



UNEP/UNDP/DUTCH
Joint Project on Environmental Law
and Institutions in Africa



THE EAST AFRICAN SUB-REGIONAL PROJECT

DEVELOPMENT AND HARMONISATION OF ENVIRONMENTAL LAWS

VOLUME 7

REPORT ON THE DEVELOPMENT AND HARMONISATION OF LAWS RELATING TO FORESTRY

DECEMBER 1999

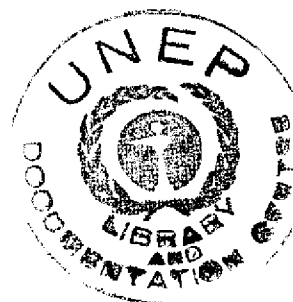
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PREFACE

Environmental law is an essential tool for the governance and management of the environment and natural resources. It is the foundation of national and regional policies and actions to ensure that the use of natural resources is done equitably and sustainably.

In the East African sub-regional countries of Kenya, Tanzania and Uganda have, since 1995, been developing and harmonising various environmental laws in selected sectors within their region. The process of developing and harmonizing environmental laws is intended to lead to the enactment or amendment of the internal legislative, regulatory and administrative framework of each country. Such change has been harmonized at a sub-regional level where the three countries have agreed on legal principles, definitions and substantive legal provisions to govern a segment or matter of the environment or natural resource sector.

The volumes produced by the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa, East African Sub-regional Project, are intended to build capacity in Kenya, Tanzania and Uganda in environmental law. The East African Sub-Regional Project is a component of the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa funded by the Dutch Government. The underlying presupposition is that the three countries share similar historical and legal heritage and that the physical and historical situation in East Africa offered an opportunity to initiate and encourage dealing with environmental issues according to problem-sheds. The historical facts are that (a) there is a history of regional co-operation among the countries from colonial times; and (b) there is shared legal tradition which derives from common law origins. These two historical facts were relied upon to support development and harmonization of legislation on selected themes in the commonly shared environment.

The UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa is funded by The Royal Dutch Government, as a pilot project, to work with selected countries towards development of environmental law and institutions in Africa. The purpose is to enhance the capacity of the countries to develop and enforce laws relating to environment and natural resources. Phase I of the Project which commenced at the end of 1994, and is scheduled to end in December 1999, involves seven countries, namely: Burkina Faso, Malawi, Mozambique, Sao Tome and Principe, Kenya, Tanzania and Uganda. While activities in the first four countries

focus on entirely national activities, the work in the three East African countries are focused on issues which are essentially of sub-regional character. The management of the Joint Project is based at UNEP within its environmental law activities and is directed by a Task Manager, who works under guidance of a Steering Committee. Members of the Steering Committee are UNEP, UNDP, FAO, The World Bank, IUCN Environmental Law Centre and The Dutch Government.

The Process For Development and Harmonization Of The Laws

Representatives of the three governments met in February 1995 to work out general principles and modalities for their co-operation.

A second meeting was held in May 1995, to discuss the general terrain of topics amenable to development and harmonization of laws. The final decision on six priority topics was taken at their third meeting in February 1996.

The six topics which were selected for the Project's activities are:

- (i) Development and harmonization of EIA Regulations;
- (ii) Development and harmonization of laws relating to transboundary movement of hazardous wastes;
- (iii) Development and harmonization of the methodologies for the development of environmental standards;
- (iv) Development and harmonization of forestry laws;
- (v) Development and harmonization of wildlife laws; and
- (vi) Recommendation for legal and institutional framework for the protection of the environment of Lake Victoria.

The seventh topic, development and harmonization of laws relating to toxic and hazardous chemicals was taken up in 1998 when the work on the first six was virtually complete. The three countries considered this as one of the critical issues in environmental protection in the sub-region.

For each of the topics, the governments jointly worked out generic terms of reference. However, each national team subsequently worked out country-specific terms of reference to reflect national legal and institutional situations, existing initiatives on the same task as well as existing priorities. The respective national consultants were also selected by the National Coordinating Committees (NCC), working in consultation with an officer at the UNDP country office.

The national consultants have now completed their work. In each case, the reports have enjoyed reviews by the national panels constituted under the aegis of the respective NCCs. Draft reports, as they evolved, were circulated to the consultants in the three countries. In many cases, the consultants were able to take the reports of their counterparts into account in finalizing their reports. Therefore, very high degree of harmonization of reports had been achieved before the consultants could meet together.

At the end, a workshop to finally harmonize the reports was held in 1998 in Kisumu, Kenya and was attended by the consultants for each topic for substantive discussions of their reports and to agree on recommendations to their governments. The objectives of the workshop were to; (a) ensure that recommendations for policies and law for the respective topics as far as possible, are in harmony; (b) promote the development of legal and institutional machineries which are comparable in all the three East African countries in the absence of an over-arching sub-regional framework; (c) harmonize the normative prescriptions and institutional machineries and therefore create an opportunity for harmonized enforcement procedures; and (d) create an opportunity for dealing with the respective environmental problems according to the problem-sheds, which are essentially sub-regional. The workshop was facilitated by Professor David Freestone, Legal Advisor, International and Environmental Law Unit of The World Bank and Mr. Jonathan Lindsay, a Legal Officer in Development Law Service at the United Nations Food and Agricultural Organization.

Thereafter, a meeting for Permanent Secretaries responsible for environment from the three countries was held and attended by the national coordinators. The Permanent Secretaries as accounting officers and policy leaders in their ministries were fully briefed on the aspirations and activities of the project; how the project had developed and the process of harmonization. They assumed ownership of the outcome of the reports. They also resolved that the stage was well-set for development of a sub-regional binding instrument on environmental management. Their debate recognized that a legally binding instrument in the form of a protocol within the framework of the Treaty of East African Cooperation would take time to evolve and could involve a broad cross-section of ministries. For these reasons, they resolved that as an interim measure, they would sign a memorandum of understanding.

Subsequently, a Memorandum of Understanding on Cooperation in Environmental Management was entered into by the three governments on 22 October 1998 covering all the themes of the project and also covering other aspects which had not been envisaged in the project. One of the main features of the Memorandum of Understanding is a commitment to develop a protocol on environment management under the auspices of the proposed East African Treaty.

The governments of Kenya, Tanzania and Uganda are expected to take up the recommendations and the Memorandum of Understanding and implement the recommendations. In fact, the Permanent Secretaries specifically requested UNEP and its cooperating agencies in the Joint Project to assist in the development of the Memorandum of Understanding.

Meanwhile, the Joint Project has undertaken to produce the reports on the seven topics as stand-alone publications and as bases for national legislation. In addition, a report on the review of national projects related to environmental law and institutions has been prepared as part of the publications. The national reports were prepared by the National Coordinators in the three countries. This report is intended to assist in avoiding duplication of efforts and create a coherent synergy in reviewing and developing environmental laws.

This Volume comprises three reports prepared by the national consultants, harmonized at the joint workshop and finally accepted by the Permanent Secretaries. Its theme is the development and harmonisation of forestry laws in the East African sub-region. The report identifies priority activities requiring development and harmonisation forestry laws. The reports also present proposals for areas of possible capacity building. The critical areas which need harmonisation at the East African sub-regional level are presented.

Address any enquiries about these reports to:

Task Manager

UNEP/UNDP/Dutch Joint Project

Technical Cooperation Unit

Division of Policy Implementation

United Nations Environment Programme

P.O. Box 30552

NAIROBI, KENYA

Tel: 254 2 623815/624256/623480/623923

Fax: 254 2 623859/230198

email: charles.okidi@unep.org

Overview

Introduction

Kenya, Tanzania and Uganda, all have a sizable amount of forest cover. These range from high mountain forests to coastal and savanna forests. Because of the diverse nature of the forests, different approaches to their management have to be used. All the three countries have a high demand for forest products, especially for fuelwood, because of the nature of their socio-economic situations. There is heavy settlement in the rural areas with a lot of agricultural activities. This heavily impinges on the amount of forested areas that have to be cleared for the activities thereby leading to loss of forest cover, and land degradation.

The three countries still have a sizable amount of protected forests which, given a proper legal regime, will continue to be protected for generations to come. The laws which, relating to management of forests in the three countries all appear to be out of tune with the realities in modern sustainable forest management. As such, the recommendations for reform of the laws should play an important part in catalyzing action to ensure that these important resources are conserved for the benefit of the present and future generations.

