

CHAPTER 52

FORESTRY

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
3. Appointment of forestry officers.

PART II—SPECIAL PROVISIONS RELATING TO GOVERNMENT FOREST RESERVES
AND GOVERNMENT PROTECTED FORESTS

4. Governor may constitute reserves and protected forests.

PRELIMINARY PROCEDURE FOR CONSTITUTING GOVERNMENT FOREST RESERVES

5. Notification of intention to create a reserve and appointment of reserve settlement officer.
6. Notice of inquiry.

THE INQUIRY

7. Duty to reserve settlement officer at inquiry.
8. Reserve settlement officer to have judicial powers.
9. Reserve settlement officer may sever or join claims.

JUDGMENT

10. Publication of judgment on completion of the inquiry.

APPEAL

11. Appeals from judgment of reserve settlement officer.

CONSTITUTION OF THE FOREST RESERVE

12. Order of the Governor constituting the forest reserve.

MODIFICATION OF THE RESERVE SETTLEMENT OFFICER'S JUDGMENT

13. Rights may be extinguished or modified by Commissioner.
14. Reserve may be made to exclude areas over which claims are admitted.

FURTHER PROVISIONS AFFECTING RIGHTS

15. Commissioner may close existing rights of way and watercourses if alternatives exist.
16. Extinguishment and revival of rights.
17. Non-exercise of rights.
18. Rights in reserves may not be alienated without consent of Commissioner.
19. No new rights to be acquired in land to be constituted a reserve except with approval.

MISCELLANEOUS

20. (Repealed by KDSLN 5 of 1982).
21. Power to de-reserve.

PART III—SPECIAL PROVISIONS RELATING TO LOCAL GOVERNMENT FOREST RESERVES

CONSTITUTION OF RESERVES

22. Constitution of local government forest reserve.

PROCEDURE

23. Action precedent to the constitution of a local government forest reserve.
24. Order constituting local government forest reserve.
25. Approval of Commissioner.
26. Power to local government to revise or modify order.

PROVISIONS AFFECTING RIGHTS IN LOCAL GOVERNMENT RESERVES

27. Extinguishment of rights in local government forest reserve.
28. Control of alienation of rights in local government forest reserve.
29. Power to de-reserve.

PART IV—GOVERNMENT FOREST RESERVES CONVERTED TO LOCAL GOVERNMENT FOREST RESERVES

30. Power to convert existing forest reserves into local government forest reserves.

PART V.—LOCAL GOVERNMENT PROTECTED FORESTS

31. Protected forests.
32. Power to withdraw protection.

PART VI—ADMINISTRATION OF LOCAL GOVERNMENT FOREST RESERVES

33. Management of local government forest reserves.

PART VII—COMMUNAL FORESTRY AREAS

34. Power of local government to declare lands communal forestry areas.
35. Notification of declaration.
36. Management and control.
37. Power of local government to make rules.
38. Power to vary or cancel declaration.

PART VIII—GENERAL PROVISIONS

ENTRY UPON LANDS

39. Marking of boundaries.
40. Improvement of forest generally.
41. Prevention of offence.
42. Power to exempt certain classes and districts.

MISCELLANEOUS

43. Forest produce required for public purposes from local government forest reserves.
44. Disposal of fees and royalties.
45. Saving of power to acquire land in local government forest reserves for public purposes.

REGULATIONS

46. Power of Governor to make regulations.
47. Power of Governor to make regulations.
48. Power to exempt areas from regulations.
49. Power of local government to make rules.

OFFENCES AND LEGAL PROCEDURE

50. Acts prohibited in a forest reserve.
51. Saving in respect of section 50.
52. Offences in protected forests.
53. Seizure of certain forest produce.
54. Offences.
55. Arrest of suspected persons.
56. Innocent possession.
57. Onus of proof.
58. Authority to compound offences.
59. General penalty.
60. Additional penalty.
61. Institution and conduct of legal proceedings.

PART IX—SAVING

62. Saving as to existing forest reserves.

CHAPTER 52

FORESTRY

A LAW FOR THE PRESERVATION AND CONTROL OF FORESTS

NN 1963,
Cap. 44,^a
KDSLN 5 of
1982,
KTSLN 1 of
1987.

[1 February 1938]

Date of
commence-
ment.

1. This Law may be cited as the Forestry Law.

Short title.

PART I—PRELIMINARY

2. In this Law, unless the context otherwise requires:—

Interpreta-
tion.

“cattle” includes sheep, goats, horses, mules, donkeys and camels;

“chairman of the local government” means the chairman of the local government council of the area within which the area, or the council in question, is situated;

“communal forestry area” means any land within the area occupied by a local community which land is constituted a communal forestry area under this Law;

“Commissioner” means the State Commissioner for the time being charged with responsibility for forests;

“community” means any group of persons occupying any lands in accordance with and subject to customary law;

“enclave” means an area completely surrounded by a forest reserve and excluded from that forest reserve by an order made under this Law;

“forest” includes Government forest reserves and protected forests, local government forest reserves and protected forests, and communal forestry areas;

^aThe numbering of the sections has been retained.

