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NYERI COUNTY BILLS, 2021

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**THE NYERI COUNTY FOREST MANAGEMENT
AND CONSERVATION BILL, 2021**

A Bill for

AN ACT of the County Assembly of Nyeri to give effect to section 10(b) of Part 2 of the Fourth Schedule of the Constitution; establishing the legal and regulatory framework for the conservation and management of forests in Nyeri County, community participatory plan and for purposes incidental thereto

ENACTED by the County Assembly of Nyeri as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Nyeri County Forest Management and Conservation Act, 2021.

Short title .

2. In this Act, unless the context otherwise requires—
“benefits” mean quantifiable and non-quantifiable goods and services provided by forest ecosystems;

Interpretation.

“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;

“Committee” means the County Forestry Committee established under section 7 of this Act;

“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;

“County” means Nyeri County Government;

“County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to forestry;

“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;

“Director” means the Director responsible for matters relating to forestry;

“Directorate” means the Directorate for the time being responsible for matters related to forestry;

“forest” means land which is declared or registered as a forest, or woody vegetation growing in close proximity in an area of over 0.5 of a hectares including a forest in the process of establishment, woodlands and thickets within Nyeri County;

“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 management plan” means a written document establishing direction and goals for the management, conservation and utilization of a specific forest land area; specifying all silvicultural practices and activities necessary to accomplish the merchantable production of a forest product; and all practices that will minimize adverse environmental effects and improve livelihoods;

“Fund” means the Funds established under section 64 of this Act;

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

“forest owner” means —

- (a) in the case of a public forest, the government as defined in Article 62 (1) (g) of the Constitution;

- (b) in the case of a community forest, the community as defined in Article 63 of the Constitution; and
- (c) in the case of a private forest, the registered owner of the land as defined in Article 64 of the Constitution;

No. 34 of 2016.

“forest produce” includes bark, animal droppings, beeswax, canes, charcoal, creepers, earth, fibre, firewood, fruit, galls, grass, gum, honey, leaves, flowers, moss, murrum, soil, peat, plants, reeds, resin, rushes, rubber, sap, soil, seeds, spices, stones, timber, trees, water, wax, withies, and such other things as may be declared by the County Executive to be forest produce for the purpose of this Act;

“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;

“Forum” means the Forestry Stakeholders’ Forum established under section 14 of this Act;

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

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

“Management Agreement” means an agreement between the County Executive Committee Member and an association under section 27 of this Act;

“nature reserve” means an area of land declared to be nature reserve under section 42;

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

“private forest” means forest as classified under section 16 of this Act;

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

“public forest” means forests as classified under section 30(2) and (3) of the Forest Conservation and Management Act, 2016;

“resident” means a person who has resided in Nyeri

for a continuous period of at least seven years.

“Service” means Kenya Forest Service as established under section 7 of the Forest Conservation and Management Act, 2016;

“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; and

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

3. The objective of this Act is to provide a comprehensive legal and institutional framework for the management, protection and conservation of the forests within County by —

Objectives and purpose of this Act.

- (a) giving effect to the Constitution and national laws as regards the provisions of management, protection and conservation of the forests;
- (b) securing and sustaining progressive realization of the human right to a clean and sustainable environment;
- (c) engaging the public and ensuring public participation in the management, conservation and protection of the forests;
- (d) ensuring that there is increase forest cover within the county;
- (e) scaling-up and maintaining plans, strategies and policies aimed at management, protection and conservation of forests within Nyeri County;
- (f) providing incentives to the communities to encourage their contributions in management, protection and conservation of forests; and
- (g) balancing the rights of the community to access and use the forest and the obligation of the County to manage, protect and conserve the forest.

4. Any person implementing or applying this Act shall be guided by the following principles—

Guiding principles.

- (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;
 - (d) the values and principles of public service in accordance with Article 232 of the Constitution;
 - (e) protection of indigenous knowledge and intellectual property rights of forests resources; and
 - (f) international best practices in management and conservation of forests.

5. This Act shall apply to community forests and private forests in Nyeri County.

Application of this Act.

PART II – INSTITUTIONAL FRAMEWORK

6. (1) Subject to the provisions of this Act the County Executive Committee Member shall exercise control and provide guidance over forest management, protection and conservation and the implementation of this Act by —

Functions of the Chief Executive Committee Member.

- (a) advising the County Executive Committee on policy issues relating to forest management, protection and conservation;
- (b) formulating and periodically reviewing county forest policies and plans;
- (c) developing strategies for implementation of this Act and related national and county policies and plans including a community based management, protection and conservation plan;
- (d) co-ordinating with the national government on enhancement of management, protection and conservation programs;
- (e) co-ordinating with other county governments on management, protection and conservation programs;
- (f) developing a forest resource and information system;
- (g) securing and conserving endangered species, trees and plants that are rare and indigenous;
- (h) overseeing forest management, protection and

conservation programs through an effective monitoring and evaluation system;

- (i) aligning forests management, protection and conservation sector with the socio-economic development goals of the county;
- (j) making regulations as provided for under or as is necessary for the better implementation of this Act; and
- (k) preparing a report to be submitted to the county assembly annually and from time to time as maybe necessary on the state of the forests in the county.