Therefore, this volume presents country reports for strategies to ensure that forests conservation is done in a sustainable manner.

Kenya Country Report

The Kenya Country Report was prepared when the country is at cross-roads between making a framework environment law and a new forestry law. The two laws are complimentary, even though many aspects are cross-cutting between a framework law and sectoral law like forestry law. Like those of Tanzania and Uganda, the report reviews the policy framework for the management of forests and forestry resources in Kenya. It provides a brief introduction on the value of forestry resources to the socio-economic activities of the country and outlines the inter-connectedness of the environmental sectors. There are two main types of forestry resources in the in the three countries, that is, natural and plantations forests. Kenya also practices farm forest production as an essential component of diversified farm production.

The report further reviews Kenya's treaty obligations related to forest management. The underlying issues identified in

reviewing the treaties is that at present there are no clear obligations to protect forests.

On Kenya's current forestry law, the report reviews the principal Acts of Parliament related to forestry by critically analyzing the main provisions and the effectiveness of such laws. In this regard, the report examines the content of forestry jurisprudence in Kenya at length. The analysis explains that the existing laws on forestry are not based on management principles and that the development of the laws did not follow the necessary sequencing, which begins with policy-making, to be expressed in legal and institutional arrangements and eventually to develop operational designs and guidelines. The Report therefore presents new lines of forestry policy and legal development.

The Report also reviews the recommendations as provided in the NEAP Report of 1994, followed by the Draft Forest Bill of November, 1995 on both matters of form and substance including arrangement of headings and sections found therein. On the substantive matters of the draft Bill, the review is based on its relationship with the current forest policy goals and objectives.

The report makes a strong case for sub-regional co-operation on forestry matters particularly in the context of East African co-operation. The arguments are that internal and external harmonization of laws are necessary components of the sub-regional cooperation. The rationale for the intended harmonization is based on common or similar challenges faced by the three East African countries. In conclusion, the Kenyan Country Report makes a number of recommendations on issues of policy and practice of law and sub-regional harmonization. A text of the draft Forest Bill, 1995 is also included in the Report.

Tanzania Country Report

The Tanzania Country Report is presented on the basis that a previous report on the same subject matter had been prepared by another consultant who did not complete the work as required. This Report is therefore a follow-up report to take into account recent developments in the forestry sector in Tanzania and to provide information which was missing in the previous report.

In this regard, certain important contents such as the state of the forestry resources in Tanzania and review of the existing

law and policies made before 1998 are not included. It may be necessary to refer to other sources of information on the state of Tanzania's forestry sector to as to have a comprehensive view of the issues at hand. On the basis of the above analysis, the Report concentrates on reviewing mainly the Forest Ordinance of 1957 which is the existing law and the National Forest Policy of 1998.

On the Forest Ordinance of 1957, the Report reviews a number of aspects including matters of forest ownership, tenure, access, resource assessment, licensing and environmental impact assessments. Issues of effectiveness of the legislation are also presented. Other related legislation such as Tanzania Forestry Research Institute Act, 1980, the Land Act, 1999, the Village Lands Act 1999 are also presented.

The report analyses new concepts in the new National Forestry Policy, 1998 *visa-vis* the existing legislation on forestry management. The Report further presents the institutional framework for forest management as provided in the Forest Policy.

It is on the basis of the National Forestry Policy 1998, that Tanzania has prepared a draft Forest Bill to amend the Forest Ordinance of 1957. The report analyses both the Forest Policy and draft Forest Bill with a view of incorporating the sub-regional recommendations on the development and harmonization of forestry laws held in Kisumu on the 5 and 6 of February 1998. The concluding recommendations suggest that Tanzania needs to improve the draft Bill by including those provisions which are missing. In the end, the existing draft Forest Bill is attached to the report.

Uganda Country Report

The Uganda Country Report reviews the state of forestry resources in Uganda. Uganda Forestry estate is composed of natural forests, planted forests, agro-forestry areas and woodlands. A brief analysis of the contribution by forest products to the economy is made including socio-cultural

contributions. To lay a foundation for a deeper review of the law, the report analyses the key issues in forest and environment management in Uganda. The issues basically relate to deforestation and forest degradation, which are in turn caused by tenurial problems, population growth and poverty. Issues of institutional and managerial nature are analyzed in context of the wider context of environment management which includes forestry sector. Strategies are proposed to deal with each of the issues stated.

The Ugandan report thereafter reviews the existing national policies and laws related to forest management. Having enacted a new Constitution, a framework environment law, a Wildlife Statute, the Land Act, new norms on forest management are reviewed and analyzed with those laws in mind. In essence, the Forest Act of 1964 is found to be heavily deficient in modern methods of sustainable forest and environment management and Constitutional requirements. The report also reviews other related legislation in the context of the modern methods of sustainable forest management.

To bring the issues relating to forest management into an international perspective, the report also presents and analyses the international forest law and its implication to Uganda. This analysis is based both on soft and binding laws. In this context, international treaties and global strategies are reviewed.

To conclude the report, a summary of recommendations to reform the existing law and also on reviewing a number of sectoral laws which impact on forests are presented. A draft Forest Bill, which incorporates all the recommendations was prepared and is contained in the Country Report.

The respective reports were prepared by national Consultants. The Kenyan report was prepared by J.B. Ojwang; the outline of the Tanzanian report is Vincent Shauri; while Uganda report was prepared by Jane Anywar and Emmanuel Kasimbazi. We acknowledge their contributions with gratitude.

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KENYA COUNTRY REPORT

EXECUTIVE SUMMARY

This Report is summarised as follows:

The maintenance of substantial forest cover is of critical importance to both the economy and ecological cycles in Kenya. Not only do forests serve as the direct source of most of the domestic energy requirements, and of construction material and roundwood for industrial use, but they also regulate and stabilise the soils and water resources which are vital to other crucial areas of the economy such as agriculture. Forests are the richest habitat for fauna, flora and micro-organisms. Forests also sequester harmful greenhouse gases and provide environmental and aesthetic satisfaction for the people.

Since the role of the forestry sector as a vital link between economy and environment is not always brought into the equation of economic policies and activities, its strategic contribution to human welfare is generally weakened through public neglect.

Although Kenya has, since 1965, expressed public policy stand-points indicating concern for the environment, it is only recently, that effective policies on the subject of forestry have been put in place. Thus, this sector of the economy and environment has moved at its own pace, without the support of effective legislation. The main governing statute for the forestry sector has been the Forests Act (Cap 385), revised over the years from 1942 to 1992, with its quite limited objectives which were designed more to effect governmental control, largely for economic cause, rather than to provide a broad framework for management in the interests of sustainable development.

Thus, major problems have afflicted the forestry sector, right from the early years of the post-independence period. Such problems include: (a) an inadequate supply of roundwood for domestic and industrial use; (b) the decimation of indigenous forests with their considerable wealth of biodiversity; (c) the destruction of catchment forests, occasioning a severe disruption of ecological cycles; (d) the uneconomic management of industrial forests; and, (e) the failure to keep and manage forests on a sustainable basis.

In the context of greater international concerns, and especially those culminating in the "Earth Summit" at Rio de Janeiro in 1992, the Kenya Government has undertaken important legal and related obligations to work towards the conservation of biodiversity and the sustainable management of the country's environmental resources.

Attempts to fulfil such undertakings by the Government have recently taken form in the conception of new policies. Such policies are recorded in the recent national *Development Plans*, in the Report of the National Environment Action Plan (1994), in the Ministry of Environmental Conservation (document entitled *Kenya Forest Policy*, (1994)), and in the Government's Sessional Paper on Environment and Development, (1995).

Government policy, as expressed in its several policy documents, has drawn lessons from past problems, and proposed the pursuit of an economically managed forestry sector, a forestry sector that conserves and expands its indigenous forest cover, that protects catchment areas, that expands industrial forest plantations, and that facilitates the sustainable management of forests.

A draft Forests Bill has been prepared to provide a legal framework for the implementation of the new Forestry Policy. Until this Bill is appropriately revised and enacted, the new policies will remain in abeyance, and the *status quo* in the forestry sector will continue to prevail. This is because the existing forestry institutions are still the very old ones which had been in place all along under the Forests Act since its inception. It is important that the new policies, which have certain clear merits, be given the necessary impetus through the enactment of a new statute establishing new institutions, and providing an effective basis for the sustainable management of forests and forestry resources.