"forest growth" includes anything growing or to be grown on land other than agricultural crops;

"forestry officer" means any officer of the Forestry Division of the Ministry of Animal and Forest Resources or any officer appointed under section 3 for the purpose of giving effect to the provisions of this Law;

"forest produce" includes:-

- (a) timber, firewood, charcoal, rubber, gutta percha, latex, wood oil, gum, resin, natural varnish, tanning extracts, tanning barks, fruits, fibres, bark and lac, whether found in or brought from a forest or not; and
- (b) (i) trees and all other parts or produce of trees not otherwise herein mentioned;
- (ii) plants, including climbers and grasses, creepers and all parts or produce of such plants;
- (iii) wood ashes;
- (iv) peat surface soil and minerals other than minerals within the meaning of any enactment regulating the working of minerals;
- (v) gravel, limestone, rock and laterite;
- (vi) honey, beeswax, guano, silk-cocoons, humus and all produce from animals,

when found in or brought from a forest;

"forestry property" means any stock, stores or materials owned by Government or a local government and used or intended to be used in any forest operations or any forestry work, and includes boundary marks and pillars, boundary or survey beacons or signs, name plates, machinery, scientific instruments, implements, tools, buildings, tents, fences, vehicles, roads and bridges and cattle;

"forest reserve" means any area constituted a forest reserve under the Law or under any enactment repealed by this Law, which shall not have ceased to be a forest reserve under any enactment;

"girth" means the circumference of a tree measured either at a height of four feet six inches from the ground or (if the tree is buttressed above that height) measured at one foot above where the highest buttress merges with the bole;

"inquiry" means any inquiry by a reserve settlement officer;

"lands at the disposal of the Government" means any lands which the state has acquired or may acquire by agreement or otherwise and includes lands leased to the Government;

"minor forest produce" means any forest produce other than timber;

"protected forest" includes:-

- (a) any area declared to be, or constituted as protected forest under this Law;
- (b) any area proposed to be reserved, the preliminary notice in regard to which has already been published;

"protected tree" or "protected minor forest produce" means any species of tree or any minor forest produce declared by the prescribed person to be protected under this Law;

"timber" includes all trees, whether standing, fallen or felled, stumps of trees and all wood, whether or not cut up of fashioned or hollowed out for any purpose;

"to take minor forest produce" includes to cut, collect, gather or remove such produce;

"to take timber" means to fell, lop or girdle trees or to carry away any timber from the lands upon which the trees have fallen or been felled, whether the trees have been felled by cutting or by removing the soil from the roots or by any other method or combination of methods;

"tree" includes palms;

"working plan" means any plan of operations or work on any area whether in a forest or not so decided upon and described as such by the Chief Conservator of Forests.

3. The Civil Service Commission or the Local Government Service Board, may appoint such officers as may be considered necessary for the purpose of giving effect to the provisions of this Law.

Appoint-
ment of
forestry
officers.

Governor may constitute reserves and protected forests.

PART II—SPECIAL PROVISIONS RELATING TO GOVERNMENT FOREST RESERVES AND GOVERNMENT PROTECTED FORESTS

4.—(1) It shall be lawful for the Governor to constitute as Government forest reserves any of the following lands:—

- (a) lands at the disposal of Government;
- (b) any lands in respect of which it appears to the Governor on the advice of the Chief Conservator of Forests that the forest growth on such lands should be protected or reserved or forest growth be established.

(2) The Governor may by notice in the State Gazette declare any such lands to be a Government protected forest.

Preliminary Procedure for Constituting Government Forest Reserves

Notification of intention to create a reserve and appointment of reserve settlement officer.

5.—(1) Before constituting any lands a Government forest reserve a notice shall be published by the Governor in the State Gazette:—

- (a) specifying as nearly as may be the situation and limits of the lands;
- (b) declaring that the lands now form a protected forest;
- (c) declaring whether the lands are at the disposal of the Government or are lands coming within section 4(1)(b);
- (d) declaring that it is intended to constitute such lands a Government forest reserve, either for the general purposes of Government or for the particular use and benefit, wholly or in part, of any class of persons or for the benefit of any community or authority;
- (e) appointing an officer, hereinafter referred to as the reserve settlement officer, to inquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person or communities or brought to the knowledge of the said officer affecting the lands or any other rights in or over the lands which it is proposed to constitute a Government forest reserve.

(2) If for any reason the reserve settlement officer appointed under this section is unable to perform his duties, the Governor may, by notice in the State Gazette, appoint any person to act on his behalf or as his successor; such notice may have retrospective effect for a period not exceeding one month.

6. Upon publication of the notice aforesaid the reserve settlement officer shall:—

Notice of inquiry.

