forest officer in-charge;

(d) three other persons appointed by the Board and nominated by—

(i) relevant community forest associations;

(ii) relevant forest industries in the forest conservation area; and

(iii) relevant civil society organizations involved in forest conservation and operating in the forest conservation area.

(5) The members of a forest conservation committee appointed in accordance with subsection (4)(a) and subsection (4)(d) shall hold office for a period of three years and shall be eligible for a further term of three years.

(6) A person who is not a member of a forest conservation committee may be invited to attend meetings
of the committee and take part in its deliberations but shall not have a right to vote.

(7) A member of a forest conservation committee shall be entitled to be paid such allowances as the Salaries and Remuneration Commission may recommend.

(8) The Board may set aside funds for the proper functioning of the committees.

(9) The Cabinet Secretary may, in consultation with the Board, make Regulations governing the procedures of the forest conservation committees.

20. (1) The county executive committee member responsible for forestry in each county—

(a) shall supervise the implementation of national policies on forest management and conservation;

(b) shall prepare an annual report for the Cabinet Secretary on the activities of the county government in relation to this Act and any national policies on forest management and conservation;

(c) shall promote afforestation activities in the county;

(d) may advice and assist communities and individuals in the management of community forests or private forests; and

(e) may enter into joint management agreements with communities or individuals for the management of community forests or private forests.

(2) A county assembly may enact legislation for the better carrying into effect of the provisions of this section.

21. (1) The Kenya Forestry Research Institute, as established under the Science, Technology and Innovation Act, 2013, shall be the agency in forestry research and development.

(2) The Institute shall develop research and development programmes to provide information and technologies for sustainable development of forestry and allied natural resources.

(3) The Institute shall, in consultation with relevant organizations—

(a) prepare forestry research and development
strategies for the country;
(b) conduct expert training courses in forestry and allied natural resources;
(c) disseminate research findings to support forestry development in the country and counties; and
(d) participate in the development and monitoring of national forest standards.

(4) The Institute shall, on a regular basis, compile and submit a report for the Cabinet Secretary relating to forestry research and development.

PART II—FINANCIAL PROVISIONS

22. The funds of the Service shall consist of—

(a) such moneys as may be appropriated by Parliament for the purposes of the Service;
(b) such moneys as may accrue to or vest in the Service in the course of the exercise of their powers or the performance of its functions under this Act;
(c) such moneys as may be payable to the Service pursuant to this Act or any other written law;
(d) such gifts as may be given to the Service; and
(e) all moneys from any other source provided, donated or lent to the Service.

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

24. (1) At least two months before the end of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Service for that financial year.

(2) The annual estimates shall make provision for all estimated expenditure of the Service for the financial year, and in particular shall provide for—

(a) preparation and operationalization of management plans for all national forests;
(b) protection and conservation of all indigenous forests in national forests;
(c) development and promotion under license of timber and bamboo plantations and recreational tourism in national forests;

(d) fulfillment of any other activities either in the Strategic Plan or as deemed necessary by the Board;

(e) payment of the salaries, allowances and other charges in respect of the members of staff of the Service

(f) payment of the pensions, gratuities and other charges in respect of retirement benefits payable to the members of staff of the Service;

(g) proper maintenance of the buildings and grounds of the Service;

(h) proper maintenance, repair and replacement of the equipment and other movable property of the Service;

(i) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit; and

(j) capacity building for county governments for forestry development.

(3) The annual estimates shall be submitted to the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Service except in accordance with the annual estimates submitted under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary, and the Cabinet Secretary responsible for the National Treasury.

25. (1) The Board shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Service.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Controller and Auditor-General the accounts of the Service, in respect of that year, together with a statement of—
(a) income and expenditure during that financial year; and

(b) assets and liabilities of the Service on the last day of that financial year.

(3) The accounts of the Service shall be examined, audited and reported upon annually by the Auditor-General in accordance with the provisions of the Public Audit Act, 2003.

26. (1) There is hereby established a fund to be known as the Forest Conservation and Management Trust Fund.

(2) The objects of the Trust Fund shall be to nurture, promote and inspire innovations in forest conservation.

27. The Trust Fund shall consist of—

(a) monies from time to time appropriated by Parliament for purposes of the Fund;

(b) moneys levied for the use of forests or forest lands in such manner as the Cabinet Secretary may, upon the recommendation of the Board of Trustees and in consultation with the Cabinet Secretary for the National Treasury, determine;

(c) income from investments made by the Board of Trustees;

(d) such sums of money or other assets as may be specifically designated from the funds of the Service; and

(e) such sums of monies as may be received by the Trust Fund in the form of endowments, grants, donations, bequests or other gifts.

28. (1) The Trust Fund shall be managed by a Board of Trustees appointed by the Cabinet Secretary.