(2) The County Executive Committee Member in performance of his or her duties under the Act —

- (a) may consult with other county governments, public agencies, research institutions, private organization and other government or non-governmental entities whose functions relate to those of forest; and
- (b) shall secure public participation, including setting up through regulations of specific mechanism for regular engagement of stakeholders on policy matters.

(3) The County Executive Committee Member shall in accordance with Article 10 of the Constitution and through public participation formulate a county forest development strategy.

7. (1) There is established a Committee to be known as the County Forestry Committee which shall comprise of

Establishment of a Committee.

- (a) a non-executive chairperson, who shall not be a public officer, appointed by the Governor;
- (b) the Chief Officer designated for forestry;
- (c) the Chief Officer, responsible for Lands or a designated representative appointed in writing;
- (d) the Chief Officer responsible for agriculture or a designated representative appointed in writing;
- (e) the Chief Officer responsible for Finance or a designated representative appointed in writing;
- (f) the Chief Officer responsible for Administration

or a designated representative appointed in writing; and

- (g) the County Director designated for forestry who shall be the secretary to the committee;
- (h) three other persons who shall be appointed by the County Executive Committee Member in consultation with the Governor, drawn from the public and being members of a special group with an interest in environmental matters.

(2) The County Executive Committee Member may co-opt any other member as may be necessary.

8. The functions of the Committee shall be to—

Functions of the Committee.

- (a) advise the County Executive Committee Member on policy issues relating to forest management, protection and conservation;
- (b) consider and recommend to the Executive Committee Member the establishment of forests within Nyeri County;
- (c) consider and approve all management agreements;
- (d) advise the Executive Committee Member on formulation and review of policies, approval of licenses and rules for marketing and trade in forest produce within the County;
- (e) advise the Executive Committee Member on all matters pertaining to the establishment, development, conservation and utilization of forests in the County;
- (f) consider and approve proposals for forest concessions, timber harvesting contracts and special use permits as defined under the provisions of this Act;
- (g) mobilize and manage resources for county forestry development;
- (h) prepare a report to be submitted to the County Executive Committee Member annually and from time to time as maybe necessary on the state of forests management, protection and conservation in the county; and
- (i) carry out any other functions as may be necessary

for the implementation of the provisions of this Act.

9. A person shall be qualified for appointment as a member to the Committee under section 7(a) and (h) of this Act if such person —

Qualifications for appointment to the Committee.

- (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 Nyeri County.

10. The members of the Committee under section 7 subsections (a) and (h) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.

Tenure of Office.

11. A member of the Committee under Section 7 subsections (a) and (h) shall be paid such remuneration or allowances, as the Salaries and Remuneration Commission may recommend.

Remuneration of the Committee Members.

12. A member of the Committee under section 7 subsection (a) and (h) shall be removed from office if such member —

Removal from office.

- (a) is absent from three consecutive meetings of the committee without written apology;
- (b) violates Chapter Six of the Constitution;
- (c) ceases to be a resident of the 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 duties.

13. (1) No matter or thing done by the Director, officer, assistant, employee or agent of the Department shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Directorate, render the member, officer, employee, agent or any person

Protection from personal liability.

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 Committee, shall if the court holds that such act was done in good faith, be paid out of the funds of the Directorate, 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 Committee, officer, employee or agent of the Directorate from individual responsibility for unlawful or criminal acts committed by the Director, officer, assistant, employee or agent of the Directorate.

14. (2) There is established a Forum to be known as the County Forestry Stakeholder Forum which shall comprise of—

County Forestry
Stakeholder Forum.

- (a) the County Executive Committee Member or an alternate designated in writing;
- (b) the Director who shall be the Secretary of the Forum;
- (c) a representative of the Kenya Forest Service;
- (d) a representative of the Kenya Forest Research Institute;
- (e) a representative of the Kenya Wildlife Service;
- (f) a representative of the National Environment Management Authority;
- (g) chairperson of the county assembly committee responsible for matters relating to forest;
- (h) the County Commissioner or an alternate designated in writing; and

the two levels of government to engage in discussions and make decisions which shall enable the harmonization of their approaches towards forest management, protection and conservation.

(2) To enable the interactions referred to in subsection (1), the forum shall—

- (a) facilitate consultations and co-ordination of implementation of national and County policies in forest management, protection and conservation;
- (b) promote data and information sharing between the two levels of government in forest management, protection and conservation;
- (c) promote sharing of experiences, best practices, implementation of competencies and emerging issues in forest management, protection and conservation between the stakeholders;
- (d) identify and prevent potential conflicts in intergovernmental relations in forest management, conservation and protection before they become formal disputes; and
- (e) perform any other function that may be conferred on it by this Act.