- (a) immediately cause the particulars contained therein to be made known in the district or districts in which the lands are situated by causing the same to be read and interpreted in the local language in every area court in the said district or districts and also by, as far as he considers essential, informing the chiefs of the communities dwelling on, and the local government having jurisdiction over, the lands aforesaid in writing; and
- (b) fix and, in the manner aforesaid, make known a period within which and a place to or at which any person or community claiming any right or rights in or over or affecting the lands which it is proposed to constitute a forest reserve shall either send in a written statement of claims to him or appear before him and state orally the nature and extent of their alleged rights.

The Inquiry

7.—(1) As soon as possible after the expiration of the period fixed by the reserve settlement officer he shall:—

Duty of reserve settlement officer at inquiry.

- (a) inquire into and determine the limits of the lands specified in the notice aforesaid; and
 - (b) determine the nature and extent of any claims or alleged rights affecting the land which have been preferred or brought to his notice.
- (2) The reserve settlement officer shall keep a record in writing of:—
- (a) all such claims and alleged rights;
 - (b) all objections which may be made to such claims or alleged rights; and
 - (c) any evidence in support of or in opposition to any claim or alleged right.

8. For the purposes of the inquiry the reserve settlement officer shall have all the powers conferred upon a District Judge.

Reserve settlement officer to have judicial powers.

Reserve settlement officer may sever or join claims.

9. The reserve settlement officer may at any time during the inquiry join any number of claims or sever any claims joined and in his judgment may give a decision which may join any number of claims or sever any claims which were formerly joined.

Judgment

Publication of judgment on completion of the inquiry.

10.—(1) Upon the completion of the inquiry, the reserve settlement officer shall deliver his judgment, describing the limits of the land specified in the notice aforesaid and setting forth, with all such particulars as may be necessary to define their nature, duration, incidence and extent, all claims and alleged rights preferred or brought to his knowledge in respect of the lands and admitting or rejecting the same wholly or in part, and shall file it at the Land Registry.

(2) A notice shall be published in the State Gazette specifying the land which it is intended to reserve, the privileges conceded in respect of such land and stating the special conditions intended to govern the reservation thereof. In addition such notice shall be made known so far as may be practicable to every person who, and the head of any community which, preferred any claim or in respect of which any claim was brought to the knowledge of the reserve settlement officer.

Appeal

Appeals from judgment of reserve settlement officer.

11.—(1) Any person who has made a claim on his own behalf, or where a claim has been made on behalf of a community that person or the representative of that community may, within three months of the date of delivery of the judgment, appeal to a District Judge against that portion of the reserve settlement officer's judgment which affects his claim or the claim made on behalf of the community which he represents.

(2) An appeal shall lie to the High Court within whose area of jurisdiction the forest reserve is situate from a decision of a District Judge on appeal against the judgment of the reserve settlement officer within thirty days of the date of the decision appealed against. The decision of the High Court shall be final.

Constitution of the Forest Reserve

12.—(1) The Governor may make an order constituting the lands in respect of which an inquiry has been held a Government forest reserve at the expiration of three months from the date of publication of the notice in the State Gazette under section 10:

Order of the Governor constituting the forest reserve.

Provided that if an appeal has been made against the judgment of the reserve settlement officer no such order shall be made until such appeal has been determined or until the expiration of the time within which an appeal may be laid.

(2) Such order shall, subject to the provisions of subsection (3), set forth:—

- (a) the limits of the lands which constitute the reserve; and
- (b) all rights affecting the same as set forth in the judgment of the reserve settlement officer or established by the court upon appeal from such judgment; and
- (c) such additional rights as the Governor shall consider it just and equitable to allow notwithstanding that such rights have not been allowed in the judgment of the reserve settlement officer.

(3) Such order shall not include therein such rights as may have been allowed by the reserve settlement officer but which have been subsequently modified or extinguished as hereinafter provided and where the boundaries of the reserve have been modified as hereinafter provided the order shall set forth the boundaries as subsequently determined.

(4) Such order shall be published in the State Gazette and made known in the same manner as was the judgment of the reserve settlement officer.

(5) From the date of the publication of such order in the State Gazette such lands shall be a Government forest reserve.

(6) Any order made under this section may be revised or modified by the Governor and such revision or modification may be given retrospective effect.

(7) In any revision or modification made by the Governor under subsection (6) the Governor may, after such inquiry, if any, as he shall in his discretion think fit:—

- (a) exercise the powers conferred upon him by subparagraph (ii) of section 13; and
- (b) add such additional rights as he shall consider it just and equitable to allow notwithstanding that such rights had not been allowed in the judgement of the reserve settlement officer.

Modification of the Reserve Settlement Officer's Judgment

Rights may be extinguished or modified by Commissioner.

13. Where the reserve settlement officer has admitted wholly or in part any right or claim and in the opinion of the Commissioner the exercise of such right or claim or any part thereof:-

- (a) would stultify the objects of any forest reserve;
- (b) would seriously hinder the efficient working of any forest reserve; or
- (c) would do serious damage to any forest reserve;

the Commissioners:-

- (i) may extinguish any such rights or claims and shall either give monetary compensation, or grant in exchange similar rights on other similarly situated land either within or without the final boundaries of the forest reserve; or
- (ii) may confine or restrict any rights or claims to certain areas either within or without the forest reserve or the exercise of such rights to certain times of the year; or
- (iii) may adopt wholly or in part any one or any combination of the above methods of dealing with the matter.

