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THE KERICHO COUNTY FOREST CONSERVATION AND MANAGEMENT ACT, 2021

No. 3 of 2021

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Date of Commencement: See Section 1

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THE KERICHO COUNTY FOREST CONSERVATION AND MANAGEMENT ACT, 2021

AN ACT of the County Assembly of Kericho to give effect to Sustainable management, including conservation and rational utilization of all forest resources in the County for the socio-economic development of the County

ENACTED by the County Assembly of Kericho, as follows—

PART I—PRELIMINARY

Citation and Commencement

1. This Act may be cited as the Kericho County Forest Conservation and Management Act, 2021 and shall come into force upon notice in the *Gazette* by the County Executive.

Interpretation

2. In this Act unless the context otherwise requires—

“Authorized person” means a person who is appointed in writing by the County Executive, the Authority or such other person as may be prescribed to be an authorized person for the purposes of this Act;

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

“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;

“Committee” means the County Forest Conservation Committee established under section 5 of this Act;

“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

“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” means forest as classified under section 31(4);

“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 County Department for the management of a specified forest area at a price determined after forest valuation and bidding;

"contract" means authorization entered into with a third party for performance of specified activities on behalf of the Service or the County Department in a forest area for a specified fee;

"County" means a County established under article 176(1) of the Constitution;

"County chief officer" means the County Chief Officer responsible to the County executive committee member for the administration of the County department responsible for forestry;

"County department" means the County Department for the time being responsible for forestry;

"County executive" means the County Executive Committee Member responsible for matters relating to forestry;

"County forest" means forest as classified under section 31(3);

"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 microorganism 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/her charge and implementation of this Act including—

- (a) in the case of a County forest, the County Government;
- (b) in the case of community forest, the community land management committee established under the Community Land Act; and
- (c) in the case of a private forest, the owner of the private forest.

"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;

"Forest Sink Initiative" means such initiative or scheme by the Government to promote the establishment of forests as carbon sink and climate change mitigation and adaptation.

"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;

"Joint management agreement" means authorization where the County Department 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;

"Licensing authority" means the person responsible for the issuance of licenses in the case of a County forest,

"Nature reserve" means an area of land declared to be nature reserve under section 13;

"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 6(3);

“Property mark” means a mark placed on a log, timber or other forest produce with a prescribed instrument to denote ownership by the County Government or any other owner;

“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 9(1);

“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.

Application of Act

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

Guiding Principles

4. The implementation of this Act shall be guided by the following principles—

- (a) good governance and access to public information, and a participatory approach to forest conservation and management shall be enshrined to ensure the effective involvement of stakeholders in forest conservation and management;
- (b) forest resources management and conservation shall be devolved wherever possible and appropriate to those owners and managers of forest resources;
- (c) wherever possible, an -ecosystem approach shall be adopted in the conservation and management of forests and counties shall collaborate in managing forests falling in more than one County within the same ecosystem;
- (d) the rights and responsibilities of communities and private land owners to manage and utilize forest and forest resources shall be recognized;

- (e) benefits accruing from forest conservation and management, shall be enjoyed and equitably shared by the people of Kenya;
- (f) monitor the implementation of this Act and other forest regulations within the county;
- (g) ensure the fair distribution of benefits derived from resources in County forests;
- (h) review and recommend applications for licenses and renewals in respect to County forests under the County Government;
- (i) review and recommend applications for licenses and renewals in respect to national forests under the Service;
- (j) monitor the management of community forests in the county;
- (k) develop and oversee the implementation of forestry extension programs; and
- (l) identify and recommend areas to be set aside for the creation of County forests.

PART II—ADMINISTRATION

Establishment, Role and Functions of Forestry Directorate

5. (1) There is established the Directorate of Forestry which shall be an office in the County Department responsible for Environment and Natural Resources matters.

(2) The functions of the Directorate shall be—

- (a) to implement all the County forest functions according to this Act;
- (b) support and facilitate the Committee in carrying out its functions;

(3) The Executive Committee Member and the County Public Service Board shall ensure that the Directorate has adequate human, financial and any other appropriate resources to enable it carry out the functions assigned under this Act.

County Forest Conservation Committee

6. (1) There is here established the County forest conservation committee.