(2) The Board of Trustees shall consist of a chairperson and four other members.

(3) The Board of Trustees shall—

(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 National Treasury; and

(c) keep and maintain audited accounts of the Fund and publish such accounts in such manner as may be approved by the National Treasury.

PART IV—CONSERVATION AND MANAGEMENT OF FORESTS

29. (1) Forests may be classified as public, community or private forests.

(2) Public forests include—

(a) public forests classified under Article 62(1)(g) of the Constitution; and

(b) forests on land between the high and low water marks classified under Article 62(1)(l) of the Constitution.

(3) Community forests include—

(a) forests on land lawfully registered in the name of group representatives;

(b) forests on land lawfully transferred to a specific community;

(c) forests on any other land declared to be community land by an Act of Parliament;

(d) forests on land that is lawfully held, managed or used by specific communities as community forests;

(e) forests on ancestral lands and lands traditionally occupied by hunter-gatherer communities; and

(f) forests lawfully held as trustland by the county governments, but not including any public land held in trust by the county governments under Article 62(2) of the Constitution.

(5) Private forests include—

(a) forests on registered land held by any person under any freehold tenure;

(b) forests on land held by any person under leasehold tenure;
(c) any forest owned privately by an individual, institution or body corporate for commercial or non-commercial purposes; and

(d) forests on any other land declared private land under an Act of Parliament.

30. (1) All public forests in Kenya are vested in the Service, 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.

(2) The Cabinet Secretary may, on the recommendation of the Board and after consultation with the National Land Commission declare any un-alienated public land or any land purchased or otherwise acquired by the Service to be a public forest.

31. (1) All community forests shall be vested in the community, 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.

(2) The Service shall register each community forest in accordance with Regulations prescribed in accordance with this Act.

(3) The Service shall notify the relevant county government of the registration of a community forest as soon as is practicable of the registration.

(4) Upon registration under subsection (2), the community may apply to the county government for—

(a) to the county government for technical advice regarding appropriate forestry practices and conservation; or

(b) to the Fund, subject to availability of funds, loans from the Fund for the development of the forest.

(5) A community that establishes or owns a community 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.

32. (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 of the forest under this section.
(2) The Service shall register a forest under subsection (1) where the forest meets the criteria prescribed in rules made under this Act.

(3) Upon registration under subsection (2), the owner of a private forest may apply—

(a) to the Service for technical advice regarding appropriate forestry practices and conservation; or

(b) to the Fund, 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

33. (1) The Service may recommend, after consultation with the National Land Commission, the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest:

Provided that such variation of boundaries or revocation of the registration of a public forest or a portion of a public forest does not—

(a) endanger any rare, threatened or endangered species; or

(b) adversely affect its value as a water catchment area; and prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes.

(2) A recommendation for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest shall be submitted to Parliament for approval by the Cabinet Secretary.

(3) Where Parliament approves the variation of the boundaries of public forest or the revocation of the registration of a public forest or a portion of a public forest, the Cabinet Secretary shall publish a notice in the Gazette.
(4) The Service shall not recommend any such proposal unless—

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

(b) public consultation in accordance with the Second Schedule has been undertaken and completed in relation to the recommendation.

(5) The Cabinet Secretary may prescribe Regulations for the, the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest.

34. (1) Upon the recommendation of the Service or the relevant county government, the Cabinet Secretary may, by notice in the Gazette, declare any community or private forest, which in the opinion of the Service is mismanaged or neglected, to be a provisional forest.

(2) A notice in accordance with the provisions 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 General has issued a notice requiring the forest 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 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.
(4) 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.

(5) 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.

35. (1) Subject to sub-section (2), the Service may, in consultation with the relevant government agencies and stakeholders, and with approval of the Cabinet Secretary, 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 may, with the approval of the Cabinet Secretary, acquire by purchase any land suitable to be declared a national forest in accordance with this Act.

(3) No purchase or exchange shall be transacted under this section unless prior public consultation is carried out in accordance with the Second Schedule.

(4) The Service may enter into an arrangement with the owner of public forest for the management of the forest.

36. (1) Every County Government shall, establish and maintain arboreta, green zones or recreational parks for use by persons residing within its area of jurisdiction.

(2) For the purposes of subsection (1), every County Government shall cause housing estate developers within its jurisdiction to make provision for the establishment of
green zones at the rate of at least five percent of the total land area of any housing estate intended to be developed.

(3) Every County Government 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 green zones, recreational parks and arboreta by County Governments.

(5) No arboretum or recreational park shall be converted to any other use unless the County Department responsible for forestry, consults the residents of the area in the jurisdiction within which such arboretum, green zones or recreational park is situated.

(6) For purposes of this section, a County Department responsible for forestry may in consultation with the Service prescribe conditions as to the species of trees to be planted in a green zone, arboretum or recreational park.