PART III – MANAGEMENT OF FORESTS

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

Classification of forests.

(2) Community forest includes —

- (a) forestland lawfully registered in the name of group representatives under the provisions of any law;
- (b) forestland lawfully transferred to a specific community by any process of law;
- (c) forestland that is lawfully held, managed or used by specific communities as forest area, grazing areas or shrines; or
- (d) such other forest that may be set aside as a community forest by the County Government according to any written law.

(3) Private forests include —

- (a) forestland held by any person under any freehold tenure;
- (b) forestland held by any person under leasehold tenure;
- (c) any other forestland that may be declared private under the provisions of this Act; and
- (d) any forest owned privately by an individual, institution or body corporate for commercial or non-commercial purposes

17. The County Executive Committee Member shall, upon the recommendation of the Committee for the area within which a forest is situated, place any land under the management of the County where —

Placement of unclassified forest under the management of the County.

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

18. The County may establish and maintain arboreta and recreational parks for the non-consumptive use of persons residing within its area of jurisdiction—

Arboreta and recreational parks.

- (a) for the purposes of this section, the County shall cause housing estate developers within its jurisdiction to make provision for the establishment of mini-forests at the rate of at least five percent of the total land area of any housing estate intended to be developed;
- (b) the county may establish and maintain a recreational park in every market center within its area of jurisdiction; and
- (c) the County Executive Committee Member shall facilitate and initiate the provision of technical assistance in the establishment and maintenance of mini-forests, recreational parks and arboreta by the county government.

(2) No arboretum, mini forest or recreational park shall be converted to any other use unless the county

government consults the community residents of the area in the jurisdiction within which such arboretum, mini forest or recreational park is situated.

(3) For purposes of this section, the County Executive Committee Member, may in consultation with the community and other stakeholders, prescribe conditions as to the species of trees to be planted in a mini-forest, arboretum or recreational park.

19. (1) Within six months after enactment of this Act, the County Executive Committee Member shall, in consultation with relevant stakeholders formulate policies for the development and periodic revision of the forests management guidelines prescribed by this Act.

Forest management, protection and conservation policy guidelines.

(2) The purpose of the guidelines shall be to establish the standards for the management of all forests in accordance with accepted principles and practices under this Act.

(3) Adherence to the forest management guidelines shall form part of the requirements necessary for the approval of licenses under the provisions of this Act.

20. The County Executive Committee Member shall, within six months after the commencement of this Act and in consultation with relevant stakeholders, formulate the woodfuel rules and regulations for the purposes of ensuring sustainable woodfuel production and fair trade practices.

Woodfuel Rules and Regulations.

21. (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.

Ecosystem approach to management of Forests within the County.

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

22. (1) The management of every forest placed under the control of the County shall vest in the Executive Committee Member for the time being responsible for matters related to forests.

Management of forests within Nyeri County.

(2) Every forest under subsection (1) shall be managed in accordance with the Forest Management Guidelines that complies with the requirements prescribed by this Act and regulations or rules made under this Act.

(3) The Directorate with the recommendation of the Committee shall be responsible for the preparation of the forest management guidelines and the wood fuel regulations with respect to each forest.

(4) In the preparation of county forest conservation and management guidelines and the wood fuel regulations, the Directorate and the Committee shall ensure that there is public participation.

23. The County Executive Committee Member shall be responsible for the conservation, utilization, protection and sustainable management of forests and forest resources belonging to the county for the purposes of —

Purpose of
managing forests
within Nyeri County.

- (a) conservation of water, soil and biodiversity;
- (b) county cultural and religious heritage;
- (c) riverine and riverbank protection;
- (d) income to the county through licensing and leases to ensure sustainable utilization of wood and non-wood products and carbon trading;
- (e) carbon sequestration and other environmental services;
- (f) recreation and tourism; and
- (g) education and research.

24. (1) The county forest management, protection and conservation guidelines may allow, within the limitations of the available forest and land resources, for user and commercial rights, including —

Utilization of forests.

- (a) leases for both consumptive and non-consumptive uses including plantation establishment;
- (b) collection of non-wood forest produce for community-based enterprises;
- (c) grass harvesting and grazing; and
- (d) ecotourism and recreational activities.

(2) The management of the forests shall be done with participation of the community through signing of management agreements with community forests associations.

PART IV— COMMUNITY PARTICIPATION

Part A

25. (1) The Director shall keep a register of all registered community forest associations.

Operationalisation of the community forest association.

(2) The County Executive Committee Member in consultation with other stakeholders shall make regulations for the operationalization and functionality of the community forest association.

26. (1) The obligations of the community forest associations shall be to—

Obligations of the community forests associations.