(2) The Committee shall consist of—

- (a) a non-executive Chairperson, recruited competitively by the County Public Service Board and appointed by the Governor;

- (b) the County Chief Officer responsible for forestry who shall be the secretary;
 - (c) the Chief Officer responsible for agriculture or his/her designated representative appointed in writing;
 - (d) the County Chief Officer responsible for environment or a designated representative appointed in writing;
 - (e) the County Chief Officer responsible for water or a designated representative appointed in writing;
 - (f) the Chief Officer, responsible for Lands or a designated representative appointed in writing;
 - (g) the Kenya Forest Officer whose jurisdictional authority falls within the County;
 - (h) the County Director of forestry;
 - (i) the Kenya Wildlife Service Officer whose jurisdictional authority falls within the County;
 - (j) the National Environment Management Authority officer whose jurisdictional authority falls within the County; and
 - (k) three other persons who shall be appointed by the Executive Committee Member fulfilling such criteria and drawn from such membership as provided in subsection (3) and (4).
- (3) The County Executive may make rules and regulations governing the procedures of the committee.
- (4) A person shall be qualified for appointment as Chairperson under sub-section(1) (a) if the person—
- (a) meets the requirements of Chapter Six of the Constitution;
 - (b) holds at least a Bachelor's Degree from a recognized institution;
 - (c) has knowledge and experience of not less than five years in the field of natural resources, forestry, or environmental management.
- (5) A person shall be qualified for appointment as a Member under sub-section (1) (k) if the person—
- (a) holds at least a diploma from a recognized institution of higher learning;
 - (b) has knowledge and experience of at least 2 years in matters relating to natural resources, forestry, or environmental management, or any other related field;

- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is a resident of the County.

(6) The members of the Committee to be appointed under section 6 (1)(k) shall be drawn from wood fuel groups, groups representing private forest owners, groups representing the community owning forests, non-governmental organizations operating within the County and whose activities are focused on natural resource conservation and body representing the businesses related to forestry taking into account gender, disability and youth.

(7) The members of the Committee under subsection (1) (k) shall hold office for a period of three years which may be renewed for a single further term of three years.

(8) The appointment of the Chairperson and the members under subsection (1) (k) shall be in writing and by notice in the *County Gazette*.

Termination of Membership

7. A member shall vacate his/her position as a member of the Committee if he/she—

- (a) is absent from three (3) consecutive meetings of the Committee without written apology;
- (b) violates Chapter 6 of the Constitution;
- (c) ceases to be a resident of Kericho County;
- (d) voluntarily resigns from the committee;
- (e) dies; or
- (f) is so incapacitated by prolonged physical or mental illness as to be unable to attend and discharge his/her duties.

Functions of County Forest and Conservation Committee

8. (1) The functions of the County Forest Conservation Committee shall be to—

- (a) advise the County Government on the ideas, desires and opinions of the people within the County in all matters relating to the conservation and utilization of national and County forests within the county;
- (b) monitor the implementation of this Act and other forest regulations within the County;

- (c) ensure the fair distribution of benefits derived from resources in County forests;
 - (d) review and recommend applications for licenses and renewals in respect to County forests under the County Government;
 - (e) review and recommend applications for licenses and renewals in respect to national forests under the Service;
 - (f) monitor the management of community forests in the county;
 - (g) develop and oversee the implementation of forestry extension programs; and
 - (h) identify and recommend areas to be set aside for the creation of County forests.
- (5) The members of the Committee under subsection (3) (a) and (3) (f) to (3)(h) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.

(6) Persons who are not members of the Committee may be invited to attend meetings of the Committee and take part in its deliberations but shall not have voting powers.

(7) A member of the Committee shall be entitled to be paid such allowances as the Salaries and Remuneration Commission may determine.

(8) The County Executive shall set aside funds for the proper functioning of the Committee.

(9) The County Executive may make rules and regulations governing the procedures of the Committee, County, Community and private forests.

Conduct of Business and Affairs of the Committee

9. (1) The business and affairs of the Committee shall be conducted in accordance with the provisions of the Second Schedule.

(2) Except as provided in the Schedule, the Committee may regulate its own procedure.

Remuneration and Allowances of Committee Members

10. A member of the Committee shall be paid such allowances and reimbursable expenditures for meetings as recommended by salaries and remuneration commission

Public Access to Information

11. Any person may make a written request to the Directorate of Forestry and the Committee for any information held, and such information shall be made available as per Access to Public Information Act.