Ideally the proposed legislation should be enacted only after a framework environmental statute has already been passed; and the forestry legislation should be based on the principle of harmony with the framework statute, as well as with other laws that have a bearing on the environment, such as those dealing with water, wildlife, agriculture, among others.

Apart from achieving the vertical harmonisation referred to in paragraph 9, it is necessary that horizontal harmony with the forestry laws of the neighbouring countries, Tanzania and Uganda, should also be ensured. This is for a number of reasons which include: the conservation of forests is affected by sub-regional phenomena that operate irrespective of geographical boundaries; such harmonisation would enable all the countries of the Sub-Region to better fulfil their treaty obligations with regard to the conservation of biological diversity.

The existing draft Forest Bill should provide for an autonomous body of professional competence to manage

conservation and maintain forests. Such a body should apply commercial principles in relation to industrial forests, but should work in greater collaboration with other public agencies in the maintenance of indigenous forests.

It is necessary to involve members of the public and local communities, as much as possible, in the management of indigenous forests, and to this intent, it is necessary to bring to the public greater awareness on the importance of a viable forestry sector.

This Report addresses these developments in forestry policy and law, and draws attention to the matters that should be taken into account when implementing present commitments

to the sustainable management of forests. This Report examines the Draft Bill, and indicates how it could be improved and its institutional arrangements in particular be strengthened to provide a basis for working towards the objectives in question.

The Report ends by addressing the prospects for sub-regional co-operation in forestry management, as well as the need for a harmonisation of forestry laws within the Sub-Region, as a strategy for realising more effective management of the forestry sector. All the critical recommendations emerging from the Report findings, as well as from contributions made at three different workshops are outlined at the end.

CHAPTER ONE

1.0 INTRODUCTION

Forests fulfil vital economic, social, aesthetic and ecological functions. While these goals are closely inter-related, those of primary economic character may be identified as:

- (a) the supply of roundwood for direct industrial use and for purposes such as construction and joinery;
- (b) the provision of raw material for the manufacture of board, pulp and paper;
- (c) the making of tools, implements and fibre;
- (d) for fuel in direct or indirect (charcoal) form;
- (e) source of food and feeds; and,
- (f) the provision of pharmaceutical substances.

Forests, besides, are an integral aspect of the biosphere and help to stabilise ecological systems. They stabilise soils and regulate the flow of groundwater as well as run-off. In this way forests lessen soil erosion and limit downstream sedimentation in rivers and streams. They provide water-shed protection and enhance water resources. Forests, furthermore, are the primary habitat for precious fauna, flora and micro-organisms. Forests also help to enhance air quality by absorbing gaseous wastes from human and other socio-economic activities. They provide, in addition, a decorative feature for the landscape, and have an aesthetic role in the planning of human settlements. These functions cannot be very well performed by any substitute or artificial contrivances; and thus, forests are essential to the full enjoyment of the amenities of nature.

The role of trees and forests in the developing countries (countries not so well endowed with energy, nor with the capacity to fabricate solid construction materials) is particularly significant. Indeed the economies of these countries are in many ways dependent upon forestry.

This background sheds light on the interest shown by the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP) in the issue of forestry in Kenya and in the East African Sub-Region. Although the main sphere of interest for the two sponsoring organisations is the environment, it is no doubt appreciated that environmental degradation is so often the direct outcome of human attempts to fulfil social and economic goals. Inadequate energy and unsatisfactory economic conditions are the primary factors responsible for the progressive decimation of forest areas in the East African Sub-Region.

The sustainable management of East African forests would in the first place ensure people's continued utilisation of these forests; secondly, it would benefit the pursuit of critical environmental interests, such as soil and water conservation and the maintenance of air quality; and, thirdly, it would enable the relevant countries to fulfil their international responsibilities to conserve biodiversity and genetic resources, which have their main abode in the forests.

This inter-connectedness of environmental sectors, it is worthy of note, and falls not only on a vertical plane but also on a horizontal (geographical) plane. The ecological zones and the natural phenomena that interplay with existence of forests, extend right across the three countries of East Africa. Such measures of conservation which, say, Kenya may adopt, cannot by themselves yield the best results unless co-ordinated with Tanzanian or Ugandan programmes, and vice versa.

Hence, the East African Sub-Region has been taken as a convenient and natural unit of study. The three countries need to make appropriate harmonisations in their forestry programmes, in order to ensure comprehensiveness in their policies for sustainable utilisation of forest resources.

CHAPTER TWO

THE POLICY FRAMEWORK FOR THE MANAGEMENT OF FORESTS AND FORESTRY RESOURCES

Policy, which refers to a broad plan of action set up to guide specific action, is generally conceived in the light of past and current problems, as well as perceptions of future trends. Thus, before taking stock of Kenya's current policy framework, it is necessary to shed some light on past experience at the level of operations.

2.1 A Synopsis of the Forest Estate of Kenya

Kenya's forest estate covers a total of about 1.64 million hectares; comprising two main components of the forestry sector, namely indigenous forests, and industrial plantations. The area covered by industrial plantations is reckoned to be some 130,000-170,000 hectares; the remainder, some 1,470,000-1,510,000 hectares, is occupied by indigenous forests. An estimated 30% of the nation's wood supply comes from indigenous forests and industrial plantations combined. Some 40% of the wood supply comes from the arid and semi-arid areas (ASAL) which cover about 80% of the total area of the Kenyan territory. The remaining 30% of the wood supply comes from farms (farm forestry).

Kenya's forestry sector therefore, falls into three very basic categories, each raising its own problems with special policy-making requirements. These are: (a) farm forestry; (b) industrial forest plantations; and, (c) indigenous forests.

The estimated fuelwood consumption for 1995 was 20 million m³; while that for industrial roundwood and pole wood utilisation was 2.3 million m³. A large portion of the fuelwood (including charcoal wood) comes from indigenous forests, in particular from the ASAL. It should, however, be noted that the share of farm-grown and plantation-grown wood, in the fuelwood account, is rapidly increasing. Industrial wood, in virtually all cases, comes from plantations. The origins of these plantations go back to the colonial period, when

individual farmers were allowed to plant crops on government lands on the condition that they interplanted them with trees and duly cared for the trees.

The balance between demand and supply in forest sector, is already very tenuous, and if the *status quo* is maintained, self-sufficiency cannot be guaranteed; quite apart from considerations relating to the vital role forests play in preserving the ecological and environmental balances.

It is believed that Kenya's high-to-medium potential agricultural lands (which form less than 20% of the national territory) could, with good husbandry and management, produce as much as 3 million m³ of industrial roundwood per year; and this would be enough to meet the country's requirements for the foreseeable future, apart from yielding surpluses for export.

There are, however, factors, which militate against the goals of enhancing the productivity and stability of the forestry sector. One of these is the population factor. The country's population as at 1989 stood at 21 million; and from this baseline the estimates made are 28.3 million for 1995, 43.6 million for 2010, and 63.6 million for 2025.

Kenya's rate of population increase stands at 3.3% per year (*World Population Data Sheet*, 1995). Such a growth trend raises the pressure on forest resources; firstly, through the growing demand for forest-based subsistence and manufactured goods; and, secondly, through pressures on the ecological systems that bear a symbiotic relationship to the existence and replenishment of forests.

Initiatives to stabilise the productivity of the forestry sector must also take into account certain national and local demographic trends. Kenya is experiencing much activity in

the population sector with increased urbanisation, rural-to-urban and rural-to-rural migration. In some cases, especially with rural-urban migration, there are sex-oriented trends, to the effect that many rural households, in all intents and purposes, are now headed by women who have to take the critical decisions in relation to the use and conservation of forest resources.

It was noted in the *Kenya National Environment Action Plan* (NEAP) Report (June, 1994, p.21) that:

"At present an average of 5,000 ha of forest reserve land are being lost annually through excision. Forest degradation through over-exploitation has led to a 40-60% loss of standing wood volume from most forest reserves in the last 30 years".

The NEAP Report further stated (p.22) that:

"Forest plantations have approximately declined from 170,000 ha to 164,000 ha as per 1994 inventory reports. Yet the demand for all wood products is increasing at three per cent per annum. Wood fuel consumption amounts to about 20 million cubic metres per annum and industrial roundwood and polewood utilisation is about 2.3 million cubic metres".

The NEAP Report recorded that over 80% of all households in Kenya use wood fuel or other biomass fuel for their domestic needs, and that about one-third of the biomass fuel consumption is in the form of charcoal.