- (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 forests;
- (b) formulate and implement environmental and forest programmes consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria;
- (c) protect sacred groves and protected trees;
- (d) assist the Directorate in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular in relation to act and omissions that destroy forests;
- (e) with the approval of the County Executive Committee Member enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of forests;
- (f) keep the County Executive Committee Member informed of any developments, changes and occurrences within forests which are critical for the conservation of biodiversity;
- (g) help in fighting fire and soil erosion; and
- (h) perform any other act that is necessary for the efficient conservation and management of forests.

27. (1) The County may, upon an application by a company, government agency, forest community, professional association, an educational institution, non-governmental organisation, co-operative society, or an individual, and after approval by the Committee has been

Management Agreement.

obtained, enter into an appropriate management agreement for all or part of any forest within its jurisdiction.

(2) A management agreement entered into under subsection (1) shall specify —

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

(3) Where the forest referred in subsection (1) lies within the jurisdiction of more than one County government, an application shall be made to each of such county governments, and such county governments may jointly agree to enter into a management agreement.

(4) Nothing in this section shall be deemed to transfer or to vest in any person, institution, or organization any right of ownership of any land declared to be a county government forest, other than the purposes of sustainable management.

(5) A management agreement shall not convert a forest placed under the control of the County into a settlement area.

(6) The management agreement between the County and the association shall confer on the association all or any of the following forest user rights —

- (a) collection of medical herbs;
- (b) harvesting of honey;
- (c) harvesting of timber and fuel wood;
- (d) grass harvesting and grazing;
- (e) collection of forest produce for community based industries;
- (f) ecotourism and recreational activities; and
- (g) scientific and educational activities.

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

Termination or variation of the Management Agreement.

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

(2) Where the Committee intends to terminate the management agreement or withdraw a particular user right on either of the grounds stipulated in subsection (1) (a) or (1)(b) of this section it shall —

- (a) issue a notice of to stop conducting any further activities in the forest; and
- (b) give the affected association seven days' notice to show cause why the management agreement should not be so terminated or the user right so withdrawn.

(3) Where an association is aggrieved by the decision of the Committee under this section, it may, within thirty days after being notified of the decision, appeal to the County Executive Committee Member against the decision.

PART B—Incentives for Forest Conservation

29. The purpose of the incentives for forest conservation is to —

Purpose.

- (a) to increase forest and tree cover;
- (b) to encourage stakeholders' participation; and
- (c) encourage operation of payment for ecosystem services mechanisms.

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

County community forestry programmes.

- (a) grants to community forest associations to support the preparation of management plans for forests on community land; and
- (b) qualified service providers to provide technical assistance to the community forest organizations.

31. The County Executive Committee Member shall by regulation, establish a county greening programme that shall provide —

County reforestation programme.

- (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.

32. (1) The County Executive Committee Member shall, on an annual basis, grant research awards and scholarships to further knowledge on forest resource management and conservation.

County forestry awards and prizes.

(2) In recognition of meritorious achievements and service in the forestry sector, the County Executive Committee Member shall, on an annual basis, award prizes to both individuals and organizations.

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

Alternative energy initiatives.

34. (1) The County Executive Committee Member, in-consultation with the 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.

Benefit sharing mechanism.

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

35. The County Executive Committee Member and the Committee shall plan and execute participatory programs necessary for observing the county tree-planting week on community and private forestland.

County tree planting week.

36. The County Executive Committee Members shall formulate regulations for private forest incentives.

Private Forest Incentives

PART V— MANAGEMENT OF COMMUNITY FORESTS

37.(1) The management of all forests and forest resources on community land shall vest in the community.

Management of community forest.

(2) The proceeds from the sale of trees or other forest produce and environmental services derived from a community forest shall be put in the fund established by the

County Executive Committee Member responsible for matters relating to finance under section 61.

(3) The County Executive Committee Member responsible for matters relating to finance shall by regulations determine the sharing of the proceeds in subsection (2)

38. (1) The community shall be responsible for the conservation, utilization, protection and sustainable management of forests and forest resources on community land for the purposes of—

Purpose of managing the community forests.

- (a) conservation of water, soil and biodiversity;
- (b) riverine and riverbank protection;
- (c) sustainable production of wood and non-wood products;
- (d) carbon sequestration, trade and other environmental services;
- (e) protection of forest resources from fire, insect and disease, and unlawful harvesting, damage or removal;
- (f) protection of areas prone to fire, flooding, and of areas of important genetic and biodiversity;
- (g) recreation and tourism;
- (h) cultural and religious purposes; and
- (i) education and research.

39. The forest conservation and management guidelines for community forests may, within the limitations of the available forest and land resources, allow for user and commercial rights, including—

Utilization of community forests.

- (a) collection of forest produce for community-based industries;
- (b) sustainable wood fuel production: guided by recommendations of the committee;
- (c) grass harvesting and grazing;
- (d) ecotourism and recreational activities;
- (e) sustainable harvesting on non-wood forest products; and
- (f) establishment of apiaries and other forest compatible enterprises as shall be recommended by the committee.