PART III—CONSERVATION AND MANAGEMENT OF FORESTS**Classification of Forests**

12. (1) For the purposes of this Act, forests are classified into County, community and private forests.

(2) County forests include—

- (a) forest land lawfully held, used or occupied by the County Government or a department of the County Government
- (b) forests on land transferred to the State by way of sale, reverse or surrender;
- (c) forests on Land in respect of which no individual or community ownership can be established by any legal process;
- (d) forests on land in respect of which no heir can be identified by any legal process; and
- (e) forests on land lawfully held by the County government in trust for the people resident in the county.

(2) 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.
- (f) lawfully held as trust land by the County government, but not including any public land held in trust by the County government under Article 62(2) of the Constitution.

(3) 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;
- (d) forests on any other land declared private land under an Act of Parliament.

Forests Management Guidelines

13. (1) Within six months after enactment of this Act, the Executive Committee Member shall in consultation with relevant stakeholders promulgate regulations for the development and periodic revision of the Kericho County Forests Management Guidelines and Standards prescribed by this subsection.

(2) The purpose of the Guidelines is to establish the standards for the management of all forests in accordance with accepted principles and practices to which the County Government requires all forest managers under this Act to adhere.

(3) Adherence to the County Forest Management Guidelines shall form part of the requirements necessary for the approval of licenses under the provisions of this Act.

Woodfuel Rules and Regulations

14. The Executive Committee Member shall within six months after the commencement of this Act and in consultation with relevant stakeholders enact the Woodfuel Rules and Regulations for the purposes of ensuring sustainable wood fuel production and fair trade practices.

Ecosystem Approach to Management of Forests within Kericho County

15. (1) All forests shall be managed in accordance with the integrated ecosystem approach that takes into consideration the wood and non-wood resources, the environmental services and the socio-economic benefits provided by the forests.

(2) The County Executive Committee Member may declare a county forest or a part of it as a biodiversity hotspot among the county forest with restricted management.

Creation and Management of County Forest

16. (1) The County Government shall be responsible for the protection and management of forests and woodlands under its jurisdiction, and shall ensure that such forests are managed on a sustainable basis in accordance with an approved management plan.

(2) The County Government shall be responsible for creation of County forests and increasing tree cover within their area of jurisdiction.

Management of Community Forest

17. (1) All community forests are 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 County Executive 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 community shall be entitled to receive from the County Government -

- (a) technical advice regarding appropriate forestry practices and conservation;
- (b) subject to availability of funds, loans from the Fund for the development of the forest, provided that the funds are obtained and utilized in accordance with the procedures set out by the County Executive.

(4) 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.

Declaration and Reversion of Provisional Forests

18. (1) Upon the recommendation of the County Executive, the Cabinet Secretary may, by order published in the Gazette, declare any community or private forest, which in the opinion of the County Executive is mismanaged or neglected, to be a provisional forest.

(2) A declaration under sub-section (1) of this section shall only be made where—

- (a) the forest—
 - (i) is an important catchment area or a source of water springs;
 - (ii) is rich in biodiversity and contains rare, threatened or endangered species;
 - (iii) is of cultural or scientific significance; or
 - (iv) supports an important industry and is a source of livelihood for the surrounding forest communities;
- (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 compiled 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 County Executive is satisfied that it has been adequately rehabilitated and the owner has given an undertaking to efficiently manage it.

(5) The County Executive may, upon reversion of a provisional forest, prescribe for observance by the owner such conditions as maybe necessary to ensure compliance with the provisions of this Act.

Exchange Forest Area with Private Land

19. (1) Subject to sub-section (2) the County department may in consultation with the relevant government agencies and stakeholders, and with approval of the County Executive, 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 County Government 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
- (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 County Government may, with the approval of the County Executive, acquire by purchase any land suitable to be declared a County forest under this Act.

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

Donations and Bequests

20. (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 County Department, an educational institution, an association or a non-Governmental organization for the development of forestry and the conservation of biodiversity .recreational parks.

(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.

Arboreta and Recreational Parks

21. (1) The County Executive 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), the County Executive shall cause housing estate developers within its jurisdiction to make provision for the establishment of green zones at the rate of at least five per cent of the total land area of any housing estate intended to be developed.