The diversification of farm production is a practical approach to social and economic development for Kenya, a country so short on high-potential agricultural land yet so overwhelmingly dependent on agriculture. Trees are to be seen as an essential component of diversified farm production, in particular as trees not only contribute to employment and income for the farmer, but also perform vital roles in soil and water conservation.

2.2 The National Policy Framework and Policy-making Issues

The role of trees in farm management has not been fully appreciated and exploited, partly on account of policy limitations. Public administration in relation to farming, forestry and related issues has been conducted largely in a sectoral framework, rather than cross-sectoral in the process of enhancing socio-economic development the contributions of the forestry sector.

A more serious problem for policy-making in respect of forestry, has arisen from its inter-connection with the constant

demands for fuelwood. As the consumption of fuelwood is both informal in character and pervasive, its role in the formal national economy has generally ended up not being fully represented. As a result, the state's central economic planning has tended to leave out some in the realities of the forestry sector, in the course of normal policy-making stages.

Such limitations of sectoralism, moreover, have also had their impact on the various sub-sectors of forestry. For instance, industrial tree consumption has been linked exclusively to the industrial plantations, and not to farm forestry. Those involved in farm forestry, therefore, have hardly drawn any benefits from industrial-tree demands; and thus, there has been no scope for any multiplier effects in the forestry sector flowing from a working commercial relationship between farm and industry. If such a relationship were to be established, industry would have access to greater quantities of wood; and the farmers would be encouraged to plant more trees and to practise good tree husbandry. Such a situation, moreover, would enhance the capacity to conserve the precious indigenous forests that are more ecologically complex and serve, in more special ways, to maintain of the ecosystem.

The sub-sector of industrial forestry has had its own problems, which would raise certain policy issues. Virtually all the industrial forests are to be found in the high-to-medium potential agricultural lands. Obviously, these forests have been in competition with the usual farming activities, with the rapidly rising rates of population growth. As a result, on many occasions governmental decisions have been taken to excise industrial-forest lands to convert them into human settlements. The rationale of such decisions need to be determined on the basis of clear land-use policy guidelines, which have not been in place. Not only have such excisions of forest land reduced the national acreage of forest, but they have also led to ecological disturbances in the form of watershed damage, with the consequential injuries to the intricate natural systems.

Industrial forests have not been well managed, with the result that tree yields have tended to be low, even as administrative expenditures have burgeoned. The problems of management in the industrial forestry sub-sector have been aggravated by the failure of the Forestry Department to put in place and maintain a reliable infrastructure serving these forests. (It is to be noted that a policy decision has now been taken to place the management of indigenous forests and farm forestry under a forest authority, while industrial forest plantations are to be managed by an industrial enterprise).

In these circumstances, productivity in the industrial forestry sub-sector has been low, and the whole enterprise has proved

to be uneconomical. This state of affairs has been aggrieved further by the lack of a constructive commercial policy with respect to tree products.

In 1996, the Government commissioned M/S. Price Waterhouse to conduct a study on ways of revitalising the forestry sector; and the consulting agency has already reported its findings (1997) and made strong recommendations for commercialisation, especially in the industrial forestry sector.

All the same very considerable financial outlays have been placed in the industrial forestry sub-sector, even at the expense of the other sub-sectors. The Ministry of Environmental Conservation currently spends 90% of its total budget (including Government and donor funds) on the Forestry Department. Within that Department, the management of industrial plantations takes as much as 60% of all the available financial resources. The annual revenue from the industrial forest sub-sector has been, in the last two years, about Kenya shillings 200 million, which accounts for about 30% of the management costs. The most expensive item in such expenditures has been personnel costs, which take as much as 95%. Hardly any money has been left for development funding, which has been derived almost exclusively from donor funds. The industrial forestry sub-sector, thus, has not paid its way and has had to be subsidised. This state of affairs was at the core of the Price Waterhouse study referred in this report.

Indigenous forests, as they grow are largely influenced by the dynamics of nature, and have unique localised ecological functions. They have a special role as a component of biodiversity, as habitat for fauna and flora, and they contain unique forest goods and substances. As regards these forests, the NEAP Report thus states (p.22):

“Over-exploitation and illegal cutting of indigenous forests is a matter of great concern. The lack of appropriate technology for maximum utilisation of the raw materials, low recovery, poor silvicultural practices, and low budgetary provision for recurrent forest operations have all hampered effective management. As a result, timber, wood fuels, polewood and carving wood are being exploited at unsustainable levels”.

An estimated 85% of Kenya's remaining indigenous forests are made up of closed-canopy forests. The remaining 14% are made up of bushland and grassland, mangroves and bamboo. The bulk of these forests are found in mountainous areas which are classified as protected forests. These forest areas are regarded as fragile and threatened ecosystems. Some of them (for example, the bamboo forests at high

altitudes) support some of Kenya's rare mammals; yet they are amenable to easy destruction by humans who readily exploit them for economic purpose.

The NEAP Report underlines the importance of some of the indigenous forests as loci of biodiversity (p.22):

“One area that deserves immediate attention is the coastal forests. [The] Coast Province forests constitute less than 10% of the nation's forests, but they contain nearly half of the country's rare trees.

There are animals and plants found in remnant coastal forests that occur nowhere else. Kaya forests are sacred places to the local communities, and other sites have cultural or ceremonial importance. Many forest areas have been destroyed for crop and livestock production, mining, wood fuel, human settlements, tourist developments, etc.”

There are, accordingly, many complex issues with respect to the forestry sector in Kenya. In the first place, there are issues focussing on effectiveness and productivity in the forestry sector, viewed largely from an economic stand-point. Secondly, there are vital issues of environmental safety (which include the stability of the soils, hydrological cycles, animal and plant life, etc) that must be addressed in the interest of the Kenyan public. Thirdly, Kenya has legal obligations at the international level that relate to or touch on forest resources. Some of these obligations arise from the clear provisions of the treaty law, whereas others may seem to be founded upon principles of a “soft law” character.

2.3 Kenyas' Treaty Obligations on Forest Management

In the category of treaty law obligations one may cite in particular, the following international agreements:

(a) Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 1971)

- The object of the Ramsar Convention is to conserve and enhance wetlands, that is, “areas of marsh, fen, peatland, or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres” (Art. 1(1)).

Wetlands, in the case of Kenya, do cover areas of some vegetation including forested areas, such as the mangrove forests of the Indian Ocean coast. Kenya

acceded to the Ramsar Convention on June 5, 1990, and has since then had both Lakes Nakuru and Naivasha, in the Great Rift Valley, listed as Wetlands of International Importance (Art.2).

(b) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Washington, DC, 1973)

- The protection afforded by CITES covers tens of thousands of species of plants and animals. The Convention regulates or prohibits international trade in such threatened species, and thus provides a framework for their conservation and protection against over-exploitation. Kenya ratified CITES on December 13th, 1978.

(c) Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region (Nairobi, 1985)

This Protocol, which forms part of the Eastern African Action Plan under UNEP's Regional Seas Programme, entered into force on May 30th, 1996 along with the other related Agreements.

Its primary object is to provide for the protection of threatened and endangered species of flora and fauna, and important natural habitats in the Eastern African region. Kenya acceded to the Protocol on September 11, 1990.

(d) Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi, 1985)

The object of this Convention, which forms part of the Eastern African Action Plan of UNEP's Regional Seas Programme, is to protect and manage the marine environment of the coastal areas of the Eastern African region. Kenya acceded to this Convention on September 11, 1990, and it entered into force on May 30, 1996.

(e) Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972)

Article 2 of this Convention defines "natural heritage" thus:

"... natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations

and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated areas of outstanding universal value from the point of view of science, conservation of natural beauty".

Kenya, which accepted this Convention on June 5, 1991, has many remarkable geological formations, as well as indigenous forest areas which would properly fall within the Convention's scheme of conservation.

(f) African Convention on the Conservation of Nature and Natural Resources (Algiers, 1968)

By this Convention, the various independent African states undertook "to adopt the measures to ensure conservation, utilisation and development of soil, water, flora and faunal resources, in accordance with scientific principles and with due regard to the best interests of the people" (Art.II). Kenya's party status under this Convention entered into force on October 9th, 1969.

(g) Convention on Biological Diversity (Nairobi, 1992)

The object of this important global Convention was to conserve biological diversity, to promote the sustainable use of its components, and to encourage equitable sharing in the benefits arising from the utilisation of genetic resources. Kenya signed the Convention during the Rio de Janeiro "Earth Summit" on June 11th, 1992, and ratified it on July 26th, 1994.