Nyeri County Forest Management and Conservation Bill, 2021

The Directorate shall, with advice from the
and as far as is reasonably practical, establish
urban parks, arboreta, and amenity belts on
s, for recreational, aesthetic and pollution
rposes.

Establishment of
urban park, arboreta,
amenity belts and
green zones.

Directorate shall cause residential and
state development to include the provision of
and other green zones to cover at least ten
land area to be developed.

ing in this Act shall be deemed to prevent any
forest community from using, subject to such
may be prescribed, such forest produce as it

Customary Rights.

shall make inquiries regarding the application, including the authenticity of the application and the suitability of the site vis-à-vis the activities for which the application is made, and, based on such inquiry, the County Executive Committee Member may within three months of receipt of the application—

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

44. (1) The Governor may, on the advice of the County Executive Committee Member, by order published in the Gazette, declare any tree, species or family of tree species to be protected in the whole county or in specific areas thereof, and the County Executive Committee Member shall cause this information to be disseminated to the public.

Protection of trees.

(2) The provisions of subsection (1) shall be reversed when the Governor is, on the advice of the County Executive Committee Member, satisfied that the protection is no longer necessary.

45. (1) A 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 and

Forest Management Plan.

- (a) the County Executive Committee Member shall be responsible for the preparation of a management plan with respect to the forest within the county, in consultation with the local communities;
- (b) the County government may discharge its responsibilities under this section by preparing any requisite plan and adopting it or by adopting a plan prepared by the community or any another person or body;
- (c) the County Executive Committee Member may, with the approval of the County Assembly, make rules to give effect to the provisions of management plans.

(2) The County Executive Committee Member shall,

be responsible for the protection and management of all forests and woodlands under its jurisdiction, and shall ensure that such forests are managed on a sustainable basis in accordance with an approved management plan.

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

Management of indigenous forest.

- (a) conservation of water, soil and biodiversity;
- (b) riverine 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.

(2) Pursuant to subsection (1), the County Executive Committee Member shall, in consultation with the Committee, prepare forest management plans for an indigenous forest.

(3) The provisions contained in this Act regarding the management of indigenous forests shall apply to the management of indigenous forests situated within the jurisdiction of the County.

(4) The authorized officer responsible for the area shall, in consultation with the ward administrator, forest association and local community, make inspection visits at least twice a year, and shall make a report thereon to the County Executive Committee Member as to whether such forests are managed in accordance with the provisions of this Act.

(5) The County Executive Committee Member shall report to the County Assembly on the authorized officer's report received under subsection (4), and the County Assembly may, if it is satisfied that it is in the public interest for a forest to be managed by the county, make appropriate recommendations to the County Executive Committee Member.

47. (1) The County Executive Committee Member, in consultation with the Committee shall only give its consent

Consent for mining and quarrying.

for mining and quarrying operations in a forest area where—

- (a) the area does not contain rare, threatened or endangered species;
- (b) the forest does not have any cultural importance or contain sacred trees or groves;
- (c) an independent Environmental Impact Assessment has been carried out;
- (d) the miner has undertaken through execution of a bond the value of which will be determined by the Board, to rehabilitate the site upon completion of his operation to a level prescribed by the County Executive Committee Member;
- (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) The County Executive Committee Member shall make rules to govern mining and quarrying in forests.

PART VI— LICENSES, CONCESSIONS AND PERMITS

48. (1) A person shall not undertake any commercial use of forests and forest resources on public land or community land without a licence from the County Government.

Licenses, concessions and permits.

(2) Notwithstanding subsection (1), a person shall not produce wood fuel in or from indigenous forests.

49. (1) 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.

Licenses.

(2) A licence shall only be granted where the use of forest resources is in accordance with the forest management guidelines and approved by the Committee.

(3) 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.

50. (1) A licence issued under this Act may be for commercial, consumptive or non-consumptive use.

Types of Licenses.

(2) Commercial use licences include –

- (a) forest concessions;
- (b) timber harvesting; and
- (c) woodfuel production.

(3) Non-consumption use licences include permits for purposes other than the harvesting or utilization of forest products and resources shall include—

- (a) ecotourism;
- (b) carbon trading; and
- (c) bee keeping.

51. (1) The approval of licences under this Act shall be subject to environmental and social safeguard.

Environment and social safeguard.

(2) A licence shall not be issued without a forest compliance audit.

52. (1) The County Executive Committee Member shall, in consultation with the Committee, establish standard qualifications for persons wishing to apply for permission to undertake commercial use of forests.

Standard qualifications to apply for licence.

(2) The County Executive Committee Member shall, by regulation, specify the standard qualifications and the form of pre-qualification requirements for all commercial use licences in accordance with the laws governing public procurement.

(3) A commercial use licence shall be issued through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

No. 33 of 2015.

(4) The County Executive Committee Member shall specify the standard qualifications by Regulation for issuance of community use permits.