Reserve may be made to exclude areas over which claims are admitted.

14. If the reserve settlement officer has admitted wholly or in part any rights on any area which in the opinion of the Chief Conservator of Forests could be excised from the reserve without materially altering or stultifying the objects of the reserve the Governor may so amend the boundaries of the reserve that such areas are excluded from the reserve or he may create such excluded areas or enclaves within the boundaries of the reserve:

Provided that in altering the external boundaries of the reserve the officer shall not include any area which lies outside the original boundaries set out in the notice of the proposed reserve published in accordance with the provisions of section 5.

Further Provisions affecting Rights

15. In any Government forest reserve the Commissioner may close any right of way or watercourse:

Government Commissioner may close existing rights of way and watercourses if alternatives exist.

Provided that in his opinion another right of way or watercourse equally convenient already exists or is provided.

16. Every right in or over land in respect of which no claim shall have been made to the reserve settlement officer, or of which no knowledge shall have been acquired by that officer before delivery of his judgment shall be extinguished:

Extinguishment and revival of rights.

Provided that if any person shall, within one year of the date of delivery of the final judgment, claim and satisfy the Commissioner that he was possessed of a right in respect of which he might have made a claim, and that through ignorance of the fact that an inquiry was being held or for other sufficient reason he failed to make such claim, the Commissioner may direct:-

- (a) that such right shall be revived; or
- (b) that such claim shall be modified or extinguished in accordance with the provisions of section 13.

17. If any right within a forest reserve shall not have been exercised for a period of ten years it shall be deemed to be extinguished.

Non-exercise of rights.

18. It shall not be lawful for any person to alienate any right, affecting land included in a forest reserve, which has been established before the reserve settlement officer or before a court under section 11 or revived under section 16, by sale, mortgage or transfer without the consent of the Commissioner first had and obtained. Any such sale, mortgage or transfer effected without such consent shall be null and void.

Rights in reserves may not be alienated without consent of the Commissioner.

19. During the period between the dates of the publication by the Governor of the notice of his intention to create a Government forest reserve and of the order of the Governor constituting the reserve:-

No new rights to be acquired in land to be constituted a reserve except with approval.

- (a) no right shall be acquired in or over the land comprised within such notice otherwise than by succession or under a grant or contract in writing entered into with the approval of the Governor; and

(b) save as hereinafter provided:-

- (i) no new house shall be built;
- (ii) no tree shall be cut; and
- (iii) no forest produce shall be removed;

Provided that nothing in this section shall be deemed to prohibit any act done with the permission in writing of the local government or a forestry officer of a rank not below that of assistant conservator of forests.

Miscellaneous

20. Repealed by KDSL N 5 of 1982.

Power to
reserve

21. The Governor may by order direct that from a date named therein any lands or any part thereof constituted a Government forest reserve under section 12 shall cease to be a Government forest reserve or a part of such reserve and thereupon from such date such lands shall cease to be a Government forest reserve or a part of such reserve:

Provided that the rights, if any, which may have been extinguished therein shall not revive in consequence of such cessation.

PART III—SPECIAL PROVISIONS RELATING TO LOCAL GOVERNMENT FOREST RESERVES

Constitution of Reserves

Constitution
of local gov-
ernment for-
est reserve.

22. It shall be lawful for a local government, by order made with the approval of the Commissioner, to constitute as a local governmental forest reserve and land lying within the area of its jurisdiction.

Procedure

Action pre-
cedent to the
constitution
of a local
government
forest res-
erve Com-
missioner.
KDSL N 5
of 1982.

23.—(1) No lands shall be constituted a local government forest reserve under section 22 unless and until:-

- (a) the intention to constitute such lands a local government forest reserve has been announced by the local government in a manner approved by the Commissioner; and
- (b) the existence, nature and extent of any rights claimed by or alleged to exist in favour of any persons or communities affecting the lands which it is proposed to constitute a local government forest reserve has been inquired into and determined by or under the direction of the local government.

(2) The announcement referred to in this section shall require all claimants to put forward their claims within three months.

(3) All claims not put forward within three months of the announcement shall be invalid:

Provided that the provisions of the proviso to section 16 shall apply to local government forest reserves, *mutatis mutandis*.

(4) If the inquiry made in acceptance with paragraph (b) of subsection (1) discloses the existence of any rights in any area which in the opinion of the Chief Conservator of Forests could be excluded in whole or in part from the reserve without materially altering or stultifying the objects of the reserve, the Commissioner may so amend the boundaries of the reserve that such areas are excluded from the reserve or he may create such excluded areas as enclaves within the boundaries of the reserve:

Provided that in altering the external boundaries of the reserve the Commissioner shall not include any area which lies outside the boundaries of the proposed reserve as announced in accordance with paragraph (a) of subsection (1).

