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MANAGEMENT ACT, 2017**

No. 5 of 2017

Date of Assent: 28th March, 2017

Date of Commencement: See Section 1

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**THE KWALE COUNTY FOREST CONSERVATION
AND MANAGEMENT ACT, 2017**

AN ACT of the County Assembly of Kwale to provide for the sustainable, utilization, management and conservation of the forests and forest resources for the socio-economic prosperity of the County, to give effect to section 21 (2) of the Forest Conservation and Management Act, 2016.

ENACTED by the County Assembly of Kwale as follows—

PART I—PRELIMINARIES

1. This Act may be cited as the Kwale County Forest Conservation and Management Act, 2017 and shall come into force upon notice in the *Kenya Gazette*. Citation and Commencement.

2. In this Act unless the context otherwise requires— Interpretation.

“authorised officer” has the meaning as defined in the County Governments Act, 2012;

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

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

“committee” means the Kwale County Forest Conservation Committee;

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

“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, services or Forest Land for direct or indirect financial benefits;

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

“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—
 - (i) Lawfully held, managed or used by specific communities as forest area, grazing areas or shrines;
 - (ii) Such other forest that may be set aside as community forest by the County Government.

“concession agreement” means authorization which is a long term agreement issued by the County Division responsible for forestry for the management of a specified forest area at a price determined after forest valuation and bidding;

“contract” means authorization entered into with a third part for performance of specified activities on behalf of the County Division responsible for forestry in a forest area for a specified fee;

“county” means Kwale County as established under article 176 (1) of the constitution;

“county forest” means forests within public land as defined under article 62 (2) of the constitution of Kenya;

“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;

“division” means organ of the County dealing with Forestry

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

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

“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 forest area on public land by means of a long-term contract for the purpose of commercial forest management and utilization;

“forest Division” means the County Directorate responsible for forestry;

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

“Forest management guidelines”

(a) means a written document establishing direction and goals for the management, conservation and utilization of a specific forest land area; specifying-

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

(ii) all practices that will minimize adverse environmental effects and optimize livelihood objectives

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

“fund” Means the Kwale County Forest Conservation and Management Fund to be established under the provisions of the public finance management act 2012;

“indigenous forest” means a forest which has come about by natural regeneration of trees primarily native to Kwale County.,

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

“licensing authority” means the person responsible for the issuance of licenses under his charge being the County Government of Kwale or its appointed authority;

“person” means a natural person or a corporate , including community associations;

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

“private forest” includes-

- (a) Forestland held by any person under freehold tenure;
- (b) Forestland held by any person under leasehold tenure; and
- (c) Forest on farmland
- (d) Any other forestland declared private under this Act

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

“provisional forest” means any forest which has been declared a provisional forest by the County Executive Committee Member;

“service” means Kenya Forest Service;

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

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

3. (1) The purpose of this Act is to ensure the sustainable management of the Kwale County forests. Purpose of the Act.

(2) Forest management is sustainable if it ensures biological diversity, enhanced productivity, regeneration and resilience capacities; vitality and posterity of forests. Sustainable management allows for the possibility of multiple uses of forest in a way that satisfies ecological, economic, social, and cultural needs.

4. This Act shall apply to County Forests, Community Forests and Private forests in Kwale County. Application of the Act.

5. (1) The principles set out in subsection (3) must be considered and applied in a balanced way— Guiding principles and values in decision-making.

- (i) In the exercise of any power or the performance of any duty in terms of this Act;

- (ii) In the development and implementation of County Government policies affecting forests;
 - (iii) In the exercise of any power or the performance of any duty in terms of any other legislation where the exercise of that power or the performance of that duty will impact on a forest;
 - (iv) In the issuing of a license or other authorization relating to the use of a resource that will affect forestry; and
 - (v) By any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity, which may have an effect on forests.
- (2) An organ of County Government applying these principles shall—
- (i) Take into account the differences between natural forests, woodlands and plantations;
 - (ii) Recognize that conservation of biological diversity within plantations should be promoted in a way which is consistent with the primary economic purpose for which the plantation was established;
 - (iii) Only apply those principles which it considers relevant to the decision or action which is contemplated; and
 - (iv) Give such weight to each principle, as it considers appropriate.
- (3) The principles and values are;
- (i) Forest resources are an important County asset of common concern and shall be managed in a manner that does not compromise the value of the resource according to the principle of sustainable development.
 - (ii) The “precautionary principle” and the “polluter and user pays principle” shall be applied in the conservation and management of forests;
 - (iii) To ensure that efforts to increase forest and tree cover are undertaken within broad County

land use and development plans, and an 'ecosystem' approach' shall be adopted wherever possible;