37. (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 Service, County Department responsible for forestry, 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 under subsection (1) shall be gazetted in accordance with this Act.

(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.

38. (1) The Cabinet Secretary may, upon the recommendation of the Board of the Service and after consultation with the relevant County Government and relevant stakeholders, by notice in the Gazette, declare any national, county, community or private forest, as a nature reserve.

(2) Where a nature reserve is to be declared by the Cabinet Secretary within community or private land, the
Cabinet Secretary shall make prior arrangements for compensation to the forest owner.

(3) Every nature reserve shall be established for the following purposes—

(a) the conservation of forestland of particular environmental, cultural, scientific or other special significance;

(b) the preservation of biological diversity and threatened or endangered species.

(4) The Cabinet Secretary shall, at least ninety days before the making of an order under this section—

(a) publish in the Gazette and in at least two newspapers of nationwide circulation a notice of the intention to make the order; and

(b) invite comments from members of the public.

(5) The Cabinet Secretary shall in consultation with the Service take into account any comments received before making an order under this section.

(6) Whenever the Cabinet Secretary proposes to amend or revoke the order under this section, public notice of such an intention shall be given, and an opportunity for public comment provided as mentioned in subsection (4) (b).

(7) Upon declaration of a national, community or private forest as a nature reserve, the Director-General shall in consultation with the relevant county governments, government agencies and stakeholders, prepare a management plan in respect to the declared nature reserve.

39. (1) The Cabinet Secretary, on the advice of the Kenya Forestry Research Institute, 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 shall cause this information to be disseminated to the public.

(2) No person shall fell, cut, damage or remove, trade in or export or attempt to export any protected tree species or family of trees or regeneration thereof or abet in the commission of any such act.
(3) The provisions of subsection (1) shall be reversed when the Cabinet Secretary, on the advice of the Kenya Forestry Research Institute, is satisfied that the protection is no longer necessary.

(4) The Cabinet Secretary may prescribe Regulations or guidelines for the protection and regeneration of a protected tree species.

40. (1) A forest owner may enter into an agreement with any person for the joint management of any forests for a period to be specified in the agreement.

(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 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 in accordance with sub-section (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 sub-section (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.

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

(a) conservation of water, soil and biodiversity;
(b) riparian 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 sub-section (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 Service may enter into a joint management agreement for the management of any indigenous forest or part thereof with any person, institution, government agency or forest association.

42. (1) All plantation forests in a public forest shall be managed on a sustainable basis for the production of wood and other forest products and services for commercial purposes.

(2) Where the Service is satisfied that all or part of a public forest which is a plantation forest may be efficiently managed through a licence, concession, contract, joint agreement, it may place an advertisement in at least two daily newspapers of national circulation calling for applications from interested persons for the management of the public forest.

(3) An applicant for the management of a public forest in accordance with this section shall submit the application together with a proposed management plan in respect of the forest.

(4) A person aggrieved by the decision of the Service in relation to the application made in accordance with this may appeal to the Environment and Land Court within sixty days of the decision.

(5) A licence, concession, contract or joint management agreement made in accordance this section shall comply with the Constitution, this Act and any relevant written law.
43. (1) Where the Service is satisfied that utilization of a public forest can be done through the granting of a concession, the Service shall grant the concession subject to the provisions of the Constitution, this Act and any other relevant written law.

(2) The Service shall not recommend any such proposal unless—

(a) the proposal has been subjected to an independent environmental impact assessment; and

(b) public consultation in accordance with the Second Schedule has been undertaken and completed.

(3) The grantee of a concession shall—

(a) comply with the guidelines or management plans prescribed by the Service;

(b) prepare environmental and social impact assessments as may be required under any other written law;

(c) prepare a concession area forest management plan that shall include inventories, reforestation or replanting programmes, annual operation plans and community user rights and benefits;

(d) protect the concession area from destruction and encroachment by any other person;

(e) ensure that the forest areas under his management are maintained for the conservation of biodiversity, cultural or recreational use;

(f) maintain the physical boundaries of the concession;

(g) take precautions to prevent the occurrence or spread of forest fires in connection with any or all operations within or outside the concession area;

(h) 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; and

(i) pay applicable land rent, fees and other charges for utilizing forest resources within the concession area;

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

(5) A grantee of a concession shall be personally responsible for any loss or damage, including the negligence of the grantee’s employees, arising from the grantee’s operations on the land for which the concession has been obtained.

(6) The Service may, by notice in the Gazette, withdraw a concession granted under this section where a grantee breaches any of the conditions prescribed by this section or prescribed in the concession agreement.

44. (1) The Service may, upon application by any person, institution or organization, and after approval by the Service has been obtained, enter into an appropriate management agreement for all or part of a public forest.

(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 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) 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 public, other than the privilege of management and control.