(3) The County Executive shall, establish and maintain a recreational park in every market centre within its area of jurisdiction.

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

(5) For purposes of this section, a County Executive may in consultation with the relevant stakeholders prescribe conditions as to the species of trees to be planted in a green zone, arboretum or recreational park.

Declaration of Natural Reserves

22. (1) The Cabinet Secretary may, upon the recommendation of the natural reserves Board of the Service and after consultation with the County Executive and relevant stakeholders, by Notice in the *Gazette*, declare any county, community or private forest, as a nature reserve.

(2) Where a nature reserve declared as such will occur within community or private land, the Cabinet Secretary shall make prior agreed 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 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..
 - (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.

Management of Plantation Forests

23. (1) All plantation forests in County forests shall be managed on a sustainable basis with the primary objective being the production of wood and other forest products and services for commercial purposes.

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

(3) The applicant shall submit his application together with a proposed management plan in respect of the forest which is the subject of the application.

(4) Any person aggrieved by the decision of the Committee to enter into a management agreement for a plantation forest under this section may appeal to the Environment and Land Court within sixty days of the decision made.

(5) All licences, concessions, contracts or joint management agreements made under this Section shall be made in accordance with the provisions of the Constitution, the Public Procurement and Asset Disposal Act and other relevant laws of Kenya County forest can be done through the granting of a concession, the County Executive shall grant the same subject to the provisions of the Constitution, the Public Procurement and Asset Disposal Act and any other relevant laws.

Concession on County Forest

24. (1) Where County Executive is satisfied that utilization of a County forest can be done through the granting of a concession, the County Executive shall grant the same subject to the provisions of the Constitution, the Public Procurement and Asset Disposal Act and any other relevant laws.

(2) The County Executive 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 schedule has been undertaken and completed.

(3) In addition to sub-section (1), the grantee of a concession shall—

- (a) comply with the guidelines or management plans prescribed the County Executive;
- (b) prepare environmental and or social impact assessments as required under the laws governing environmental protection;
- (c) prepare a concession area forest management plan that shall include inventories, reforestation or replanting programs, annual operation plans and community user rights and benefits;
- (d) protect the concession area from destruction and encroachment by other persons;
- (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 and 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;
- (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 under this section shall be held personally responsible for any loss or damage, including the negligence of his/her employees, arising from his/her operations on the land for which the concession has been obtained.

(6) The County Executive may by notice in the *Gazette* withdraw a concession granted under this section where a grantee breaches any of the conditions prescribed under sub-section (3).

Consent for Mining and Quarrying

25. (1) The County Executive shall only give his consent for mining and quarrying operations in a forest area where—

- (a) the area does not contain rare, threatened or endangered species;
- (b) the forest does not have any cultural importance or contain sacred trees or groves;
- (c) an independent Environmental Impact Assessment or audit has been carried out;
- (d) the miner has undertaken through execution of a bond the value of which shall be determined by the Committee to rehabilitate the site upon completion of the mining operation to a level prescribed by the County;
- (e) the forest is not an important catchment area or source of springs; and
- (f) the carrying on of the mining and quarrying operations shall not contravene any rules made under this Act.

(2) Subject to subsection (1), mining and quarrying may be carried out in a County forest under the authority of a licence issued by the County Executive and in accordance with the Mining Act.

(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 of mining and quarrying, or any other activity carried out in the forest, shall, where the activity concerned is likely to result in the depletion of forest cover in any forest, include a condition requiring the licensee to undertake compulsory

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.

Management Plan

26. (1) Every County forest, nature reserve and Provisional forest within the County shall be managed in accordance with a management plan that complies with the requirements prescribed by rules made under this Act.

(2) The County Department shall be responsible for the preparation of a management plan with respect to the County forest.

(3) In preparing a management plan the County Department responsible shall consult with the committee.

(4) It shall be the duty of the County Executive to give effect to provisions of management plans in respect to County forests.

(5) The Committee shall approve the County forest management plans community participation.

PART IV—COMMUNITY PARTICIPATION

Application for Community Participation

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

(2) An association registered under subsection (1) may apply to the County Executive for permission to participate in the conservation and management of a County forest in accordance with the provisions of this Act:

Provided no such application shall be made where there is an existing prior agreement or license.