- (iv) The management of forests and forest resources shall where possible be devolved to the lowest level possible;
- (v) The principles of good governance and full access to public information, and a participatory approach to forest conservation and management will be enshrined to ensure the effective involvement of communities, the private sector and civil societies in planning, implementation and decision making processes;
- (vi) The rights and responsibilities of communities and private land owners to manage and utilize forest and forest resources shall be recognized so long as these do not contravene the provisions of any law.;
- (vii) Forest conservation and management shall be recognized and supported as a form of land use on public, community and private land;
- (viii) The benefits accruing from County and Community forests' conservation, their management and sustainable utilization shall be enjoyed and equitably shared among the people of Kwale County.
- (ix) Scientific knowledge and expertise, professionalism and international best practice, including the provisions of multilateral environmental agreements, shall form the cornerstone of policy and forest conservation and management,
- (x) Forest research, training and education shall be promoted; and,
- (xi) Indigenous knowledge and intellectual property rights embodied in forest biodiversity and genetic resources shall be protected.

PART II—ADMINISTRATION

- 6.** (1) There is hereby established a County Forest Division headed by a person appointed by the County

Establishment,
role and
functions of

Executive Committee Member.

County Forest
Division.

(2) The role and functions of the County Forest division is to ensure sustainable forest management and shall include—

- (i) Supervision, advisory and coordination role in all matters relating to forest policy and legislation;
- (ii) Formulation of policy and strategy for the conservation and management of forests and forest resources;
- (iii) Preparation of guidelines for regulation of trading, licensing and benefit sharing in respect of forestry resources.
- (iv) Setting County goals, objectives, targets, and indicators; Mainstreaming of forestry issues into other County sectoral policies, programmes and plans;
- (v) Implementation of forest management guidelines in collaboration with other departments and agencies;
- (vi) Establishing and coordinating County programmes to increase tree cover
- (vii) Promoting cooperation among county Government departments, private sector, non-governmental organizations and other organizations engaged in forest conservation and management;
- (viii) Co-ordinating development of the County Forest code;
- (ix) Performing such other functions as may be assigned under the provisions of this Act.

7. (1) There is established the Kwale County Forest Conservation Committee comprising of—

- (i) Chairperson, appointed by the County Executive Committee Member, from among the Committee Members and in accordance with the provisions of this Act. Provided that the Chairman should not be a public service employee

Establishment
and
Composition of
the County
Forest
Conservation
Committee.

- (ii) The Chief Officer in the Division responsible for Forestry or his representative who will be the secretary to the committee;
- (iii) The Chief Officer responsible for the County Finance or a designated representative,
- (iv) The Chief Officer, responsible for Lands or a designated representative;
- (v) A representative of the service in the County;
- (vi) A representative of Kenya Wildlife Service in the County
- (vii) Five other persons appointed by the County Executive Committee Member, of whom—
 - (a) One shall be nominated by a County body representing private forest owners;
 - (b) One shall be nominated by a County body representing forest owned by the community;
 - (c) One shall be nominated by a body representing the privates sector ;
 - (d) One shall be nominated by Woodfuel groups
 - (e) One from a non-governmental organization operating within the County and whose activities are focused on natural resource conservation

(2) The members of the Committee appointed under subsection (1) (ii) - (vii) may attend Committee meetings in person or through a designated representative.

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

(4) The appointment of the chairperson and the members under subsection (vii) shall be in writing by name and by notice in the County Gazette.

(5) In appointing the committee members the County Executive Committee Member shall comply with the provisions of the Constitution of Kenya.

8. (1) A person shall be qualified for appointment as the chairperson if that person—

Selection of the Chairperson.