(4) No management agreement shall convert a public forest into a settlement area.

(5) The Cabinet Secretary may prescribe Regulations to give effect to this section.

45. (1) The Service shall only give its consent for 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 or audit has been carried out;
(d) the forest is not an important catchment area or source of springs:

Provided that the Cabinet Secretary shall, on the recommendation of the Service, and in consultation with the Cabinet Secretary responsible for environment, and the relevant government agencies, publish rules to Regulate and govern quarrying operations in forest areas; and

(e) the carrying on of the quarrying operations shall not contravene any Regulations made in accordance with this Act.

(2) Subject to subsection (1), quarrying may be carried out in a public forest under the authority of a licence issued by the Service and in accordance with any other relevant written law.

(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.

(4) The conditions on which a licence for quarrying an any allied 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 restoration and re-vegetation immediately upon the completion of the activity.

(5) 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.

46. (1) Every public forest, nature reserve and provisional forest shall be managed in accordance with a management plan that complies with the requirements prescribed by Regulations made by the Cabinet Secretary.

(2) The Service shall be responsible for the preparation of a management plan with respect to each public forest, nature reserve and provisional forest.

(3) Every county government shall be responsible for the preparation of a management plan with respect to forests in the county.
(4) A community that owns a community forest may
prepare a management plan for that community forest or it
may request the relevant county government to prepare a
management plan for the community forest.

(5) In preparing a management plan, the Service shall
consult with the relevant forest conservation committees.

(6) The Director-General and relevant county
governments shall supervise the implementation of forest
management plans for public forests in the case of the
Director-General and community and private forests in the
relevant county in the case of the county government.

PART V—COMMUNITY PARTICIPATION

47. (1) A member of a forest community may,
together with other members or persons resident in the
same area, register a community forest association in
accordance with the provisions of the Societies Act.

(2) A community forest association registered in
accordance with this section may apply to the Service for
permission to participate in the conservation and
management of a public forest:

Provided no such application shall be made where
there is an existing prior agreement or license in relation to
that forest.

(3) An application made in accordance with this
section shall be in the prescribed form and shall provide—

(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-General may require.

(4) Where the Service grants permission in accordance with this section, it may impose such conditions as it may deem fit including the development of a forest management plan in accordance with this Act.

(5) The Service shall maintain an up to date record of all associations that have been granted permissions in accordance with this section.

48. (1) Where a community forest association has been granted permission to participate in the management or conservation of a forest in accordance with the provisions of his Act, that association shall —

(a) protect, conserve and manage the forest or part of the forest in accordance with an approved management agreement entered into with the Service and the provisions of the management plan for the forest;

(b) formulate and implement sustainable forest programmes that shall be consistent with the traditional forest user rights of the relevant forest community;

(c) protect sacred groves and protected trees;

(d) assist the Service or any other relevant authority in enforcing the provisions of this Act including in relation to illegal harvesting of forest products;

(e) with the approval of the Service enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of the forest;

(f) inform the of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity;

(g) help in firefighting; and

(h) do any other act that is necessary for the efficient conservation and management of the forest.

(2) The management agreement between the Service and the community forest association may permit the association to—
(a) collect medicinal herbs in the forest;
(b) harvest of honey in the forest;
(c) harvest of fuel wood in the forest;
(d) harvest grass in the forest or graze livestock in the forest;
(e) collect forest produce for community-based industries;
(f) carry out ecotourism or recreational activities in the forest;
(g) carry out scientific research or education activities in the forest;
(h) establish a plantation in the forest;
(i) develop community wood and non-wood forest-based industries; and
(j) enjoy 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 section shall be carried out so as to conflict with the conservation of biodiversity; and

(ii) the Director-General may, in consultation with the association, prescribe rules for the conduct of the activities specified in this section.

49. (1) A community forest that has been granted permission to participate in the management or conservation of a forest association may, with the approval of the Director-General, assign any or all its rights under a management agreement to a suitably qualified agent on mutually agreed terms.

(2) The Director-General shall not approve any assignment under this section that is inconsistent with the main objectives and purposes set out in the management agreement between the Service and the community forest association.

(3) The community forest association shall be
responsible for the acts of the agent that contravene the provisions of this Act or the terms and conditions of the management agreement between the association and the Service.

50. (1) The Director-General may terminate a management agreement with a community forest association that has been granted permission to participate in the management or conservation of a forest or withdraw a particular user right where—

(a) the association breaches the terms and conditions thereof;

(b) it is necessary for the purpose of protecting or conserving biodiversity; or

(c) the association asks the Director-General to terminate the agreement or withdraw the user right.

(2) Where the Director-General intends to terminate a management agreement or withdraw a particular user right the Director-General shall notify the association at least thirty days before the management agreement is terminated or the user right is withdrawn.