(h) United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 1994)

The objective of this Convention is to combat desertification and mitigate the effects of drought through effective action at all levels supported by international co-operation and partnership arrangements, with a view to contribute to the achievement of sustainable development in the relevant countries. The development and conservation of forests, on account of their role in the stabilisation of soils and water resources, and thus, in the stabilisation ecological cycles, may be seen as one of the concrete ways of contributing to the objects of the Convention to Combat Desertification.

The Convention to Combat Desertification has to-date been ratified by more than 115 countries. It entered

into force on December 26th, 1996. Kenya ratified the Convention on June 24th, 1997, and is now under international legal obligation to undertake the required measures of implementation.

The foregoing selection of flora-related treaties does place clear obligations on parties, such as Kenya, in regard to protection, conserve the environment and ensure sustainable utilisation of the natural resources (fauna/flora) therein.

The Convention on Biological Diversity, for example, places on the States Parties specific duties of conservation in relation to *in-situ* bio-resources. Article 8 provides that "Each Contracting Party shall, as far as possible and as appropriate": (a) establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (b) develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity; (c) regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; (d) promote the protection of ecosystems, natural habitats and the maintenance of viable populations or species in natural surroundings; (e) promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; (f) rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies; among other factors.

State Party under-takings under such treaty law clearly raise *duties of policy elaboration, legislation and administration* for the sustainable utilisation of biodiversity in general, and flora which in particular is the primary concern of this Report. This is to be taken as a point of departure in considering Kenya's policy stand-points in relation to the forestry sector.

In the case of such a policy-making obligation, one may add, it is strengthened further by a substantial body of "soft law" which bears upon Kenya as much as it does upon other States.

Pertinent examples are to be found in Agenda 21, the detailed programme document of the Rio de Janeiro "Earth Summit", and the Forest Principles, which were formulated at Rio and adopted as a "non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests".

The decisions taken at the "Earth Summit" with regard to forests, reflected the sometimes conflicting interests of the developed countries on the one hand, and the developing countries on the other hand. Although participants from developed-country participants were inclined to be in favour of binding legal positions on the conservation of forests, this was not agreeable to many developing-country Parties who are endowed with extensive natural forests. Hence, the Summit only arrived at a compromise formula incorporated in the Forest Principles and in Agenda 21.

The position of the developed countries was guided by the realisation that the continued production of industrial emissions by these countries in particular, jeopardised the state of the atmosphere and of the world climatic system; hence *all* countries should commit themselves to the conservation of forests as sequestering bodies for such emissions. The fact that such a position failed to recognise the industrialisation needs of the developing countries, is precisely what raised reservations on the part of the representatives of these countries.

By adopting Agenda 21, the Summit participants committed themselves to "consider the need for and feasibility of all kinds of appropriately internationally agreed arrangements to promote international co-operation" (para. 11.12(e)) with regard to forests. It was not, however, possible to reach a consensus on the need to work towards a global forest convention. With this failure to "internationalise" the issue of forest conservation, the tropical forests of the developing countries, as Philippe Sands observes in his *Principles of International Environmental Law*, Vol.1 pg. 407 (1995)

"... are carefully guarded as part of the national patrimony of these countries".

The compromise reached in producing the Forest Principles, was guided by the objective of making at least some contribution towards the management, conservation and sustainable development of forests:

"The guiding objective of these principles is to contribute to the management, conservation and sustainable development of forests and to provide their multiple and complementary functions and issues". (*Preamble, para. (b)*).

Clause 4 of the Forest Principles prescribes a broad duty in the management of forests, as follows:

"The vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, *inter alia*, their role

in protecting fragile ecosystems, watersheds and fresh-water sources and as rich store-houses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognised”.

The national policy-making concern in relation to forests therefore, should be viewed as founded firstly, on national social, environmental and economic welfare imperatives; secondly, on binding international legal obligations; and, thirdly, on voluntarily assumed, non-binding international relations under-takings. This is the context in which Kenya's policy-making in the forestry sector should be seen. On the premise that such objectives and international responsibilities represent progressive and desirable goals in natural resource management, they will serve as a logical reference point in the assessment of Kenya's policy orientations in relation to the forestry sector.

2.4 Kenya's Current Forestry Law

The main regime of law today governing forests is that set up under the Forests Act (Cap.385), although other statutes also have a somewhat indirect bearing on the forestry sector.

The Forests Act makes no distinction between, say, indigenous forests and plantation forests, or farm forests. The Act's conception of forests is purely in the category of being legal and formal. Section 2 of the Act states that the phrase “forest area” “means an area of land declared, under the provisions of Section 4, to be a forest area”. Section 4 in turn makes the qualities of a “forest” dependent on decisions taken by the Minister. The Minister may, by *Gazette* notice: “(a) declare any unalienated Government land to be a forest area; (b) declare the boundaries of a forest and from time to time alter those boundaries; (c) declare that a forest area shall cease to be a forest area”.

The concept of ministerial declaration of forests implies that there may be many forests in the country which for purposes of the Act, are not forests because the Minister has not yet declared them so to be. What criteria guide does the Minister use in declaring a forest to be a “forest”? What mechanism is in place to keep the Minister constantly informed of the factual existence of forests throughout the country, to enable him to be up-to-date in his declaration of forests to be “forests” under the law?

There are no objective criteria in the Statute to influence the Minister's decision-making; and the Act sets up no forest-monitoring machinery to constantly apprise the Minister of the fact that some “forest” exists which should legally be declared to be a forest.

As already mentioned earlier in this Report, the management of forests in Kenya has caused considerable losses in the sector, and has caused considerable financial burden on government. Part of the explanation for this situation should be attributed to the statute's failure to provide an objective basis for the establishment and recognition of forests.

A relevant issue of policy choice may be the involvement of commercial enterprises as well as professional forestry bodies in the identification, establishment and management of forests. Since the Minister may not consider himself to be impelled always to monitor and act upon actual forest areas that should be declared to be “forests” for purposes of the law, it will be necessary to engage the role of commercial entities and professional forestry organisations in the necessary investigations leading to such a recognition of forests. As mentioned earlier, a Price Waterhouse consultancy report of 1997 to the Ministry of Environment and Natural Resources (later re-named the Ministry of Environmental Conservation) recommended that:

“A commercially oriented and profitable plantation sector will release the Government from a substantial financial commitment and presents the ideal opportunity to address the wider issues and the restructuring possibilities.....”

Section 6(1) of the Forests Act also gives the Minister special powers in the designation of forest areas:

“The Minister may, by notice in the *Gazette*, declare a forest area or a Central Forest or any part thereof to be a nature reserve for the purpose of preserving the natural amenities thereof and the flora and fauna therein, and may declare that a nature reserve shall cease to be a nature reserve”.

The powers of the Minister under both Sections 4 and 6 are not subject to any objective criteria, and he may thus terminate the forest status or nature reserve character of any area with or without cause. The mode of exercise of this power is likely to lead to uneconomic forestry management. Economic management must be guided by rational considerations of gain and loss; and the processes of such management should not exclude the role of relevant and interested organisations of a business and professional character.

Under the Forests Act, the effect of the declaration of a forest area, a Central Forest or Nature Reserve, by the Minister is to bring into operation, in relation to such areas, the prescribed conservation machinery which is centred on one official, the Chief Conservator of Forests. No cutting, grazing, removal of forest produce or disturbance of flora is allowed in a nature reserve without the consent of the Chief Conservator (Section 6(2)). Where such consent is given, the grantee is required

to be guided by the principle of conserving the natural flora and amenities of the reserve.

A number of activities are prohibited in a forest area or Central Forest except with the approval of the Chief Conservator. The relevant activities include:

- (a) the felling, cutting, taking, burning, injuring or removal of forest produce;
- (b) erecting any building or cattle enclosure;
- (c) setting any fire to any grass or under-growth or any forest product;
- (d) disposing of any fire or lighted material;
- (e) depasturing cattle, or allowing any cattle to be therein;
- (f) clearing, cultivating or breaking up land for cultivation or any other purpose;
- (g) constructing any road or path; and,
- (h) damaging, altering, shifting, removing or interfering in any way whatsoever with any beacon, boundary mark, fence, notice or notice board.

While it cannot be disputed that provisions of the fore-going kind serve the purpose of protecting forest areas from damage or degradation caused by human activity, their success assumes several considerations which at present are not part of the governing regime of law.