(3) The application referred to in subsection (2) shall be in the prescribed form and shall contain—

(a) a list of the members of the association and its address;

(b) the Constitution of the association;

(c) the association's financial regulations;

- (d) the area of forest for which the association proposes to undertake conservation and management;
 - (e) the association's proposals concerning—
 - (i) use of forest resources;
 - (ii) methods of conservation of biodiversity;
 - (iii) methods of monitoring and protecting wildlife and plant populations and enforcing strict protection; and
 - (f) such other information as the County Executive may require.
- (4) The County Executive may give consent to develop a forest management plan in accordance with the regulations, rules and standards prescribed.

(5) The County Executive shall cause to be kept an up to date record of all associations participating in the conservation or management of national or County forests respectively.

Obligations of a forest Association

28. (1) An association approved by County Executive to participate in the management or conservation of such a forest or part of a forest shall—

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

(2) The Management Agreement between the County Executive and the association shall confer on the association all or any of the following forest user rights—

- (a) collection of medicinal herbs;
- (b) harvesting of honey;
- (c) harvesting of fuel wood;
- (d) grass harvesting and grazing;
- (e) collection of forest produce for community based industries;
- (f) ecotourism and recreational activities;
- (g) scientific and education activities through the plantation establishment and livelihood improvement scheme;
- (h) contracts to assist in carrying out specified forestry operations;
- (i) development of community wood and non-wood forest based industries; and
- (j) other benefits which may from time to time be agreed upon between an association and the County Executive:

Provided that:

- (i) none of the activities specified in this subsection shall be carried out so as to conflict with the conservation of biodiversity; and
- (ii) the County Executive may, in consultation with the association, make rules regulating the performance thereof.

(3) In case of establishment of plantations under the non-resident cultivation, the cultivator shall be allowed to cultivate in the forest for a period not exceeding three years.

(4) All management agreements made under this Section shall be in accordance with the provisions of the Constitution, the Public Procurement and Disposal Act and other relevant laws of Kenya.

Assignment of Forest User Rights

29. (1) An Association may, with the approval of the County public officer in charge of forestry, assign any or all its rights under a management agreement to a suitably qualified agent on mutually agreed terms.

(2) The Director-General or the County public officer in charge of forestry shall not approve any assignment that is inconsistent with the main objectives and purposes set out in the management agreement.

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

Termination or Variation of a Management Agreement

30. 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 right may be terminated.

Customary Rights

31. Nothing in this Act shall be deemed to prevent any member of a forest community from using, subject to such conditions as may be prescribed, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.

PART V—LICENSING AND TRADE IN FOREST PRODUCTS

General Provisions

32. (1) No Person shall undertake any commercial use of forests and forest resources on public land or community land without a licence from the County Government.

(2) Notwithstanding subsection (1), no person shall produce wood fuel in or from indigenous forests.

(3) A licence may be granted through Concessions, Timber Sale Contracts, or Forest Permits for commercial and non-commercial forest uses, in accordance with this Act.

(4) A licence shall only be granted when the use of forest resources is in accordance with the forest management guidelines and approved by the county forest committee.

(5) A person granted a licence for commercial use shall post a bond in the manner prescribed to assure performance of work, payment of forest fees and charges, redress of injuries or return of property.

Types of Licences

33. (1) Licences issued under this Act may be for commercial, consumptive or non-consumptive use.

(2) Commercial use licences include—

- (a) Forest Concessions;
- (b) Timber harvesting;
- (c) Woodfuel production.

(3) Non-Consumption use licences include Permits for purposes other than the harvesting or utilization of forest products and resources. These include but not limited to—

- (a) Ecotourism
- (b) Carbon trading
- (c) Bee keeping

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

Eligibility for Authorization

34. (1) A person shall not be eligible to apply for an authorization unless that person—

- (a) possesses the necessary legal capacity to enter into binding agreements, and has the technical and financial capacity to undertake the forestry activities for which the authorisation is sought; and
- (b) 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) legal capacity includes the competence to enter into contracts which for business entities shall be demonstrated through proof of registration;
- (b) technical capacity includes the competence to undertake forestry activities, as demonstrated by employment of technical staff: access to equipment, satisfactory past performance and a record of good compliance with the laws and standards; and
- (c) financial capacity 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.