(3) The Director-General shall give the association an opportunity to challenge the decision to terminate the management agreement or withdraw the user right and where the association is aggrieved by the decision of the Director-General the association may appeal against the decision to the Board within thirty days of being notified of the decision of the Director-General.

(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.

51. 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 by this Act or any other written law, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.
PART VI—INCENTIVES FOR INCREASING FOREST AND TREE COVER

52. Subject to Article 66 of the Constitution, investors in forests shall share the benefits of their investment with local communities by applying various options including but not limited to infrastructure, education and social amenities.

53. (1) The Cabinet Secretary for the National Treasury and the relevant member of the county executive committee responsible for matters related to finance may, on the recommendation of the Cabinet Secretary, propose tax and other fiscal incentives to increase investments in forest land use and forest resource utilization in order to promote forest conservation and management, and to prevent or abate forest degradation.

(2) Without prejudice to the generality of subsection (1), the tax and fiscal incentives, may include—

(a) customs and excise waiver in respect of imported capital goods or tax rebates to forest industries and other establishments investing in plants, equipment and machinery for improved resource utilization and for using other energy resources as substitutes for hydrocarbons;

(b) 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 a private forest is established; and

(c) income and other tax deductions to landowners in exchange for the establishment of a forest conservation easement.

54. The Cabinet Secretary shall plan and execute programmes necessary for observing the national tree-planting week and the International Day of Forests.

PART VII—LICENSING AND TRADE IN FOREST PRODUCTS

55. (1) The Service may, whenever circumstances make it necessary or appropriate to do so, invite the private sector to participate in the sustainable management of forests under their jurisdiction.

(2) The Service may issue authorisations for forestry
activities in form of—

(a) a permit;
(b) a timber licence;
(c) a special use licence;
(d) a contract;
(e) a joint management agreement; or
(f) a concession agreement.

(3) No authorization shall be issued in respect of a forest for which there is a pre-existing authorization, except on terms mutually agreed upon by all the parties involved.

56. (1) A person shall not be eligible to apply for an authorization under section 58 unless that person—

(a) possesses the capacity to enter into binding agreements with the Service;
(b) has the technical and financial capacity to undertake the forestry activities for which the authorisation is sought; and
(c) in the case of a foreign investor, has complied with all the laws for the time being in force relating to investment by foreigners.

(2) In the case of a timber licence, special use licence, contract, joint management agreement or concession—

(a) capacity under subsection (1)(a) includes competence to enter into contracts;
(b) technical capacity under subsection (1)(b) includes the competence to undertake forestry activities, as demonstrated by employment of technical staff, access to equipment, satisfactory past performance and a record of statutory and regulatory compliance; and
(c) financial capacity under subsection (1)(b) includes solvency and ability to conform to good business practices as demonstrated by the applicant’s financial statements for the past three years, where applicable, and tax compliance certificates.

(3) When issuing authorizations under this Act, the Service shall comply with the relevant provisions of the

Eligibility for authorization.
Public Procurement and Asset Disposal Act, 2005, and any other relevant written law.

57. (1) The Service shall publish in the Gazette a chain-of-custody system for the verification of the origin of forest products from public, community and private forests and the compliance of license holders in accordance with this Act.

(2) The Service shall upon request support the process of establishing and maintaining the chain of custody for a county government.

(3) A person in possession of or trading in forest products shall comply with the requirements of the chain-of-custody system established under this section.

58. (1) The Cabinet Secretary in consultation with the relevant stakeholders shall prescribe Regulations for the grading and valuation of timber and other forest products.

(2) On the advice of the registered association of professional foresters, the Cabinet Secretary may, by notice in a Gazette, authorize any person to be a timber grader or valuer for the purposes of this Act.

59. (1) No person shall import, export, re-export or introduce any forest products into or from Kenya without a permit issued by the Service under this Act.

(2) To give effect to this provisions, the Cabinet Secretary may by notice in the Gazette, publish rules regulating the export and import of forest products.

60. The Cabinet Secretary may declare by Notice in the Gazette any forest produce that may not be exported or imported.

PART VIII—ENFORCEMENT AND COMPLIANCE

61. (1) The Director-General or any authorized officer of the Service may—

(a) demand from any person the production of an authority or licence for any act done or committed by that person in a national, county or provisional forest, or in relation to any forest produce for which a licence required under this Act or under any rules made thereunder;
(b) require any person found within a national, county or provisional forest who has in his possession any forest produce suspected to have come from such forests, 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 court of competent jurisdiction:

(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 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, equipment, vessels, vehicles or livestock used in the commission of the offence:

Provided that the officer seizing such property shall forthwith report the seizure to the court of competent jurisdiction having jurisdiction over the area where the offence takes place;

(e) seize and detain any livestock found in a national, county or provisional forest without any person in charge of them:

(f) confiscate any equipment or receptacle placed without authority in a national, county or provisional forest.