- (i) Meets the requirements of Chapter Six of the Constitution;
- (ii) Holds at least a college certificate from a recognized institution;
- (iii) Has knowledge and experience of not less than five years in the field of natural resources, forestry, or environmental management

9. The functions of the Committee shall be to:-

Functions of the Committee.

- (i) Advise the County Executive Member on policy issues;
- (ii) Consider and recommend to the County Executive Member the establishment of County forests;
- (iii) Consider all management agreements;
- (iv) Advise the County Executive Member on establishment, review of policies and rules for marketing of and trade in forest produce within the County;
- (v) Advise the County Executive Member on all matters pertaining to the establishment, development, conservation and utilization of forests in Kwale County;
- (vi) Consider proposals for County forest concessions, timber harvesting contracts and special use permits as defined under the provisions of this Act;
- (vii) Carry out any other functions as may be prescribed by the provisions of this Act;
- (viii) Prepare annual report on the status of forests at the county level.

10. The business and affairs of the Committee shall be conducted in accordance with the provisions of the Second Schedule.

Conduct of business and affairs of the Committee.

11. A member of the Committee shall be paid such allowances and reimbursable expenditures for meetings as the County Executive Member shall determine.

Remuneration and allowances of Committee members.

12. Any person may make a written request to the forest division and the committee for any information held.

Public access to information.

**PART III—CONSERVATION AND MANAGEMENT
OF FORESTS**

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

(2) County forest includes all forests on public land as defined under article 62 (2) of the constitution.

(3) Community forest' includes;

- (i) Forestland lawfully registered in the name of group representatives under the provisions of any law; or
- (ii) Forestland lawfully transferred to a specific community by any process of law; or
- (iii) Forestland that is lawfully held, managed or used by specific communities as forest area, grazing areas or shrines; or
- (iv) Such other forest that may be set aside as a community forest by the County Government.
- (v) Forests on ancestral land and land traditionally occupied by hunter-gatherer communities;
- (vi) Forests lawfully held as trust land by the county government, but not including any public land held in trust by the county government under article 62(2) of the constitution

(4) Private forests include—

- (i) Forestland held by any person under any freehold tenure;
- (ii) Forestland held by any person under leasehold tenure; and
- (iii) Any other forestland that may be declared private under the provisions of this Act.

14. (1) Within six (6) months after enactment of this Act, the County Executive Committee Member shall in consultation with relevant stakeholders promulgate regulations for the development and periodic revision of the Kwale County Forests Management Guidelines and standards prescribed by this subsection. Forests Management Guidelines.

(2) The purpose of the Guidelines is to establish the standards for the management of all forests in accordance

with accepted principles and practices to which the County Government requires all forest managers under this Act to adhere

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

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

Woodfuel Rules
and Regulations

16. (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
Kwale County.

PART IV—MANAGEMENT AND USE OF COUNTY FORESTS

17. (1) The Management of every County Forest shall vest in the County Executive Member responsible for Forests.

Management
and use of
County Forests

(2) Every County Forest shall be managed in accordance with the Forest Management Guidelines and Code of Forest Practice that complies with the requirements prescribed by this Act and Regulations or Rules made under this Act.

(3) The Forest Division with the recommendation of the Committee shall be responsible for the preparation of the Forest Management Guidelines and the Woodfuel Rules and Regulations with respect to each County Forest.

(4) In the preparation of County Forest Management Guidelines and the Woodfuel Rules and Regulations, the Forest Division and the Committee shall ensure public participation.

18. The County Executive Member in charge of forestry 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
County forests.

- (i) Conservation of water, soil and biodiversity;
- (ii) County cultural and religious heritage

- (iii) Riverine and riverbank protection;
- (iv) Income to the county through licensing and leases to ensure sustainable utilization of woodfuel and non-wood products and carbon trading
- (v) Carbon sequestration and other environmental services;
- (vi) Recreation and tourism; and
- (vii) Education and research.

19. County Forest Management Guidelines shall allow, within the limitations of the available forest and land resources, for user and commercial rights, including:

Utilization of
County Forests

- (i) Leases for both consumptive and non consumptive uses including plantation establishment
- (ii) Collection of non timber forest produce for community-based enterprises;
- (iii) Sustainable woodfuel production;
- (iv) Grass harvesting and grazing;
- (v) Ecotourism and recreational activities.