Chain of Custody

35. (1) The County Executive shall establish and maintain a Chain of Custody system, to verify the origin of forest products from national, county, community and private forests and the compliance of license holders in accordance with this Act.

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

(3) Any person who contravenes subsection (2) commits an offence.

Grading and Valuation

36. (1) The County Executive in consultation with the relevant stakeholders shall make rules and regulations to establish standards for the grading and valuation of timber and other forest products.

(2) On the advice of the registered association of professional foresters, the County Executive may, by Notice in a *Gazette*, authorize any person to be a timber Grader or Valuer under this Act.

PART VI—FOREST PROTECTION

Forest Pests and Disease Control

37. The Committee may on community or private land respectively advise the Executive Committee Member to—

- (a) order the spraying or clearing of a compartment of a plantation or of a whole plantation for the purpose of controlling the spreading of pests and diseases;
- (b) control movement of timber and any other forest produce through the issue of permits; and
- (c) provide for control of vermin causing excessive damage beyond economic thresholds in forests.

Protected Species

38. (1) The Committee shall on annual basis prescribe species of trees and plants as protected species for the purposes of this Act.

(2) No person shall fell or remove protected species.

(3) A person who contravenes subsection (2) commits an offence.

Control of Invasive Species

39. The Executive Committee Member shall notify the relevant National government agencies within 12 months after enactment of this Act to Gazette Regulations on the introduction, prevention, control and management of invasive species and thereafter every two years.

PART VII—INCENTIVES FOR FOREST CONSERVATION**Purpose**

40. The purpose is to provide incentives for increasing forest and tree cover through the establishment of —

- (a) a County Community Forestry Programme;
- (b) a County Reforestation Programme;
- (c) a County Programme for Craft Apprenticeships and Vocation Training for school-leavers in forest resource-based enterprises;
- (d) a Permanent Carbon Sink Initiative;
- (e) alternative energy initiatives including energy efficient fuel wood cooking devices; and
- (f) waiver for land rates for individual farmers with more than ten percent tree cover.

Establishment of Forest Support Programmes

41. The Executive Committee Member shall, by regulation, establish a County facility to administer the allocation of funds and provision of technical assistance to the recipients of County forestry incentive programmes.

County Community Forestry Programme

42. The Executive Committee Member shall, by regulation, establish a County community forestry programme that shall provide—

- (a) Grants to community forest organization to support the preparation of management plans for forests on community land.
- (b) Qualified service providers to provide technical assistance to the community forest organizations.

County Reforestation Programme

43. (1) The Executive Committee Member shall by regulation, establish a County reforestation programme that shall provide—

- (a) Grants and technical assistance to community forest organization to support afforestation and reforestation on community land; and
- (b) Grants and technical assistance to smallholder farmers to support afforestation on private land.

County Forestry Awards and Prizes

44. (1) The Executive Committee Member shall, on an annual basis, grant research awards and scholarships to further knowledge on forest resource management and conservation. (2) In recognition of meritorious achievements and service in the forestry sector, the County Executive shall, on an annual basis, award prizes to both individuals and organizations.

Alternative Energy Initiatives

45. The Executive Committee Member shall develop guidelines in consultation with relevant stakeholders that promote alternative energy initiatives.

Benefit Sharing Mechanism

46. (1) The Executive Committee Member in-consultation with the county forest committee and relevant stakeholders shall set the criteria for clear benefit sharing mechanism with local communities in respect of revenue generated from forest utilization activities within one year of enactment of this Law.

(2) The benefit sharing mechanism shall define the types of forest utilization activities from which revenue would be shared with local communities.

County Tree Planting Week

47. The Executive Committee Member and the Committee shall plan and execute participatory programs necessary for observing the County tree-planting week on County, Community and Private Forest Land.

County Assembly to appropriate funds

48. The County Assembly shall appropriate funds for the effective implementation of this Part.

PART VIII—FORESTRY RESEARCH, EDUCATION AND TRAINING**Research, Technology Development and Transfer**

49. The Directorate shall collaborate with relevant institutions to enhance and prepare a forestry research and development strategy for Kericho County.

Public Information, Education and awareness

50. The Directorate of Forestry in consultation with the relevant government agencies shall formulate and implement a county program on public information, awareness creation and advocacy to promote sustainable forest development and management.