Firstly, the enforcement of such restrictive legal provisions cannot create new forests, nor can it limit the Minister's power of excision of forest areas for ordinary social or economic activities. Secondly, over-reliance on entry restriction is likely to miss out on positive conservation practices long observed by local populations in relation to neighbouring forests. It may be more important to take stock of traditional forest conservation practices and to employ such knowledge in the conception of sustainable management principles, than to seek reliance on the prohibitory designs of the legal process as the main strategy of ensuring the observance of good practices. Indeed, it is precisely such an understanding of the past conservation practices that should disclose the legitimate scope for the application of restrictive and prohibitory legal sanctions.

Recent studies in biodiversity conservation have generally shown that an important factor in conservation schemes should invariably be the enhancement of the stakes which the local population has in the biotic resource in question. For fauna as for flora, the most promising approach in this strategy is the institutionalisation of a benefit sharing scheme. Obviously this is not the principle that guided the formulation of the present Forests Act, which is a carry-over from the colonial period.

In the early years, biotic conservation was generally taken to dictate the isolation of the resource locus, and its protection by criminal sanctions from entry and partaking by local populations. This approach not only excluded members of the public from responsibility for conservation, but also missed out on the necessity of the dual approach to forestry, which underlines both expansion of the forest estate, and preservation of the existing estate.

The Forests Act (Section 9) makes it an offence for any person, without lawful authority, to either:

- (a) mark any forest produce or affix upon any forest produce a mark used by any forest officer to indicate that the forest is the property of the Government or that it may lawfully cut or remove; or,
- (b) alter, obliterate, remove or deface any stamp, mark, sign, licence or other document lawfully issued under the authority of the Act, or remove or destroy any part of a tree bearing the stamp or other mark used by any forest officer; or,
- (c) cover any tree stamp in any Central Forest or forest area or on any unalienated Government land with brushwood or earth or by any other means whatsoever conceal, destroy or remove or attempt to conceal, destroy or remove such stamp or any part thereof; or,
- (d) wear any uniform or part thereof, or any badge or other mark issued by the Forest Department to be worn by forest officers or other employees of the Forest Department.

It will be appreciated that these provisions represent a purely legalistic approach to the forestry problem, and are not to a significant extent founded on management principles for forests as resources that are in large-scale use by populations throughout the country. Moreover, even the prohibitory design of the provisions cannot but be purely nominal, in the light of the prescribed penalty of not more than KShs.3000 for those who are in breach.

The greatest limitation of the Forests Act in its present form, is that it is not designed to solve the country's main forestry problems; it is unlikely to guarantee increasing acreage of forest; and thus, it probably would not ensure that Kenyans have access to the quantities of forest product they require; and moreover, the Act cannot guarantee the country environmentally safe quantities of forest.

The success of forestry in Kenya will depend in the first place, on existing energy policy and practices, as well as on the operational land-use practices. Since fuelwood is by far the

dominant product used compared to other forest products, it follows that the country's forestry policies must be pursued in tandem with policies on alternative domestic-use fuels. Since the amount of forestry-supporting land is limited, special attention must be accorded to the question of land-use and land management. It is, for instance, stated in the national Development Plan for the 1994-96 period that:

"Land area under forest plantations have [sic] since 1990 declined by about 2.0 per cent per annum and no major improvements are expected within the plan period mainly due to the opportunity cost of competing land-uses" (p.184).

The problem in question is unlikely to be solved by the current Forests Act. The increasing population pressure gives rise to progressively sharper competition in economic activities; and only a careful and flexible mode of priority-setting would lead to the making of appropriate resource commitments for the forestry sector.

2.5 Other Laws Relevant to the Forestry Sector

As already noted, the possible benefits of the Forests Act are limited by the fact that it relates only to areas declared as forests; but forests in the biological sense are also found in private and trust lands. For such forests, the Act has no provisions cover administration and management. To overcome this problem, the Forest Department has been relying on the Ministry of Agriculture, as well as the Provincial Administration wing of the civil service (which administratively falls under yet another Ministry, the Office of the President), to curb wanton destruction of vegetation, including forests, in the areas concerned. The necessary measures, in such cases, are taken by virtue of the Agriculture Act (Cap.318) and the Chiefs' Authority Act (Cap.128).

The Statute Law (Miscellaneous Amendments) Act, 1993 (No.11 of 1993), in its Section 2, redefined the term "agriculture" to mean the "cultivation of land and the use of land (whether or not covered by water) for any purpose of husbandry"; and in its coverage "agriculture" included the "conservation and keeping of game animals, game birds and protected animals (all as defined in the Wildlife (Conservation and Management) Act (Cap.376) and also of aquatic animals" [Section 2(c) of the Act]. In Section 2(7), "agriculture" is defined to include "the use of land for woodlands and other forms of agroforestry, when that use is ancillary to the use of land for other agricultural purposes...."

The effect of this redefinition of agriculture is that the institutions and offices set up under the Agriculture Act may in certain cases take management decisions bearing on forests

(especially in cases of agroforestry), both as an end in itself, and as a habitat for animals in certain situations.

One sees therefore, an overlap of management authorities over some aspects of the forestry sector. Although, through good practices, it is possible to conduct such pluralistic management in a harmonious manner, the situation could equally lend itself to misunderstandings and conflicting modes of operation.

The Chiefs' Authority Act has proved particularly handy in dealing with forestry problems outside the designated areas. By virtue of this Act not only Chiefs at the Location level, but also virtually all the more senior officers of the Provincial Administration, have been able to issue orders aimed at the conservation and management of forests lying outside the gazetted areas.

The Chiefs' Authority Act does, however, raise special problems which sometimes prove counter-productive in the task of environmental management. This Act was first enacted in the colonial period, to serve as an instrument of law and order in the local areas throughout the country. It is therefore, neither suited to environmental conservation in general nor to forestry conservation in particular, as these matters require a substantial degree of public awareness, education and participation, aspects which are of limited concern in the implementation of the Act.

Where forests occur on trust land, relevant conservation functions may be performed within the framework of the Local Government Act (Cap.265). This Act empowers County Councils to establish and maintain forests within their geographical areas. The Councils may make byelaws prohibiting activities that cause damage to vegetation cover, or which necessitate the under-taking of conservation measures (S.147).

Another relevant statute is the State Corporations Act (Cap.446). By virtue of Section 3 of this Statute (S.3) the President, in 1986, promulgated the Nyayo Tea Zones Development Corporation Order (L.N. 265/1986). By this Order the Nyayo Tea Zones Development Corporation, a body corporate, was established. The relevant part of the Order reads as follows (S.3(1) and (2)):

"(1) (a) The corporation shall, in consultation with the Chief Conservator of Forests, create as part of the forests and without incision from the forests, tea growing zones, to be known as the 'Nyayo Tea Zones', in gazetted forests in those areas of Kenya where the Kenya Tea Development Authority does not operate.

- (b) Any tea growing area created and developed in a gazetted forest by the Government prior to the making of this Order shall be deemed to have been created by the Corporation under this Order.
- (2) The corporation shall manage and foster the development of tea growing in the zones created under sub-paragraph (1) and shall for that purpose in the zones:
 - (a) establish, manage and develop tea plantations;
 - (b) establish and manage nurseries for the cultivation of tea seedlings;
 - (c) establish, manage and maintain tea processing factories and process tea therein; and,
 - (d) construct and maintain access roads”.

The Nyayo Tea Zones Development Corporation Order provides a further example of overlaps in the institutional arrangements for the management of the forestry sector. The

creation of the Nyayo Tea Zones in the first place is an extract from the national forest estate and this is particularly so with regard to the indigenous forest estate. This remains true even though the declared object in the establishment of the Nyayo Tea Zones was to create a protective buffer zone around the indigenous forest estate. The management of the tea areas is vested in a new entity, outside the framework of the institutions established by the Forests Act; although the Order requires co-operative decision-making in certain cases between the corporation and the Chief Conservator of Forests.

The fact that there exist different statutes bearing on forests, with unrelated institutional arrangements, makes it clear that the whole issue of forestry is not regulated under one coherent scheme of government policy. This may be seen as part of the explanation for the current short-comings in the management of the forestry sector, with the consequence that forests have not been sustainably managed, and have proved to be a considerable financial burden on the state.