53. (1) Concessions in respect of forest on land exceeding ten percent of the total area shall be subject to approval by the County Assembly.

Approval of concessions.

(2) A proposal for concessions on forest on land not exceeding ten percent of the total area shall be approved by the Committee prior to tendering.

(3) A person or entity shall not hold a total of more than ten percent in forest concessions.

54. (1) A forest concession for forests shall be issued in accordance with the provisions of the Act and the provisions of the Public Procurement and Asset Disposal

Issuance of forest concessions.

No. 33 of 2015.

Act and any other written legislation governing public concessions.

(2) The land involved shall be identified as a potential concession area in the approved forest management guidelines for the specific forest in effect at the time the concession is offered.

(3) The concession shall require the licence holder to prepare a concession area forest management plan, including inventories, reforestation or replanting programmes and annual operations plans.

(4) The concession shall require the holder to prepare environmental and social impact assessments as required under the provisions of the Environmental Management and Coordination Act and any other laws governing environmental protection.

No.8 of 1999

(5) The licence holder shall pay to the county —

- (a) the annual fee that the holder bid in the concession process; and
- (b) any other applicable taxes and fees, for the harvesting or use of forest resources.

(6) The basic term of the concession shall be for ten years on renewable basis.

(7) The concession shall define community user rights and benefits.

55. (1) A timber-harvesting contract shall be issued through a competitive bidding process and the provisions of the Public Procurement and Asset Disposal Act shall apply.

Timber harvesting contract.

No. 33 of 2015.

(2) A timber harvesting contract—

- (a) shall be for a term not exceeding two years;
- (b) shall describe one or more areas of land within which the holder may harvest timber, or the location of logs that are being sold;
- (c) shall specify an estimate of the volume of timber that may be harvested from an area of land described in the timber sale license, or the volume of harvested logs;
- (d) shall require the license holder to pay to the County Government prescribed fees; and
- (e) may include other terms and conditions,

consistent with this Act and as determined by the County Executive Committee Member.

(3) Proposals for timber harvesting contracts shall be approved by the Committee prior to being tendered.

56. (1) A special use permit shall be issued for—

Special use permits.

(a) eco-tourism and recreational development;

(b) conservation-based activities; and

(c) construction of public infrastructure, including dams, communication masts, solar and wind farm stations.

(2) A special use permits shall be issued through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

No. 33 of 2015.

(3) The land area involved must be in the approved forest management guidelines for the specific public forest in effect at the time the permit is offered.

(4) The special use permit shall provide for conditions to ensure the conservation of forest resources.

(5) The special use permit shall define its validity..

(6) The permit holder shall pay –

(a) the annual fee that the holder bid in the concession process; and

(b) any other prescribed fees.

(7) A special use permit shall not be effective unless it is approved by the County Executive Committee Member.

57. The County Executive Committee Member may issue permits for the following commercial uses by forest communities on community forests —

Forest permits for use by communities.

(a) grazing, firewood collection, herbs, honey harvesting, cutting of grass; and

(b) harvest or use of non-wood forest products.

58. (1) The County Executive Committee Member may issue permits for—

Permits for non-consumption uses.

(a) ecotourism; and

(b) research and education purposes for non-consumption uses of forests on community land.

(2) The holder of a concession, timber harvesting

contract, or a special use permit shall provide annual returns on the operations in a prescribed format to the County Executive Committee Member.

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

59. (1) Where there are reasonable grounds to believe that there has been a contravention of the condition of a licence, or any provision of this Act, the County Executive Committee Member shall, in writing, order the suspension of a license and require the license holder to take necessary measures to remedy or prevent the contravention within a period not exceeding seven days.

Suspension, cancellation or termination of licence.

(2) Where a license has been suspended under subsection (1), a person shall not continue any activity that was permitted under the terms of that suspended license.

(3) If a license holder fails to comply with subsection (1) and (2), the County Executive Committee Member shall cancel the license.

60. (1) A person shall not assign or transfer a licence or any rights to any other person without the prior written approval of the County Executive Committee Member.

Transfer of licence.

(2) The County Executive Committee Member shall not approve an assignment or transfer of a licence to any person who does not meet the basic qualification established in this Act and regulations.

(3) A person who contravenes subsection (1) commits an offence.

PART VII— FINANCIAL PROVISIONS

61. (1) The County Executive Committee Member for matters relating to finance may establish a fund in accordance with section 116 of the Public Finance Management Act.

The Fund.

No. 18 of 2012

(2) The fund shall be used in achieving the objectives of this Act.

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

Financial year.

63. (1) At least two months before the end of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of the Directorate

Annual estimates.

for that financial year.

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

- (a) preparation and operationalization of management plans for all community forests;
- (b) protection and conservation of all indigenous forests in community forests;
- (c) development and promotion under license of timber and bamboo plantations and recreational tourism in community forests;
- (d) fulfilment of any other activities either in the Strategic Plan or as deemed necessary by the Committee;
- (e) payment of the salaries, allowances and other charges in respect of the members of staff of the Directorate allowances;
- (f) proper maintenance, repair and replacement of the equipment and other movable property of the Service; and
- (g) capacity building for community forests associations for forestry development.