(5) At any time either before or after an order has been made under section 22, the Commissioner, after reference to the Chief Conservator of Forests, may cause a further inquiry to be held by or under the direction of the local government or by any other person for the better determination of the rights affecting the land which it is proposed to constitute or which has been constituted a local government forest reserve.

24. Every order under section 22 constituting a local government forest reserve shall, after approval by the Commissioner, be published in the State Gazette and shall set forth the limits, situation and approximate area of the lands which constitute the local government forest reserve and all rights affecting the same as determined under the provisions of section 23.

Order con-
stituting
local gov-
ernment forest
reserve.

25. No order under section 22 constituting a local government forest reserve shall be published in the State Gazette or be of any effect unless and until it has received the approval in writing of the Commissioner which approval may be granted or withheld or granted on such conditions as the Commissioner may in his absolute discretion consider necessary.

Approval of
Commis-
sioner.

Power to
local govern-
ment to
revise or
modify
order.

26.—(1) A local government by order published in the State Gazette may revise or modify any order made under section 22 so that the rights affecting the land set forth in the order constituting the reserve shall accord with the determinations of any further inquiry held under the provisions of subsection (5) of section 23 and any rights declared invalid by subsection (3) of section 23 may be revived by an order under this section.

(2) The provisions of section 25 shall apply to an order made under this section in like manner as if to an order under section 22.

Provisions Affecting Rights in Local Government Reserves

Extinguish-
ment of
rights in
local govern-
ment forest
reserve.

27. Every right in or over land within an area constituted a local government forest reserve under section 22, other than the rights set forth in the order constituting such reserve, shall be extinguished upon the coming into operation of the order, save as provided in section 23.

Control of
alienation of
rights in
local govern-
ment forest
reserve.

28. It shall not be lawful for any person to alienate any right in or over land within an area constituted a local government forest reserve under section 22 by sale, mortgage or transfer without the consent of the local government which constituted such local government forest reserve or within whose jurisdiction it is situated. Any such sale, mortgage or transfer effected without such consent shall be null and void.

Power to
de-reserve.

29. A local government may by order made with the approval of the Commissioner direct that from the date named therein any lands or any part thereof constituted a local government forest reserve under section 22 shall cease to be a local government forest reserve or a part of such reserve and thereupon from such date such lands shall cease to be a local government forest reserve or a part of such reserve:

PART IV—GOVERNMENT FOREST RESERVES CONVERTED TO LOCAL GOVERNMENT FOREST RESERVES

Power to
convert exist-
ing forest
reserves
into local
government
authority
forest
reserves.

30. It shall be lawful for the Governor by order published in the State Gazette to declare that any Government forest reserve constituted under section 4 shall from a date to be specified in the order become a local government reserve or be divided up into two or more forest reserves, all or any of which shall become local government forest reserves. Thereupon all the preceding provisions of this Law relating to local government forest reserves

constituted under section 22 shall so far as possible apply to any so declared local government forest reserve as if it had been constituted a local government forest reserve by the local government within whose jurisdiction it is situated:

Provided that the rights recognized in the order under section 12 by which such forest reserve was constituted a Government forest reserve shall continue to be recognized together with all other lawful existing rights:

Provided further that no rights acquired by the Government under any of the provisions of this Law or of any Law repealed by this Law shall be thereby extinguished.

PART V—LOCAL GOVERNMENT PROTECTED FORESTS

31.—(1) Any local government with the approval of the Commissioner may, from time to time by notice, declare any land within its jurisdiction a local government protected forest.

Protected
forests.

(2) Every such notice shall be made public in the area to which it relates in the same manner as are by-laws of the local government for that area.

32. A local government authority with the approval of the Commissioner may declare by notice in the State Gazette that from the date named therein any land which has been declared a protected forest under section 31 shall cease to be a protected forest and thereupon such land shall cease to be a protected forest:

Power to
withdraw
protection.

Provided that the rights, if any, which may have been extinguished therein shall not revive in consequence of such cessation.

PART VI—ADMINISTRATION OF LOCAL GOVERNMENT FOREST RESERVES

33.—(1) The protection, control and management of a local government forest reserve shall be undertaken by the local government constituting it, or within whose jurisdiction it is situated, subject to the supervision and control of the Commissioner exercised with the advice of the Chief Conservator of Forests.

Management
of local gov-
ernment for-
est reserves.

(2) Such protection, control and management may, upon a notification to that effect being published in the State Gazette, be placed temporarily under the guidance and direction of the Chief Conservator of Forests either at the request of the local govern-

ment concerned, or upon the instructions of the Commissioner if he is of the opinion that such a step is necessary or expedient for ensuring the proper and sufficient protection, control and management of such local government forest reserve.

(3) Any local government forest reserve placed temporarily under the guidance and direction of the Chief Conservator of Forests in pursuance of the provisions of subsection (2) shall be protected, controlled and managed on behalf and for the benefit of the local government concerned.