CHAPTER THREE

CURRENT ORIENTATIONS IN POLICY AND LAW

The importance of the forestry sector to Kenya's economy has been discussed in Chapter 2 of this Report. In the same Chapter the main challenges currently facing the economy have been outlined. These challenges are mainly of an economic and a social character, as well as ecological in nature. The challenges are also, at a certain stage, of a legal character: not only must the law be brought into the initiatives towards a solution; rather the environmental aspect of the challenge in particular, places certain legal obligations upon the State. These are obligations of implementation; and in their discharge, appropriate policies and national laws, as well as administrative institutions, have to be put in place.

Endeavours to solve problems must start with policy-making, which subsequently expresses itself in the form of legal and institutional arrangements; and all these normative and operational designs are to guide public and private actions in the sustainable management of the forestry sector.

This Chapter of the Report firstly, addresses Kenya's new lines of policy-making, followed by a consideration of the proposed draft law. As already seen from the discussion of the existing law, earlier policy orientations (which date back to the colonial period when they had influenced the enactment of the Forests Act) had hardly addressed forestry as a vital aspect of a modern economic sector. The statute law is not founded on management principles that are responsive to the current realities of rapid population growth and the consequent competition for land, for fuel sources and other social and economic requirements.

Recently the Government, through its relevant institutions, has worked toward the conception of new lines of policy, as well as a new governing statute.

3.1 New Lines of Policy-making

Kenya's new lines of forestry policy have to be seen against the broader background of general environmental policy. As early as 1965, the Government formulated its landmark policy document bearing the title "African Socialism and its Application to Planning in Kenya" (Sessional Paper No. 10 of 1965). It was noted in that Sessional Paper that there were deteriorating environmental trends that could prove to be a hindrance to the nation's economic development goals:

"The use of outmoded farming techniques may result in erosion; the cutting of wind-breaks and the burning of vegetation may turn fertile acres into desert; and the destruction of forests may eliminate important water supplies; practices tending to harm rather than conserve our physical environment must be curbed through education and legislation".

This concern for the integrity of the various sectors of the environment has been sounded in the various *Development Plans* that have been formulated since 1965; and in the 1994-1996 *Development Plan* a call was made for an authoritative policy document, a Sessional Paper on Sustainable Development. Considerable progress in this direction was made through the Kenya National Environment Action Plan (NEAP), and the NEAP Report was published in 1994. The NEAP report identified certain specific issues which would provide for appropriate framework for Government policy on the environment. These matters are:

- (a) use of economic incentives and disincentives in working towards the sustainable management of natural resources;

- (b) requirement of environmental impact assessment (EIA) as a pre-condition to the under-taking of projects likely to have impacts on the environment;
- (c) environmentally-sound approaches to land use and to the establishment of settlements;
- (d) harmonisation of legislation relating to the various environmental sectors;
- (e) strengthening of the institutional framework for environmental management;
- (f) establishment of an independent co-ordinating body for national environmental management programmes;
- (g) involvement of the communities in environmental management, in respect of environmental resources in which they have a stake;
- (h) enhancement of levels of environmental education for the public;
- (i) pursuit of regional and international co-operation in environmental management.

The fore-going principles lie at the core of the recently adopted *Sessional Paper on Environment and Development*. This Sessional Paper represents the Government's position in matters of policy, with regard to environment and sustainable development. The overall policy of the Government is to achieve economically, socially and environmentally sustainable national development. Some of the specific objectives conceived within that broad policy goal, and which have a direct bearing on the forestry sector, are as follows:

- (a) to achieve sustainable utilisation of resources and ecosystems for the benefit of the present generation, while ensuring their potential to meet the needs of future generations;
- (b) to promote the maintenance of ecosystems and ecological processes essential for the functioning of the biosphere;
- (c) to promote the preservation of genetic resources and biological diversity in our ecosystems and to preserve their cultural value;
- (d) to treat environmental conservation and economic development as integral aspects of the process of sustainable development;
- (e) to conserve and manage the natural resources of Kenya, including air, water, land, flora and fauna.

The Sessional Paper incorporates the principle of citizen participation in the initiatives of environmental conservation. The paper states that:

“Environmental issues are best handled with the participation of all citizens at the relevant level with special emphasis on women and youth. Each individual shall have appropriate access to information concerning the

environment and the opportunity to participate in decision-making processes. Effective access to judicial and administrative proceedings, including redress and remedy is essential to environmental conservation and management”.

Regarding forestry, the Sessional Paper rightly observes that this sector provides a linkage with the agriculture and livestock sectors which are the backbone of Kenya's economy. The paper underlines the fact that forests, by stabilising soils, conserving water and regulating river flow, serve as the precious factor that enhances the success of all agriculture-related economic activities.

Kenya's forestry policy is stated in both the Sessional Paper and in a separate document entitled “Kenya Forestry Policy”, of June, 1994. The Sessional Paper states that the primary object of the country's forest policy falls under the following heads:

- (a) reservation of land for forests;
- (b) protection and conservation of forest resources;
- (c) promotion of increased tree-planting in pursuit of private forestry; for commercial purposes; for public amenities; for wildlife protection;
- (d) monitoring of vegetative cover changes in arid and semi-arid areas;
- (e) establishment of forest estates using improved germplasm.

Such a policy approach is designed to avoid the negative results attendant on past policies. The Sessional Paper notes that there had been, in the past, an over dependence on forest produce for basic needs; in the past there had been hardly any recognition of the principle of sustainable use of biodiversity; past policy had been based on the assumption that forests were the property of the State, and that their management was the responsibility of the Government alone; in the past there had been assumed that forests were inexhaustible, and thus their resources could be exploited without any concurrent efforts at replacement.

The Government's strategy for the development and enhancement of the forestry sector is stated in the Sessional Paper. The following strategies may be noted:

- (a) review the Forests Act;
- (b) integrate the management of forests for social and commercial objects with that for conservation;
- (c) identify and manage important forests for water-shed protection;
- (d) increase the country's forested area from 3% to 5% by the year 2010;

- (e) subject County Council-managed forests to professional management designed to achieve sustainable utilisation;
- (f) suitably adjust acreage allocations as well as locations of catchment and plantation forests, being guided by the principle of enhancing both the quality and quantity of catchment forests;
- (g) preserve natural forests for their biodiversity value, water catchment function and cultural value;
- (h) encourage the plantation of forests for woodfuel, charcoal and other products and uses;
- (i) limit the consumption of forest products through the promotion of energy-saving burners and alternative fuels;
- (j) establish peri-urban forests, and promote tree-planting campaigns covering both plantation and indigenous forests;
- (k) suitably reward those farmers who maintain significant indigenous tree plantations on their farms;
- (l) support community management of forest in accordance with cultural practices;
- (m) encourage suitable tree-planting in rangelands;
- (n) assess the status of habitats in the country, and create a biodiversity information data-base of all plant and animal species indicating their potential use, and prepare plans for the conservation and management of such areas.

The document on "Kenya Forestry Policy" is consistent with the policy goals and strategies set out in the Sessional Paper. The Forestry Policy commits the Government to pursue integrated goals with regard to forests, in respect to four cardinal issues: environment, agricultural land-use, water resources, and energy. The policy document commits the Government to enhance: the conservation of indigenous forests; to the sustainable management of forests and trees outside national reserves or any other special category; the reduction of pressure on indigenous forests; the broadening of the institutional framework for forest management, to cover commercial, social and environmental causes at the same time; to capacity-building (through education, training and research) for forest management; to forest protection against pest and disease outbreaks or fire; the rationalisation of the forestry industry, so as to realise its full potential in the national economy; and implementation of international conventions bearing on trees and forests.

3.2 Analytical Perspectives on the New Forest Policy

It is quite clear that up to the early 1990s, Kenya's forestry sector was not guided by any coherent policy that bore a significant relationship to the public interest. No authoritative policy documents had been formulated which took into account the nation's social, economic as well as

environmental priorities and responded to these by prescribing an enlightened and detailed approach to forestry management.

It is thus, hardly surprising that an old statute dating back to 1942, the Forests Act, could remain in force right through to the present, notwithstanding that it had hardly any scheme of management or conservation.

Against this background, the new policies and strategies on forestry may be said to have clear merits in most respects. The new policies and strategies are founded on a good appreciation of the social, economic and environmental importance of forests in such a water-deficient country like Kenya, which at the same time has a rapidly growing population that exerts much more pressure on vital natural resources. The new policies are destined to provide a strong foundation for a forestry sector that, with time, will play an increasingly vital role in the enhancement of the quality of life for Kenyans.