64. (1) The Committee shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Directorate.

Accounts and audit.

(2) Within a period of three months after the end of each financial year, the Committee shall submit to the County Executive Committee Member the accounts of the Directorate, 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.

PART VIII—ENFORCEMENT AND COMPLIANCE PROVISIONS

65. (1) The forester or any authorized officer of the Directorate may—

Power of officers.

- (a) demand from any person the production of an

authority or licence for any act done or committed by that person in a community or private forests, or in relation to any forest produce for which a licence is required under this Act or under any rules made thereunder;

- (b) require any person found within a community or private forests 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 community forest without any person in charge of them;
- (f) confiscate any equipment or receptacle placed without authority in a community or private forests.

66. (1) The Director shall promptly refer violations of the Act and its Regulations to the County Attorney. Referral.

(2) In lieu of making a referral, the Director may resolve a minor violation committed on community and private forest, through the assessment of an administrative penalty as established by a regulation, when the offense —

- (a) did not result in physical injury to any person;
- (b) did not significantly harm the interests of a local community; and
- (c) did not result in significant damage to forest resources or the environment; and
- (d) when the violator consents to imposition of an administrative penalty.

PART IX – OFFENCES AND PENALTIES

67. (1) Except under a forest resource licence granted under this Act, or with the permission of the County on community forest, no person shall, in a forest –

Prohibited activities
in the forest.

- (a) fell, cut, take, burn, injure or remove any forest produce or undergrowth;
- (b) clear cultivate, graze or break up land for cultivation or for any other purpose;
- (c) erect any building or livestock enclosure, or construct any road or path;
- (d) set fire to, or assist any person to set fire to, any grass;
- (e) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, or boundary mark;
- (f) possess, bring or introduce any chain saw or logging tools equipment.

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(3) All timber or any forest products cut, gathered, collected, removed, or possessed and all the conveyances, machinery, equipment, implements, work animals, and tools used in connection with this violation may be seized

and confiscated in favour of the County Government.

(4) Except under a forest resource licence granted under this Act, no person shall, in a community forest—

- (a) enter or remain between the hours of 7 p.m. and 6 a.m. unless using a recognized road or footpath or taking part in cultural, scientific or recreational activities;
- (b) enter any part which is by notice prohibited;
- (c) smoke, where smoking is by notice prohibited.

(5) A person who contravenes the provisions of subsection (4) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

68. (1) A person who grazes livestock in forests on community land without the permission of the community, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term of not exceeding six months or to both, and in addition, to confiscation of the livestock, and all equipment, implements, and tools used in connection with this violation may be seized and confiscated in favour of the County Government.

Grazing livestock on forest land without a licence.

(2) The livestock detained in subsection (1) may be auctioned at the expiry of seven days if not reclaimed by the owner.

(3) In case of death of or injury to the animals, liability belongs to the owner.

69. A person who willfully or maliciously sets fire to a forest on community or private land 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 twelve months, or to both such fine and imprisonment.

Setting fires.

70. (1) Any person who, not being a holder of a licence under this Act, produces woodfuel or offers for sale, sells or removes woodfuel in or from any community forest commits an offence.

Woodfuel.

(2) A person who produces wood fuel in or from an indigenous forest, and an officer who purports to issue a licence for wood fuel production in or from an indigenous

forest, commits an offence and are jointly or individually liable.

(3) A person who contravenes either subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding shillings one hundred thousand or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

71. (1) A person shall not without lawful authority—

Unlawful affixing or defacing of marks.

- (a) mark any forest produce;
- (b) alter or removes an official mark, or stamp; and
- (c) cover, remove or destroy any part of a tree or forest produce bearing an official stamp or mark.

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

72. A person operating a wood processing plant or downstream forest-based industry without a valid licence commits an offence and is liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment, and all the conveyances, machinery, equipment, implements, and tools used in connection with this violation may be seized and confiscated in favour of the County Government.

Unlawful operation of wood processing plants or forest-based enterprises.

73. (1) Any person who, without lawful authority —

Counterfeiting.

- (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 Unit, 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 of a tree bearing the stamp or other mark used by any forest officer;
- (c) covers any tree stump in any forest with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or

to conceal, destroy or remove such tree or any part thereof;

any uniform or part of a uniform, or any other mark issued by the Directorate to forest officers or other employees of the Unit, or who in any other way holds himself out as an employee of the Unit; or

any permit or other document purporting to be issued under this Act or any other document issued under this Act or any other document made thereunder.

- (c) litter in any community or private forests with polythene carry bags.

(2) Any person who contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment of a term not exceeding six months.

77. (1) Any person who fells, cuts, injures or removes, trades in or exports or attempts to export any protected tree, species or family of trees or regeneration thereof or abets in the commission of any such act commits an offence.