20. (1). The County Executive Committee Member responsible for Forests shall gazette all forests on public land as defined under article 26 (2) of the constitution of Kenya as county forests.

Powers to
Gazette or
De-gazette a
County Forest

(2) The County Executive Committee member shall exercise this power subject to the approval of-

- (i) the public upon a 30 day notice;
- (ii) County Forest Conservation Committee;
- (iii) the County Executive Committee;
- (iv) the County Assembly;

21. (1). A registered community group adjacent to a county forest may apply to the county government for permission to participate in the conservation and management of a county forest, provided no such application shall be made where there is an existing prior agreement or licence in relation to that forest;

(2) An application made in accordance with this

section shall be in the prescribed form and shall provide—

- (a) a list of the members of the community group and its address;
- (b) the Constitution of the group ;
- (c) the area of forest for which the group proposes to undertake conservation and management;
- (d) the group' proposals concerning —
 - (i) use of forest resources;
 - (ii) methods of conservation of biodiversity;
 - (iii) methods of monitoring and protecting wildlife and plant populations and enforcing such protection; and
- (e) such other information as the County Executive Committee Member may require

(3) The County Executive Committee Member shall respond in writing to such an application following advice of the Committee within sixty (60) days from the date of application—

- (i) Where the county government grants permission in accordance with this section, it will sign memorandum of understanding with the community group;
- (ii) Where the county government denies permission in accordance with this section, it will provide reasons for refusal.

(4) the county government shall maintain an up to date record of all community groups that have been granted permission in accordance with this section

PART V—MANAGEMENT OF COMMUNITY FORESTS

22. (1) The county division shall register each community forest in accordance with regulations prescribed in this Act; Management of community forests

(2) After registration, the county division shall inform the service;

(3) upon registration under subsection (1), the community may apply —

- (i) to the county government for technical advice regarding appropriate forestry practices and conservation; or
- (ii) to the Fund, subject to availability of funds, loans from the Fund for the development of the forest.
- (iii) A community that establishes or owns a community forest may apply to the relevant authorities for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established;

(4) the management of community forests shall vest in the community in accordance with the county forest management guidelines;

(5) the proceeds from the sale of trees or other forest produce and environmental services derived from a community forest shall belong to the community.

23. 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 community forests

- (i) Conservation of water, soil and biodiversity;
- (ii) Riverine and riverbank protection;
- (iii) Sustainable production of wood and non-wood products;
- (iv) Carbon sequestration, trade and other environmental services
- (v) Protection of forest resources from fire, insect and disease, and unlawful harvesting, damage or removal;
- (vi) Protection of areas prone to fire, flooding, and of areas of important genetic and biodiversity;
- (vii) Recreation and tourism; and Education and research.

24. Forest Management Guidelines for forests on

Utilization of Community

community land shall allow, within the limitations of the available forest and land resources, for user and commercial rights, including:

- (i) Collection of forest produce for community-based industries;
- (ii) Sustainable woodfuel production;
- (iii) Grass harvesting and grazing;
- (iv) Ecotourism and recreational activities;

25. (1) The County Executive Committee Member may, upon consultation with the County Executive Committee Member responsible for land matters, by Notice in the Gazette, declare any forest on community land that is mismanaged, degraded, neglected or under threat of permanent loss to be a provisional forest.

(2) A declaration under sub-section (1) shall be made when the County Executive committee member has issued a notice to the community to undertake specific remedial activities to manage and conserve the forest, but such notice has not been complied with.

(3) A provisional forest shall be managed on behalf of the community by the forest division for a period not exceeding three years.

(4) Subject to a review undertaken by the Committee and the community, the provisional forest may revert to the community where both parties are satisfied that it has been adequately rehabilitated and measures to ensure its conservation and management are in place.

26. (1) The Forest Division with advice from the committee shall, as far as it is reasonably practical, establish and maintain urban parks, arboreta, and amenity belts on road reserves, for recreational, aesthetic and pollution mitigation purposes.

(2) The Forest Division shall cause residential and commercial estate development to include the provision of tree planting and other green zones to cover at least ten percent of the land area to be developed.