Integration Platform

51. The Executive Committee Member shall establish a platform that will consist of the representatives of the County Government, private sector and civil society whose function will be to support the mainstreaming of forestry in County Development.

PART IX—ENFORCEMENT AND COMPLIANCE**Powers of Authorized Officers**

52. (1) The County Executive or any Authorized Officer of the County Department may—

- (a) demand from any person the production of an authority or licence for any act done or committed by that person in a 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 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 magistrate;
- (c) search any person suspected of having committed an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and arrest the person, seize and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or his agent or servant:

Provided that no person shall be arrested under this section unless the County Executive or the officer has reasonable cause to believe 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 magistrate having jurisdiction over the area where the offence takes place;

- (e) seize and detain any livestock found in a 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 County Executive or any authorized officer of the County Department may—

- (a) enter any private forest in order to assess the condition thereof or to perform any such other act which he/she 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 /herself 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 testimony for the purposes of an investigation conducted under this Act.

PART X—OFFENCES AND PENALTIES

Prohibited activities forests

53. (1) Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a 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 recognized road or footpath, or is in occupation of a building authorised by the County Executive, 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 both

(3) Any person who contravenes the provisions of section 28(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 both

Counterfeiting or Unlawfully Affixing Marks

54. Any person 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 County Department, 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 the 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;

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

Offences in Relation to Mining, Quarrying

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

Other Offences

56. (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/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/her powers or duties under this Act;
- (e) makes or is found in possession of charcoal in a 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 county, provisional, 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 exceeding one year, or both.

(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 section 27(1)(e) 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 County Department.

(7) Neither County Executive or any officer shall be liable for the injury, loss or death of any livestock so seized and detained under Section 27(1)(e).

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

- (a) introduces any exotic genetic material or invasive plants without authority of the County Executive;
- (b) dumps any solid, liquid, toxic or other wastes in a forest without authority of the of the County Executive;
- (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.

Compensation for Loss or Damage

57. (1) Where a person is convicted of an offence of damaging, or 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 County 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 County Department or the private forest owner, as the case may be, and may be disposed of as the County Executive 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.

General Penalty

58. 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.

Disputes

59. (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 Devolution of Government Act.

((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 XI—MISCELLANEOUS PROVISIONS

Rules

60. (1) The County Executive may make rules and 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, rules and 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 Committee;
- (h) providing for the creation of new forest areas including establishment of commercial forests.
- (i) controlling-the harvesting, collection, sale of and disposal of forest produce including timber grading and marking;
- (j) prescribing the amount of royalties or fees payable under this Act generally or in particular cases;
- (k) regulating the use and occupation of County forests for the purposes of residence, cultivation, and grazing;

- (l) providing guidelines for eco-tourism including recreation, camping, picnicking and cultural activities;
 - (m) providing guidelines for management planning process;
 - (n) 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;
 - (o) regulating the felling, working and removal of forest produce in areas where trees may be felled or removed;
 - (p) providing for compulsory use of property marks by the County Department responsible and owners of private forests for the purpose of identifying wood sold from county, community, provisional and private forests;
 - (q) prescribing conditions under which mismanaged- or neglected forests may be declared provisional forests and conditions for reverting them to the original owners;
 - (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) Rules 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 County Department and in consultation with the Committee the County Executive may make to apply rules in respect of any community forests in the County.
- (5) The provisions of Section 27 of the Interpretation and General Provisions Act shall not apply to rules made under this section.

Maintenance of Registers

61. The County Executive 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) County forests;
- (d) community forests;
- (e) private forests registered under section 35 of this Act;
- (f) forest management agreements and concessions under this Act; and
- (g) forest management plans.

Environment Law to Apply

62. (1) The provisions of this Act with respect to conservation, management and protection of the environment shall be in conformity with the provisions of the Environmental Management and Co-ordination Act.

(2) The provisions of the Environmental Management and Coordination Act regarding reference to the Tribunal established under that Act shall apply to hearing of appeals arising from the decisions made under this Act.

(3) No user rights or other licence or permit granted under this Act shall exempt a person from complying with any other written law concerning the conservation and protection of the environment.

(4) 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 has not responsible authority in relation to the proposal, and of the reasons thereof.

SCHEDULE**PROVISIONS FOR PUBLIC CONSULTATIONS**

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 unavailable for public at the same premise as were noticed under paragraph 1(2) (b).

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