PART VII—COMMUNAL FORESTRY AREAS

Power of local government to declare lands communal forestry areas.

34. Any local government at the request of any community within the area of its jurisdiction may, with the approval of the Commissioner for Local Government in consultation with the Ministry responsible for forests declare any lands within the area occupied by such local government a communal forestry area.

Notification of declaration.

35. Such declaration shall be made known in the same manner as local government by-laws are made known to persons ordinarily subject to the jurisdiction of a local government court and also by posting a notice setting forth the situation, extent and limits of the communal forestry area outside the office or other meeting place of the local government.

Management and control.

36. A communal forestry area shall be managed and controlled by the community acting on the advice of the local government and the forestry officer.

Power of local government to make rules.

37.—(1) A local government with the approval of the Commissioner may make rules for Local Government in consultation with the Ministry responsible for forests for the protection and management of communal forestry areas within the area of its jurisdiction for all or any of the following purposes:—

- (a) prescribing the duties of communities;
- (b) prohibiting or regulating the taking, free or on payment, of forest produce or of any specified kind of forest produce;
- (c) prohibiting the sale of forest produce or of any specified kind of forest produce by any person other than specified persons or classes of persons;

- (d) prohibiting the destruction of, or any act which may tend to the destruction of or cause injury to, any forest produce or forest growth or forest property;
- (e) providing for the seizure, detention, and disposal of timber or forest produce taken, collected, prepared, sold, purchased, possessed or not marked, in contravention of the rules or in respect of which any offence against the rules has been committed;
- (f) providing for the establishment of nurseries and for the afforestation of lands, the preservation and production of forest produce and the introduction of forest produce and the introduction of new species of trees or other forest produce;
- (g) providing for the management, utilization and protection of the areas;
- (h) protecting the forest produce in the areas by:—
 - (i) prescribing the time at which and the manner in which the rights recognized by customary law may be exercised;
 - (ii) prohibiting the taking or destruction of any specified kind of timber or minor forest produce in the exercise of such rights as aforesaid; and
 - (iii) prohibiting the exercise of all or any of such rights as aforesaid in any specified part of the area;
- (i) generally for giving effect to the objects and purposes for which the areas are established.

(2) By Laws made under this section shall be made known in the same manner as declarations made under section 34 and, subject to any exception specified in such rules, all rules made under this section shall apply to all persons who are subject to the jurisdiction of the local government, and may be made to apply in whole or in part to such other persons as may be specified in the said by-laws.

38. A local government may, with the approval of the Commissioner for Local Government in consultation with the Ministry responsible for forests, declare that from a specified date lands or any part thereof declared to be a communal forestry area shall cease to be a communal forestry area or a part of such area and

Power to vary or cancel declaration.

thereafter from such date such lands shall cease to be a communal forestry area or a part of such area. Such declaration shall be made known in the same manner as a declaration declaring an area a communal forestry area.

PART VIII—GENERAL PROVISIONS

Entry upon Lands

Marking of boundaries. KDSLN 5 of 1982.

39. Any person required so to do by the Commissioner for Local Government in consultation with the Ministry responsible for forests or the Conservator of Forests with necessary workmen may enter upon any land for the purpose of erecting any beacons or demarcating or cutting any boundary lines within and around any land which it is proposed to constitute a forest reserve or a protected forest and around any portions of land included as enclaves.

Improvement of forest generally.

40. Any forestry officer not below the rank of assistant conservator of forest may enter upon any land and may cut out and destroy any diseased, dead or dying tree or any tree likely to cause damage to any forestry property or to life or property.

Prevention of offence.

41. It shall be lawful for any forestry officer, or police officer to prevent the commission of any forestry offence.

Power to exempt certain classes and districts.

42. The Governor may by notice in the State Gazette withdraw from the operation of all or any of the provisions of this Law any class of persons or any tribe or part of a tribe, or any area specified therein, either for the period mentioned in the notice or without period assigned.

Miscellaneous

Forest produce required for public purposes from local government forest reserves.

43. It shall be lawful for the Commissioner to take from any local government forest reserve or protected forest any forest produce which may be required for public purposes upon payment of a fair and reasonable price therefor which price shall not exceed such fees and royalties as may be specified in regulations and are generally applicable in respect of the reserve or protected forest whence the forest produce was taken.

44.—(1) All fees received under this Law shall be paid by the officer receiving them into the Treasury of the State save that fees payable in respect of any local government forest reserve or any other area which the Governor may by notice in the State Gazette prescribe as an area in respect of which fees are payable to the local government, shall be paid by the officer receiving them direct to the local government.

Disposal of fees and royalties.

(2) Royalties shall be paid to the person or persons entitled to receive them.

45. Nothing in this Law shall be construed so as to prevent the acquisition under any enactment relating to the acquisition of lands for public purposes of land included in the area of local government forest reserve or protected forest.

Saving of power to acquire land in local government forest reserves for public purposes.