(2) The Director-General or any authorized officer of the Service may-

(a) enter any private forest registered under section 32(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
given 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 Ranger shall
have the same powers conferred on a police officer under
the Criminal Procedure Code and the National Police
Service Act, 2011.

62. (1) The Cabinet Secretary responsible for matters
relating to firearms may, through the Inspector-General of
Police, make available to the Service such firearms as may
be necessary for the Service to carry out its functions under
this Act.

(2) Any officer of the Service, after acquiring the
requisite paramilitary and skill at arms training, and when
authorised by the Director-General, may use a lawfully
issued firearm—

(a) in the course of the enforcement of the
provisions of this Act 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 Service shall not use a firearm—

(a) under sub-section (2)(a)(i), unless the officer has reasonable grounds to believe that he or she cannot otherwise prevent the escape, and unless he or she has given ample warning to such person that he or she is about to use a firearm against that person, and the warning is unheeded;

(b) under sub-section (2)(a)(ii) or (iii) of, unless the officer concerned believes on reasonable grounds that the officer or any other person is in danger of grievous bodily harm, or that the officer cannot otherwise prevent the removal, or, as the case may be, effect the arrest.

PART IX—OFFENCES AND PENALTIES

63. (1) Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a national, county 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 using a recognised road or footpath, or is in occupation of a building authorised by the Director General or the County public officer responsible for forestry, 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 not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(3) Any person who contravenes the provisions of section 38(2) shall be guilty of an offence and is liable on conviction to a fine not exceeding one million or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(4) Any person who contravenes the provisions of section 58 shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

64. 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 Service or the County Department responsible for forestry, 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 national or county forest with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;

(d) wears any uniform or part of a uniform, or any badge or other mark issued by the Service to be worn by forest officers or other employees of the Service, or who in any other way holds himself out to be an employee of the Service; or

(e) counterfeits or issues without lawful authority any licence or other document purporting it to be a licence or document issued under this Act or any rules made thereunder,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

65. Any person who contravenes the provisions of this Act in relation to activities in forest areas relating to quarrying or re-vegetation commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

66. (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 or her 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 or her powers or duties under this Act;

(e) makes or is found in possession of charcoal in a national, county or provisional forest; or in community forest, private forest or farmlands without a licence or permit of the owner as the case may be:

commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Any person who wilfully or maliciously sets fire to any national, provisional, county, community or private forest commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not less than one year, or to both such fine and imprisonment.

(3) Any person who operates a sawmill in a manner contrary to that prescribed in rules made under this Act commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding 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, 2013.

(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 this section 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 the County Government or any of their officers shall be liable for the injury, loss or death of any livestock so seized and detained under Section 65(1) (e).

(8) Any person who, in any forest area—

(a) introduces any exotic genetic material or invasive plants without authority from the Service or County Department responsible for forestry;

(b) dumps any solid, liquid, toxic or other wastes in a forest without authority of the Service or the County Department responsible for forestry;

(c) grows any plant from which narcotic drugs can be extracted; or

(d) extracts, removes, or causes to be removed, any tree, shrub or part thereof for export;

commits an offence and is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment.

67. (1) Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the forest produce shall be forfeited to the owner. 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 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 restoring the damage caused to the forest as a result of the offence committed, whichever is higher.

(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 Service, the County Department responsible for forestry or the private forest owner, as the case may be, and may be disposed of as the Service, County Department responsible for forestry or the private 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.

68. Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

69. (1) Any dispute that may arise in respect of forest conservation, management, utilization or conservation shall in the first instance be referred to the lowest possible structure under the devolved system of government as set out in the County Governments Act, 2012.

(2) Any matter that may remain un-resolved in the manner prescribed above, shall be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act, 2011.
PART X—MISCELLANEOUS

70. (1) The Cabinet Secretary may, on the recommendation of the Board, make Regulations 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, Regulations may be made under this section for:

(a) formulating guidelines on incentives and benefit sharing;

(b) specifying the conditions subject to which any licence, permit or authorization may be granted or issued under this Act;

(c) regulating activities in national forests, county forests, provisional forests, nature reserve and visitor indemnity;

(d) prescribing measures that enhance community participation in the conservation and management of forests;

(e) providing for protection of endangered and threatened tree species;

(f) prescribing measures and mechanisms for participatory forest management agreements with other stakeholders and lead agencies;

(g) prescribing the manner of representation of communities and other stakeholders to the Board and forest conservation committees;

(h) controlling the harvesting, collection, sale of and disposal of forest produce including timber grading and marking;

(i) prescribing the amount of royalties or fees payable under this Act generally or in particular cases;

(j) regulating the use and occupation of national and county forests for the purposes of residence, cultivation, and grazing;