PART VI—MANAGEMENT OF PRIVATE FORESTS

27. (1) A person who owns a private forest, including a

forest in the course of establishment, on land owned by the person, may apply to the county government for registration. private land

(2) Upon registration under subsection (1), the owner of a private forest may apply—

- (a) to the county government for technical advice regarding appropriate forestry practices and conservation; or
- (b) to the Fund, subject to availability of funds, loans from the Fund for the development of the forest.
- (c) A person who establishes or owns a private forest may apply to the relevant authorities for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.

(3) The management of forests on private land shall be undertaken in accordance with the County Forest Management Guidelines;

(4) the County Government shall recognize private forest associations and cooperatives in Kwale County.

28. The owners of forests on private land shall be responsible for the conservation, utilization, protection and sustainable management of forests and forest resources on their land for the purposes of— Purpose of managing private forests

- (i) Conservation of water, soil and biodiversity;
- (ii) Sustainable production of wood and non-wood products;
- (iii) Carbon sequestration, trade and other environmental services
- (iv) Protection of forest resources from fire, insect and disease, and unlawful harvesting, damage or removal;
- (v) Recreation and tourism; and
- (vi) Education and research.

29. Private forest land owners shall be bound by the Forest Management Guidelines Utilization of forests on private land

30. The proceeds from the sale of trees or other forest produce and environmental services from a private forest Proceeds from the sale of private forest produce and

shall belong to the owner of the private forest.

services.

31. (1) A registered land holder may donate or bequeath land to the County Government for the development of forestry in accordance with the provisions of this Act.

Donations and bequests

(2) A forest or forest resources established on the land donated or bequeathed under subsection (1) above shall be gazetted in accordance with the provisions of this Act.

PART VII—LICENCES, CONCESSIONS AND PERMITS

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

General provisions

(2) 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.

(3) A licence shall only be granted when the use of forest resources is in accordance with the forest management guidelines

(4) 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.

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

Types of licences

(2) Commercial use licences include—

- (i) Forest Concessions;
- (ii) Timber harvesting
- (iii) Woodfuel production;

(3) Non-Consumption use licences include Permits for purposes other than the harvesting or utilization of forest products and resources.

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

Standard qualifications to apply for license

(2) For all commercial use licences the County Executive Committee Member shall by Regulation, specify the standard

qualifications in the form of pre-qualification requirements in accordance with the laws governing public procurement.

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

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

35. (1) Concessions in respect of County Forest on land exceeding 1,000 hectares shall be subject to approval by the County Assembly. Approval of concessions

(2) Proposals for concessions on County Forest on land not exceeding 1,000 hectares shall be approved by Committee prior to tendering.

(3) No Person or entity shall hold a total of more than 5,000 hectares in forest concessions.

36. (1) A forest concession shall be issued in accordance with the provisions of the Act and the provisions of the Public Procurement and Disposal Act or its successor legislation governing public concessions. Issuance of Forest Concessions

(2) The land involved shall be identified as a potential concession area in the approved Forest Management Guidelines for the specific County 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, 1999 and any other laws governing environmental protection.

(5) The licence holder shall pay to the County Government—

- (i) The annual fee that the Holder bid in the concession process; and
- (ii) Any other applicable taxes and fees, for the

harvesting or use of forest resources.

(6) The basic term of the concession shall not be longer than 20 years.

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

37. (1) A Timber harvesting Contract shall be issued through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

(2) Timber harvesting contract–

- (i) Shall be for a term not exceeding two years;
- (i) Shall describe one or more areas of land within which the holder may harvest timber, or the location of logs that are being sold;
- (ii) 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;
- (iii) Shall require the license holder to pay to the County Government prescribed fees;
- (iv) 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.

38. (1) Special Use Permits shall be issued for the following uses:

- (i) Eco-tourism and recreational development;
- (ii) Conservation-based activities; and
- (iii) Construction of public infrastructure, including dams, communication masts, solar and wind farm stations

(2) Special Use Permits shall be issues through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

(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 Licence shall provide for conditions to ensure the conservation of forest resources.

(5) The validity of the licence shall be defined in the licence.

(6) The licence holder shall pay—

(i) The annual fee that the Holder bid in the concession process; and

(ii) Any other prescribed fees.