Other offences and penalties.

(2) A person who—

- (a) commits a breach of this Act, or fails to comply with its provisions;
- (b) commits a breach of, or fails to comply with any of the terms or conditions of a licence issued to the holder under this Act; or
- (c) fails to comply with a lawful requirement or demand made or given by a forest officer of the unit, obstructs a person in the execution of their powers or duties under this Act, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

78. A community forest association is liable for acts committed in contravention to this Act by themselves, and their members, and their operators, employees, agents, and contractors.

Forest groups.

79. The County Executive Committee Member may, by gazette notice impose such fines as necessary to fulfil the objectives of this Act.

Administrative fines.

80. (1) A person who contravenes a provision in this Act or any regulation implementing these provisions, is guilty of an offence, and is liable upon conviction to fines, imprisonment and other penalties.

General Penalty.

(2) Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable to a fine of not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or both.

(3) Offences under this Act and the Regulations shall be reported to county law enforcement officers.

PART X—MISCELLANEOUS PROVISIONS

81. (1) The County Executive Committee Member may make regulations generally for the better carrying out of the objects of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the County Executive Committee Member shall make regulations providing for—

- (a) guidelines on incentives and benefit sharing;
- (b) the conditions subject to which any licence, permit or authorization may be granted or issued under this Act;
- (c) regulation of activities in community or private, nature reserve and visitor indemnity;
- (d) measures that enhance community participation in the conservation and management of forests;
- (e) protection of endangered and threatened tree species;
- (f) measures for participatory forest management agreements with other stakeholders and lead agencies;
- (g) the manner of representation of communities and other stakeholders to the Committee and forest conservation committees;
- (h) how the harvesting, collection, sale of and disposal of forest produce including timber grading and marking;
- (i) the amount of royalties or fees payable under this Act generally or in particular cases;
- (j) the use and occupation of forests for the purposes of residence, cultivation, and grazing;
- (k) guidelines for eco-tourism including recreation, camping, picnicking and cultural activities;
- (l) guidelines for management planning process;
- (m) 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 the person by the licence;

- (n) the felling, working and removal of forest produce in areas where trees may be felled or removed;
- (o) compulsory use of property marks by the Directorate, the County Department responsible for forestry and owners of private forests for the purpose of identifying wood sold from county, community, provisional and private forests;
- (p) the creation of new forest areas including establishment of commercial forests;
- (q) production, transportation and marketing of charcoal;
- (r) ensuring compliance with national obligations; and
- (s) any other matter necessary for the implementation of the provisions of this Act

82. The County Executive Committee Member shall prepare and publish an annual report on the status of the forests and any policies on forest management, protection and conservation to be tabled before the county assembly and circulate the same to the public.

Preparation and submission of annual report.

83. (1) The Directorate shall collaborate with relevant institutions to enhance and prepare a forestry research and development strategy for the County.

Access to information.

(2) The Directorate 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.

84. The Committee may on community or private land advise the County Executive Committee Member to—

Forests pests and disease control.

- (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.

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

Protected species.

(2) A person shall not fell or remove protected species.

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

86. The Executive Committee Member shall notify the relevant national government agencies within twelve months after enactment of this Act to gazette regulations on the introduction, prevention, control and management of invasive species and thereafter every two years.

Control of invasive species.

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to ensure the sustainable management of forest and forest resources in Nyeri County. The Bill further seeks to effect the provisions of paragraph 10 of Part 2 of the Fourth Schedule of the Constitution that mandates the county governments to implement national government policies on natural resources and environmental conservation including forests.

The Bill has ten Parts:

Part I provides for preliminary matters.

Part II provides for Institutional Framework. This part establishes the County Forestry Committee and forum. It also establishes the functions of these institutions in line with the County Executive Committee Member.

Part III provides for Management of Forests. This part specifies on the classification of forests in Nyeri County and how they are managed, conserved and protected.

Part IV provides for Community Participation. This part provides for the participation of the community in forest management, protection and conservation and their incentives.

Part V provides for Management of Community Forests. This part provides for guidance on how community forests can be managed, conserved and protected. It also appreciates the customary rights of the community.

Part VI provides for Licenses, Concessions and Permits. The part provides for control over the usage of the forests through licences, concessions and permits.

Part VII provides for Financial Provisions. The part provides for the funds and financial account audits.

Part VIII provides for Enforcement and Compliance Provisions. The part provides for the powers of the officers and referrals.

Part IX provides for Offences and Penalties. The part provides for prohibited activities in the forest and penal provisions.

Part X provides for Miscellaneous Provisions. The part provides for regulations, preparation and submission of annual reports, forests pests, protected species and control of invasive species.

The Enactment of this Bill may occasion additional expenditure of public funds to be provided for in the estimates.

Dated the 15th March, 2021.

WATSON WERU,
Chairperson- Environment and Natural Resources Committee.