(k) providing guidelines for eco-tourism including recreation, camping, picnicking and cultural activities;
The Forest Conservation and Management Bill, 2015

(1) providing guidelines for management planning process;

(m) providing the circumstances in which licences, permits, leases, concessions and other agreements may be applied for, granted, varied or cancelled, and the manner in which a person to whom a licence is granted may exercise a right or privilege conferred upon him/her by the licence;

(n) regulating the felling, working and removal of forest produce in areas where trees may be felled or removed;

(o) providing for compulsory use of property marks by the Service, the County Department responsible for forestry and owners of private forests for the purpose of identifying wood sold from national, county, community, provisional and private forests;

(p) prescribing conditions under which mismanaged or neglected forests may be declared provisional forests and conditions for reverting them to the original owners;

(q) providing for the creation of new forest areas including establishment of commercial forests;

(r) regulating production, transportation and marketing of charcoal;

(s) ensuring compliance with international obligations.

(t) regulating engagement and operationalization of the payment for environmental services scheme.

(3) Regulations made under this section may require acts 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 the relevant county government and in consultation with the Board, the Cabinet Secretary may make Regulations in respect of any community forests in the County.

(5) For the purpose of Article 94(6) of the Constitution—
(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;

(b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;

the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

71. (1) The Director-General shall maintain registers of forest management and conservation activities which shall include but not limited to the following—

(a) licences issued under this Act;
(b) national forests;
(c) community forests;
(d) private forests;
(e) forest management agreements and concessions; and
(f) forest management plans.

(2) All registers maintained under this section shall be open for inspection at the office of the Director-General by members of the public.

72. (1) The provisions of this Act shall be carried out in accordance with any treaties, conventions or international agreements concerning forests or forest resources as provided for under the Constitution.

(2) The Cabinet Secretary may make regulations and give direction to ensure compliance with international instruments, conventions and agreements ratified by Kenya. that other user as the case may be.

73. The Director General may, with the approval of the Board, develop management plans for purposes of sustainable management of cross-border forest resources.
74. (1) Where a provision of this Act requires a person to conserve or protect the environment, the relevant provisions of the Environmental Management and Co-ordination Act, 1999, shall also apply with respect to the manner in which the conservation or protection shall proceed.

(2) No user rights or other licence or permit granted under this Act shall exempt a person from complying with the relevant provisions of the Environmental Management and Co-ordination Act, 1999, or any other written law concerning the conservation and protection of the environment.

(3) A user or other related right shall not be granted under this Act where the requirement for a strategic environmental, cultural, economic and social impact assessment licence under the Environmental Management and Co-ordination Act, 1999, has not been complied with.

PART XI—TRANSITIONAL PROVISIONS

75. The Forests Act, 2005 and Timber Act are hereby repealed.

76. Notwithstanding the repeal of the Forests Act, 2005—

(a) any land which immediately before the commencement of this Act, was a gazetted forest reserve as set out in the Third Schedule to this Act shall be deemed to be a national forest under this Act;

(b) any licence, contract or agreement issued under the repealed Act shall remain in force as if it were a licence, contract, or agreement issued under this Act:

Provided that where the licence, contract or agreement in force immediately before the commencement of this Act relates to activities now outlawed under this Act, shall cease upon commencement of this Act;

(c) all participatory forest management plans shall be revised to be in conformity with the provisions of this Act.

(d) subsidiary legislation made in accordance with the Forest Act, 2005, and still in force on the date of
the commencement of this Act, shall remain in force until they are revoked in accordance with the provisions of this Act.

(e) a person who immediately before the commencement of this Act was an employee of the Service under the repealed Act, shall continue to hold or act in that office as if appointed to that position under this Act, and all benefits accruing to employees under the repealed Act shall continue accruing to them under this Act.

(f) members of the Board who immediately before the commencement of this Act were appointed as Board members of the Service under the repealed Act, shall continue to hold and act as Board members as if appointed to that position under this Act, for a period not exceeding one year.

FIRST SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The chairperson 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 chairperson or an ex-officio member may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary if the member—
The Forest Conservation and Management Bill, 2015

(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/her functions as a member of the Board.

2. (1) The Board shall meet not less than four times in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairperson may call a special meeting of the Board at any time where he deems it expedient for the transaction of the business of the Board.

(2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days’ written notice of every meeting of the Board shall be given to every member of the Board by the secretary.

(3) The quorum for the conduct of business of the Board shall be half of the members’ and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(4) The chairperson shall preside over all meetings of the Board in which he is present, but in his/her absence, the vice-chairman shall preside, and in his/her 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 chairperson.