(7) No Special Use Permit is effective until it is approved by the Committee.

PART VII—LICENCES, CONCESSIONS PERMITS

39. (1) The licensing authority may issue permits for the following commercial uses by forest communities on County forests- Forest permits for use by communities

(i) Grazing, firewood collection, herbs, honey harvesting, cutting of grass;

(ii) Harvest or use of non-timber forest products; and

(iii) Woodfuel collection or production

40. The licensing authority may issue permits for the following non-consumption uses of forests on community land respectively: Permits for non-consumption uses

(a) Research and education purposes;

(b) Ecotourism;

(c) Bee keeping

(d) Carbon offset projects;

(e) Any other use as may be decided

41. (1) 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 licensing authority. Annual returns on Operations.

(2) A person who contravenes sub section (1) commits an offence.

42. (1) Where there are reasonable grounds to believe Suspension, cancellation or

that there has been a contravention of the condition of a licence, or any provision of this Act, the licensing authority 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 the period specified in that notice.

(2) Where a license has been suspended under subsection (1), no person shall 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 licensing authority may cancel the license in question.

43. (1) No person shall assign or transfer a licence or any rights to any other person without the prior written approval of the licensing authority.

(2) The licensing authority 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.

44. A licensee may, within thirty days of being notified of the cancellation of the licence, appeal to the County Executive Member in charge of forestry

PART VIII—TRADE IN FOREST PRODUCTS

45. (1) The Committee shall establish and maintain a Chain-of-Custody system, to verify the origin of forests products and the compliance of licence holders in accordance with this Act.

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

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

46. The County Executive Committee Member with approval of the county assembly may declare by Notice in the County Gazette any forest produce that may not be exported, imported or re-exported within the county boundaries.

PART IX—FOREST PROTECTION

47. The Committee may on community or private land respectively advise the County Executive Member to;

Forest and pests
control. disease

- (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.

48. (1) The County Executive Committee Member may prescribe species of trees and plants as protected species for the purposes of this Act.

Protected
species.

(2) No person shall fell or remove protected species

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

49. The County Executive Member will within the first six months after enactment of this Act Gazette Regulations on the introduction, prevention, control and management of invasive species

Control
Invasive
Species of

PART X—INCENTIVES FOR FOREST CONSERVATION

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

Purpose

- (a) A County Community Forestry Programme;
- (b) A County Reforestation Programme;
- (c) A County Programme for Craft Apprenticeships and Vocation Training for school-leavers in forest resource-based enterprises; and
- (d) A Permanent Forest Sink Initiative.
- (e) Alternative energy initiatives including energy efficient fuel wood cooking devices

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

Establishment
of forest
support
programmes.

(2) The County Executive Committee Member shall, by regulation, establish a County community forestry programme that shall provide—

- (a) Grants to community based organisations, private forest owners and county forest adjacent communities to support the management of their respective forests;
- (b) Qualified service providers to provide technical assistance to the community forest associations;
- (c) Investors in forest shall share the benefits of their investment with local communities by applying various options including but not limited to infrastructure, education, employment and social amenities and in accordance with the regulations made under this act or other relevant laws.

52. The County Executive Committee Member shall by regulation, establish a County reforestation programme that shall provide—

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

53. (1) The County Executive Committee Member shall, by regulation establish a Permanent Forest Sink Initiative to—

- (a) Establish a framework to facilitate the administration of forest sink covenants that allow landowners to access the value of carbon sequestration on all types of land;
- (b) Determine the requirements that a forest must meet to be a forest sink, the methodologies for measuring carbon sequestration or emissions of greenhouse gases from a forest sink, and a reporting and verification system; and
- (c) Provide revenue through carbon trading initiatives
- (d) Establish a dispute resolution process for disputes arising in relation to a forest sink or a forest sink

covenant

(2) The Permanent Forest Sink Initiative shall provide grants and technical assistance to community forest associations and private land owners to participate in the scheme.

54. (1) The County Executive Committee Member may, 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 may, on an annual basis, award prizes to both individuals and organizations.