Regulations

46. The Governor may make regulations for all or any of the purposes following and may specify the area or areas to which all or any regulations shall apply:—

Power of Governor to make regulations.

- (1) prohibiting or regulating the taking of forest produce or of any specified kind of forest produce on lands at the disposal of Government or communal lands;
- (2) prohibiting the sale and purchase of forest produce or of any specified kind of forest produce by any person other than the holders of licences and permits granted under this Law, or by any other persons or by any classes of persons specified in the regulations;
- (3) prohibiting the sale, purchase and possession of forest produce taken, collected or prepared in contravention of this Law;
- (4) prohibiting the destruction of, or any act which may tend to the destruction of or cause injury to, any forest produce or forest growth or forest property in any forest reserve or on lands at the disposal of the Government or communal lands;
- (5) regulating the grant and prescribing the form that any licences or permits may take in any particular case:—
 - (a) to take forest produce in forest reserves or on lands at the disposal of Government, or communal lands; and

- (b) to sell and purchase forest produce;
- (6) prescribing the procedure for fixing and making known to the public the fees to be paid on the application for and the grant of any licence to permit and the royalties and fees to be paid by the holders thereof;
 - (7) prescribing the persons who may declare any specified kind of tree to be a protected tree and any specified kind of minor forest produce to be protected minor forest produce under this Law and the procedure therefor;
 - (8) providing for the collection, payment and disposal of fees, royalties, tolls and costs of survey and demarcation;
 - (9) providing for the survey and demarcation of forest reserves and forests;
 - (10) regulating the marketing of timber and the manufacture, use and possession of marking instruments;
 - (11) regulating the taking, collection and preparation of forest produce;
 - (12) providing for the seizure, detention and disposal of timber or forest produce taken, collected, prepared, sold, purchased, possessed or not marked, in contravention of this Law or in respect of which any offence against this Law has been committed;
 - (13) requiring the holders of licences and permits to render returns and accounts and to submit their books for inspection;
 - * (14) providing for the termination, revocation and forfeiture of licences and permits;
 - (15) regulating the transit of forest produce by land and water and by different means and classes of transport;
 - (16) regulating the salving and disposal of drift timber;
 - * (17) prohibiting any act which might cause the obstruction of any waterway or cause danger to navigation;
 - (18) providing for the establishment and maintenance of nurseries and for the afforestation of lands, the preservation and production of forest produce and the introduction of new species of trees or other forest produce;
 - (19) providing for the management, utilization and protection of forest reserves;

- (20) prescribing the powers and duties of forestry officers;
- (21) authorizing the payment of grants and bonuses out of the public revenue for the encouragement of forestry;
- (22) the protection of forest produce in forest reserved by:—
 - (a) prescribing the time at which and the manner in which the rights reserved or recognized by the reserve settlement officer may be exercised;
 - (b) prohibiting the taking or destruction of any specified kind of timber or minor forest produce in the exercise of such rights as aforesaid; and
 - (c) prohibiting the exercise of all or any of such rights aforesaid in any specified part of a forest reserve;
- (23) the control of protected forests and the protection of forest produce in a protected forest *mutatis mutandis* as if such protected forest were a forest reserve;
- (24) regulating the kindling of fires for any purpose within protected forest or a forest reserve and prescribing the persons who may allocate the period during which fire may or may not be allowed for any purpose;
- (25) providing for the remission or reduction of any royalty, tax or toll charged or payable under the provisions of this Law;
- (26) generally for giving effect to the objects and purposes of this Law.

47. The Governor may make regulations for imposing tolls on forest produce or any kind of forest produce conveyed on a inland waterways opened or improved by the Government.

48. The Governor may by notice in the State Gazette exclude from the operation of any regulations made under section 46 or any area prescribed in such notice.

49.—(1) A local government, with the approval of the Governor, may make rules for any of the purposes prescribed in section 46 for the general protection and management of forests and for forest produce, exclusive of Government forest reserves, in the area within its jurisdiction.

(2) Subject to any exception specified in such rules, all rules made under this section shall apply to all persons who are subject to the jurisdiction of the local government.

to the jurisdiction of the local government and may be made to apply in whole or in part to such other persons as may be specified in the said rules.

Offences and Legal Procedure

Acts prohibited in a forest reserve.

50. Whoever in any forest reserve, except with the authority in writing of the prescribed officer:—

- (a) takes any forest produce;
- (b) uproots, burns, strips off the bark or leaves from, or otherwise damages any tree;
- (c) sets fire to any grass or herbage, or kindles a fire without taking due precaution to prevent its spreading;
- (d) smokes or lights a fire in any part of a forest reserve within which, or at a time when, smoking or the lighting of fires is prohibited by an order of the Commissioner or a local government;
- (e) pastures cattle or permits cattle to trespass;
- (f) digs, cuts, turns or cultivates the soil or makes a farm or plantation;
- (g) trespasses in any part of a forest reserve in which trespass shall be prohibited by an order of the Commissioner or a local government or during any period specified in an order of the Commissioner or a local government;
- (h) constructs any dam or weir across any river or stream or otherwise obstructs the channel of any river or stream;
- (i) resides or erects any building;
- (j) hunts or fishes;
- (k) damages in any way or destroys any forestry property, shall be liable on summary conviction, to a fine of two hundred naira or to imprisonment of twelve months or to both.