(5) At the first meeting of the Board, the members shall elect a vice-chairperson, not being a public servant, from among its members.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at the meeting of the Board at which the contract, proposed contract or matter is the subject of consideration, he/she shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

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

SECOND SCHEDULE (s. 33)

PROVISIONS FOR PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation, the responsible authority shall publish a notice in relation to the proposal —

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

(2) The notice shall in each case—

(a) set out a summary of the proposal;
(b) State the premises at which the details of the proposal may be inspected;
(c) invite written comments on or objections to the proposal;
(d) specify the person or body to which any such comments are to be submitted; and

(e) specify a date by which any such comments or objections are required to be received, not being a date earlier than 60 days after publication of the notice.

2. The responsible authority shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the proposal which are in the possession of the responsible authority.

3. The responsible authority shall consider —

(a) any written comments or objections received on or before the date specified under paragraph 2(2) (e); and

(b) any comments, whether in writing or not, received at any public meeting held in relation to the proposal at which the responsible authority was represented, or pursuant to any other invitation, to comment.

4. The responsible authority shall publish, through the same media as were employed pursuant to paragraph 1, notice of the fact that a copy of the decision in writing of the responsible authority in relation to the proposal, and of the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2) (b).

5. Where rules made under this Act so require, the responsible authority shall cause a public meeting to be held in relation to a proposal before the responsible authority makes its decision on the proposals.
### THIRD SCHEDULE

**(s. 30)**

**GAZETTED NATIONAL FOREST RESERVES**

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*The Forest Conservation and Management Bill, 2015*
MEMORANDUM OF OBJECTS AND REASONS

This Bill is intended to give effect to Article 69 of the Constitution with regard to forest resources, and to repeal the Forest Act, 2005. It also makes provisions for the conservation and management of forest resources. It is divided into eleven Parts and three Schedules. It runs to 76 clauses.

Part I of the Bill deals with preliminary matters and makes provisions for the application of the Act, the guiding principles of the Act and National Forest Management Guidelines.

Part II of the Bill deals with the administrative aspect of the Act. It establishes the Kenya Forest Service, describes its functions and provides for a Board to manage the Service. It also provides for the appointment of the Director-General of the Service and the staff of the Service, including a uniformed and disciplined force of the Service. It establishes the Kenya Forestry College and provides for the appointment of honorary foresters. It also establishes forest conservation areas and committees and provides for research and development in forestry.

Part III of the Bill deals with financial provisions. It provides for the financial year of the Service, the sources of the funds of the Service, the annual estimates, accounts and audit of the finances of the Service as well as for the Forest Conservation and Management Trust Fund and its management.

Part IV of the Bill makes provisions for the conservation and management of forests. It provides for the classification of forests, the creation and management of public and community forests, and the creation of private forests. It provides for the variation of the boundaries or the revocation of public forests as well as the declaration or reversion of provisional forests. It makes provisions for the exchange of forest areas for forest lands, the establishment of arboreta and recreational parks, donations and bequests of forests and the declaration of nature reserves by the Cabinet Secretary.

Part IV also provides for the protection of tree species and the joint management of forests by the Service and either community owners of forests or private owners of forests. It provides for the management of indigenous forests and plantation forests. It provides for the concessioning of public forests and the requirement that such agreements shall be ratified by Parliament. Finally it provides for forest management agreements with the Service, the requirement for obtaining the Service’s consent to conduct quarrying operations in public forests and for the preparation and implementation of forest management plans.

Part V of the Bill provides for community participation in management and conservation of forests. It provides for the establishment of forest associations and enumerates their obligations. It also provides
for the assignment of forests user rights, the termination or variation of management agreements and for the protection of customary rights.

Part VI of the Bill provides for incentives for the promotion of forest conservation and management, including tax and fiscal incentives. It also provides for a National Tree Planting Week in Kenya for awareness creation.

Part VII of the Bill provides for the administration of trade in forest products through authorisations by the Service. It makes provisions for chain-of-custody requirements, the grading and valuation of timber, export and import procedures of timber and it prohibits the trade in restricted forest produce.

Part VIII of the Bill deals with enforcement of the provisions of the Act and compliance with the same too. It describes the powers of the officers under the Act and how the authority to use firearms shall be obtained.

Part IX of the Bill enumerates the offences under the Act and their penalties. Part X deals with miscellaneous matters, including the making of Regulations under the Act, the maintenance of registers, the place of international instruments, covenants and agreements, co-operation among county governments, and that the Environmental Management and Coordination Act, 1999, shall apply on any matter relating to the conservation and protection of the environment.

Part XI of the Bill deals with transitional provisions including the repeal of the Timber Act and the Forest Act, 2005, as well as savings provisions regarding transactions, rights, powers, obligations, liabilities and officers under the repealed Forest Act, 2005.

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

The Bill does contain provisions limiting fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill may concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 5th August, 2015.

ADEN DUALE,
Leader of the Majority Party.