55. The County Executive Member shall develop guidelines in consultation with relevant stakeholders that promote alternative energy initiatives. Alternative Energy Initiatives

56. (1) The County Executive Committee Member shall by Regulation, in consultation with relevant stakeholders shall set the criteria for benefit sharing mechanism with local communities in respect of revenue generated from forest utilization activities. Benefit Sharing Mechanism

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

57. The Committee shall plan and execute participatory programs necessary for observing the County tree-planting week on County, community and private forestland. County tree planting week.

58. County Assembly shall appropriate funds for the effective implementation of this Part. County Assembly to appropriate funds

PART XI—MONITORING AND INSPECTION

59. The County Executive Committee Member may, by notice in the County Gazette, appoint duly qualified persons whether by name or by title of office, to serve as forest inspectors. Appointment of Forest inspectors

60. A Forest inspector shall—

(i) Monitor compliance with this Act and regulations made there under;

Duties of the inspector.

- (ii) Undertake inspections and submit reports in the manner prescribed;

61. (1) A forest inspector may at any reasonable time— Powers of the inspector

- (i) Enter any premises within a community or private forest for the purpose of ensuring compliance with this Act;
- (ii) Enter any premises on which the inspector has reasonable cause to believe that any unlawful forest produce is stored or generated;
- (iii) Request the production of a licence used for the conveying or processing of timber or other forest produce, and upon failure to produce a licence or to account satisfactorily for its absence, the authorised officer may arrest the person and take him and such timber or other forest produce before a Magistrate according to the law

(2) Any person who assaults or obstructs an inspector acting in the execution commits an offence.

PART XII—FORESTRY RESEARCH, EDUCATION AND TRAINING

62. (1) The Forest Division shall collaborate with Research, Technology Development and Transfer relevant institutions to enhance and prepare a forestry research and development strategy for Kwale County

(2) The Forest Division shall develop research and development programmes aimed at enhancing the County capacity, culture and technology in forest administration.

(3) The Forest Division shall, on an annual basis, compile and submit a record relating to forestry research and development within Kwale County.

63. The County Executive Committee Member shall, by Apprenticeship and vocational training regulation, establish a County programme to support apprenticeships and vocational training in the forest sector.

64. The Committee and the Forest division in Public Information, Education and awareness 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.

65. The County Executive Committee Member shall Integration platform

establish a platform that will consist of the representatives of the County Government, private sector and civil society whose function will be to support the mainstreaming of forestry in County development.

PART XIII FINANCIAL PROVISIONS FOR THE FOREST DIVISION AND THE COMMITTEE

66. (1) The county shall establish the Kwale County Forest Conservation and Management Fund; ^{Funds of the Forest Division and the Committee.}

(2) The Fund shall be established and managed as per the provisions of the Public Finance Management Act, 2012

PART XIV – OFFENCES AND PENALTIES

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

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

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

68. (1) The Forest division shall promptly refer ^{Referral.} violations of the Act and its Regulations to the Division responsible for justice.

(2) In lieu of making a referral, the division may resolve a minor violation committed on public land, community and private land, through the assessment of an administrative penalty as established by 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

69. (1) Any offense that is repeated shall be deemed a ^{Continuing Offences and}

continuing offense subject to a separate penalty for each occurrence of the offense. Repeat Offenders

(2) A court shall, in determining the nature and extent of any penalty imposed pursuant to this section, take into account any past violations of the Act or its Regulations by the offender.

70. (1) A holder of a forest resource licence is liable for acts committed in contravention to this Act by themselves, their operators, employees, agents, and contractors. Liability of licence holders and community forest associations

(2) 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.

71. (1) Except under a forest resource licence granted under this Act, or with the permission of the community on community land, no person shall, in a forest— Prohibited activities in forests on community land

- (a) Fell, cut, take, burn, injure or remove any forest produce;
- (b) Clear, cultivate 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 or undergrowth or any forest produce;
- (e) Possess, bring or introduce any chain saw or logging tools or equipment; and
- (f) Damage, alter, shift, remove or interfere in any way whatsoever with any beacon, or boundary 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 less than Fifty Thousand Kenya Shillings or to imprisonment for a term not less than six months, or to both such fine and imprisonment.

(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 forest on community land –

- (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 less than Fifty Thousand Kenya Shillings or to imprisonment for a term not less than Six months, or to both such fine and imprisonment.