Saving in respect of section 50.

51. Nothing in section 50 shall prohibit the exercise by any person or community of any right in a forest reserve constituted under this Law if such right has been recognized in the order constituting such forest reserve.

52. Whoever within a protected forest, except with the authority in writing of the prescribed officer:—

- (a) uproots, fells or otherwise damages any protected tree or over two feet in girth;
- (b) otherwise than during the period of year allowed for this purpose, either sets fire to or allows fire to spread to any forest growth unless such forest growth is being or has been felled for farming purposes;
- (c) contravenes any of the provisions of paragraph (b) of section 19,

shall be liable on summary conviction to a fine of one hundred naira or to imprisonment for six months and in addition thereto may be required by the court to pay a sum equivalent to the fee and royalties payable on any forest produce removed or damaged and also such amount, if any, as the court may consider just a compensation for any damage done.

53.—(1) Any forestry officer or police officer not below the rank of assistant superintendent of police may himself or by an Government employee acting under his directions, seize any forest produce reasonably suspected of having been unlawfully obtained or being unlawfully removed.

(2) Where the person suspected of having committed the offence in respect of which the forest produce has been seized has not been charged and the offence has not been compounded as hereinafter provided, such officer, after obtaining the order of magistrate, may:—

- (a) sell such forest produce and pay the proceeds thereof after deducting the expenses of the sale either to the Treasury of the State or to the local government treasury, as the case may be; or
- (b) destroy, or allocate such forest produce either to the use of Government or the local government, as the case may be.

54. Any person who:—

- (a) forges or fraudulently uses, or aids or abets any person to forge or fraudulently use, any registered hammer or hammer mark or any mark used for denoting the ownership of an

	forest produce, or any other mark used by the Forestry Division of the Ministry of Animal and Forest Resources in connection with the administration of the provisions of this Law, or any mark similarly used by a local government: or (b) alters, removes, destroys or defaces any such mark placed on forest produce or any boundary mark of a forest or of any land proposed to be included in a forest. shall be liable to a fine of two hundred naira or imprisonment for two years or to both.
Arrest of suspected persons.	55.—(1) It shall be lawful for any forestry officer to arrest without a warrant any person who may be reasonably suspected of having committed any offence under this Law, if such person refuses to give his name and address or gives a name and address which is believed to be false, or if there is reason to believe that he will abscond: Provided that any person so arrested shall be taken before a magistrate or to the nearest police station without unnecessary delay. (2) A local government forest guard shall, in respect of persons subject to the jurisdiction of a local government, have similar powers to those given to a forestry officer by this section: Provided that the person arrested shall be taken before an area court without unnecessary delay.
Innocent possession.	56. When any person is charged with the breach of any regulation prohibiting the sale, purchase or possession of any forest produce taken, collected or prepared in contravention of this Law, such person shall be liable to be convicted of such breach unless he shows to the satisfaction of the court that he was unaware that such forest produce was taken, collected or prepared in contravention of this Law.
Onus of proof.	57. The onus of proof that any forest produce has not been taken in contravention of this Law shall lie upon the person in whose possession the forest produce is found.

58.—(1) Where a person is reasonably suspected of having committed an offence against this Law, other than an offence under section 54, any forestry officer not below the rank of assistant conservator of forests may, instead of taking proceedings against such person in court, receive from such person a sum of money by way of compensation for the offence that he is suspected of having committed together with the value of the forest produce or forestry property in respect of which he was suspected of having committed an offence:

Provided that the money received by way of compensation shall not amount to more than twice the fees and royalties, if any estimated to have been lost on the forest produce in question, or twice the value of the forestry property in question, as the case may be.

(2) On such payment being made the suspected person, if in custody, shall be released and no further proceedings shall be taken against such person in respect of such offence, any property seized as being liable to forfeiture shall be restored and any proceeding pending in court in respect of the same person on the same fact shall be withdrawn.

(3) Any sums received under the provisions of subsection (1) shall, if the forest reserve or the protected forest in respect of which the offence was suspected of having been committed was a local government forest reserve or local government protected forest, be paid to the local government concerned and if not the sums shall be paid into the Treasury of the State.

59. Any person who contravenes any regulation made under this Law or the conditions of any licence or permit issued under this Law for which no penalty is expressly prescribed shall be liable to a fine of one hundred naira or to imprisonment for six months or to both.

60. In addition to any penalty imposed for an offence against the provisions of this Law or any regulations made hereunder the court may order:—

(a) any forest produce in respect of which the offence was committed or any instrument or thing with which the offence was committed to be forfeited and disposed of as the court may direct;