72. (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 less than fifty thousand shillings or imprisonment for a term of not less than 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
forest
without
license.
on
land
a

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

73. 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 Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding Twelve months, or to both such fine and imprisonment.

Setting fires

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

(2) Provided that this section shall not apply to any person who within the community forest or private forest produces charcoal for personal use only.

(3) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

75. (1) No person shall without lawful authority-

(a) Mark any forest produce

(b) Alter or removes an official mark, or stamp

(c) Cover, remove or destroy any part of a tree or forest produce bearing a an official stamp or mark

Unlawful
affixing or
defacing of
marks

(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 less than Kenya Shillings Two Hundred Thousand or to imprisonment for a term not less than three years, or to both such fine and imprisonment.

76. 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.

77. (1) No person shall wear any uniform or part of a ^{Counterfeiting} uniform, or a badge issued by the division or or hold themselves to be an employee of the Service counterfeit or issue without official authority any licence or other document purporting it to be a licence or document issued under this Act or rules

(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 Kenya Shillings Ten Thousand or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

78. (1) No person shall introduce any exotic or genetic material or invasive plants in a forest without the authority of the Committee or dump any solid, liquid, toxic or other wastes in a forest without authority of the division or grow any plant from which narcotic drugs can be extracted;

(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 Kenya Shillings Five Million or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment.

79. 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;
- (c) Fails to comply with a lawful requirement or demand made or given by an authorized officer 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 Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Other offences
and penalties

PART XV—MISCELLANEOUS

80. (1) The County Executive Committee Member may, by regulation, on the recommendation of the Committee, prescribe anything which by this Act is required to be prescribed or is necessary for the better carrying out of the provisions of this Act.

Power to make
regulations.

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

- (a) The preparation of County Forest Management

Guidelines;

- (b) The preparation of the Forest Code of Practice
- (c) The production of and trade in woodfuel
- (d) The establishment of forest fees payable under this Act, and the distribution of public revenues arising from such forest fees; and
- (e) the establishment of a County facility to administer forest support programmes, including-
 - (i) the County community forestry programme;
 - (ii) the County reforestation programme;
 - (iii) apprenticeships and vocational training programmes; and
 - (iv) the permanent forest sink initiative

FIRST SCHEDULE—LIST OF COUNTY FORESTS

| No | Ungazetted Mijikenda Sites | Sub-County | Protected Status | Size |
|----|----------------------------|------------|------------------|------|
| 1. | Kaya Tingeti | Matuga | UP | 2 |
| 2. | Kaya Dima | Matuga | UP | 3 |

1. (1) The Chairperson of the Committee shall hold office for a term of three years and shall be eligible for re-appointment for a further term of three years

Tenure of office and conduct of business of the Committee

(2) Other than ex-officio members, a member of the Committee shall, subject to the provisions of this section, hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term of three years.

(3) The members of the Committee shall be appointed at different times so that the respective expiry dates of their term of office shall fall at different times

(4) A member other than the chairperson or an ex-officio member may—

- (a) at any time resign from office by notice in writing to the County Executive Member
- (b) be removed from office by the County Executive Member if the member—

Meetings of the

- (i) has been absent from three consecutive meetings of the Committee without permission of the chairperson, or
- (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors, or
- (iii) is convicted of a criminal offence and sentenced to an imprisonment term exceeding six months or to a fine exceeding ten thousand shillings, or
- (iv) is convicted of an offence involving fraud or dishonesty
- (3) Is incapacitated by prolonged physical and mental illness or
- (4) Is found to have acted in a manner prejudicial to the aims and objectives of this Act; or
- (5) Fails to comply with the provision of this Act relating to disclosure; or
- (6) Is otherwise unable or unfit to discharge his / her functions as a member of the Committee.

committee

Disclosure of Interest

Committee may regulate procedure

2 (1) The committee shall meet quarterly provided that the chairperson may call a special meeting of the Committee at any time where he deems it expedient for the transactions of the business of the committee.

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

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

(4). The chairperson shall preside over all meetings of the Committee in which he is present, but his/ her absence, members present shall elect one

3(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Committee and is present at the meeting of the Committee at which the contract, proposed contract or matter is the subject

of consideration, he/she shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

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

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