Certain reservations, however may be expressed regarding the prospects for the new policies providing practical solutions to the kind of problems that have in the past afflicted the forestry sector.

Although the new policies are clearly stipulated on paper, they will not execute themselves bring about new benefits and economic and social welfare of the people. The policies can only be of practical value if they are entrusted to an effective institutional mechanism for implementation. The existing institutional arrangements are the very same ones which, in the past, and in the absence of appropriate policy guidance, had failed to provide a basis for correcting the short-comings in the forestry sector. As will be seen later in this document, the institutions in place were not sufficiently well-ordered to lead to productive operations. To leave these institutions untouched, and merely thrust upon them new policies and strategies, is unlikely to lead to any real solution.

The formulation of new policies came as part of the Government's concern to inject a dose of free-market conditions into the forestry sector. The intended economic rationalisation is unlikely to be achieved with a retention of a chain of public management institutions which, besides, have not been subjected to any process of re-orientation or reform. Such institutions, if retained as they are today, are likely to serve to defeat rather than facilitate the new policies and strategies.

It is recommended that the new policies should be given effect through legislated structures which put in place institutions designated to give fulfilment to the policies. There should be

a new statute on forests which should rationalise the institutional arrangements for forest management. Furthermore, any new institutional order should incorporate into its operation the role of both market and community-related agencies. In this way it will be possible to have the social, economic and environmental interests of the society duly represented.

A further point, of the same generic character as the institutional question considered above, is the fact that the new policies, for their effectiveness, presuppose the existence of a centralised national programme of environmental management.

Such a programme would entail the establishment of a national co-ordinating office and a national administrative body with authority to prescribe environmental standards and to oversee the implementation of environmental impact assessments (EIA). Forestry in its social and economic significance, but in particular, its environmental dimension, cannot be effectively protected and enhanced in accordance with the new strategies without effective EIA procedure. Now EIA, by its very nature, focuses on areas of conflict between different sectoral interests: for instance, manufacturing industry Vs. catchment forestry; infrastructure construction Vs. indigenous forest estate; chemical industry Vs. water resources; paper industry Vs. forest estate; among others. Since EIA lies at the crossroads of national, social, economic and environmental sectors, the conduct of this procedure must be of a centralised national programme that is based on general environmental management.

The success of the new forestry policies therefore, will depend on further actions to institutionalise a national scheme of environmental management.

3.3 Proposed Reforms to the Forestry Statute

Given the short-comings of the Forests Act (Cap.385) discussed earlier in this Report, but more important still, given the Government's objectives in relation to the forestry sector (discussed in Section of this Report) as well as its new policies and strategies, it was inevitable that new legislation be formulated in respect to the forest sector. There is already a Draft Forestry Bill, of November 1995. This Draft Bill is the subject of analysis in this Section of the Report. Assessment of the Draft Forestry Bill will be conducted first on matters of form, and then on those of substance. The analysis of the formal aspects of the Bill will of course be guided by a good degree of caution, as its ultimate form has to be left to the professional drafting inputs of the Parliamentary Counsel in the Office of the Attorney-General.

As regards the points of substance the Bill will be considered, firstly, in relation to the policy goals of the Government (discussed in Section 3.1.0 of this Report); and secondly, the Bill will be considered under the issues raised in the policy analysis in Section 3.2.1 of this Report.

3.4 Formal Aspects of the Forestry Bill

The Bill, in its present form, is a layman's draft in every sense, and it will take some considerable drafting inputs to raise its status sufficiently to meet basic requirements. Specific illustrations of this general remark should be given.

The very title of the Bill, "Forestry Bill" is inappropriate. "Forestry", according to the *Longman Modern English Dictionary* (ed. Owen Watson, 1976, 3rd ed), is "the science of planting and tending forests". The Draft Bill is primarily concerned with operational issues regarding forests, rather than with the *science* of forestry; and on this account the correct title will be the FORESTS BILL, just as its predecessor which became the Forests Ordinance and later the Forests Act had been.

The mode of arrangement of the clauses of the Bill is rather mixed up, repetitive and shows signs of not having been guided by conceptual clarity. The Bill is presented under the following numbered (some numbers repeated e.g. 15) headings:

- (i) Preamble
- (ii) Definitions
- (iii) Institutional Arrangement and Forest Administration
- (iv) Officials of the Department
- (v) Forestry Conservation Committees
- (vi) Creation of Forests
- (vii) Creation of Arboreta, Recreation Parks, Mini Forests, etc
- (viii) Community Forests
- (ix) Development of other Forests
- (x) Private and Urban Farm Forestry
- (xi) Forestry Management Fund
- (xii) Conservation of Biodiversity
- (xiii) Management for Sustainable Production of Forest Goods and Services
- (xiv) State Forest Leaseholds
- (xv) Management of Local Authority Forests
- (xvi) Reforestation and Tree Improvement
- (xvii) Protection of Forests Against Illegal Activities
- (xviii) Counterfeiting or Unlawfully Affixing Marks
- (xix) Compounding Offences
- (xx) Powers of Officers
- (xxi) Prosecutorial Powers
- (xxii) Presumption Concerning Forest Produce

- (xxiii) Community Participation in the Conservation of Forests
- (xxiv) Forestry Conservation Practitioners Board
- (xxv) Kenya Forestry College
- (xxvi) Rules

In between the 26 major headings in the Draft Bill there also occur many random large headings which, however, are not numbered. All these headings are not, quite clearly, guided by any organising concept. What is referred to as a preamble is in fact, not a preamble; rather it is what legal draftsmen would make it a Preliminary Part. There is need to decide whether this Bill requires a *preamble* or not.

A preamble, when used in legislation, is not one of the binding parts of the legislation. A preamble is no more than a recital of certain fundamental principles which have given justification to the initiatives for enacting the law in question. Below is a sample preamble:

“WHEREAS forests play a vital role in the stabilisation of soils and ground water, thus supporting the conduct of reliable agricultural activity;
 WHEREAS forests play a crucial role in the rainfall regimes of Kenya;
 WHEREAS forests provide the main locus of Kenya's biological diversity;
 WHEREAS forests are the main source of domestic fuel for the Kenya people;
 WHEREAS forests provide essential construction material in the form of roundwood for the making of a variety of economically beneficial products;
 AND WHEREAS Kenya has committed herself under international conventions and other agreements to promote the sustainable utilisation of forests and of biological diversity;
 NOW THEREFORE BE IT ENACTED BY THE PARLIAMENT OF KENYA AS FOLLOWS.....”

The short title of the Bill, which should be THE FORESTS ACT, should be followed by the “long title”, something like this:

“An Act of Parliament to amend and restructure the Forests Act (Cap.385) being guided by the principles of achieving greater efficiency in the forestry sector, enhancing tree production and providing a framework for sustainable utilisation in fulfilment of commitments assumed under relevant international agreements”.

Many of the current headings appearing in the Bill are not well framed, for example 3. INSTITUTIONAL ARRANGEMENT AND FOREST ADMINISTRATION Suggestions for an improved

format are made in the following paragraph.

More order could have been provided for in the Draft Bill by resolving its numerous headings into generic categories, and designing appropriate titles for these categories. Each category could have been regarded as a PART. I would propose that the Bill be divided into seven Parts, and the entire content of the Draft, with all the various headings shifted into the framework created by the seven parts. The seven Parts should be as follows:

- : Part i - Preliminary
- : Part ii - Institutional Arrangements
- : Part iii - Creation And Management Of Forests
- : Part iv - Forestry Funds
- : Part v - Offences
- : Part vi - Miscellaneous Provisions
- : Part vii - Transitional Provisions

Given the fact that the new legislation will have a new institutional arrangement, and will carrying over from the previous statute, it will be important that a Part on TRANSITIONAL PROVISIONS be included as indicated above.

The various clauses of the Draft Bill should be reset in accordance with the following scheme of presentation:

- PART I - PRELIMINARY
 - : Definitions
 - : Objects of the Act
 - : Objectives
- PART II - INSTITUTIONAL ARRANGEMENTS
 - : The Forest Authority
 - : Powers of Officers
 - : Forest Conservation Committees
 - : Forestry Conservation Practitioners' Board
 - : Kenya Forestry College
- PART III - CREATION AND MANAGEMENT OF FORESTS
 - : Creation of Forests
 - : Creation of Arboreta, Recreation Parks, Mini- forests, etc.
 - : Community Forests
 - : Private and Urban Farm Forests
 - : Other Forests
 - : Management for Sustainable Production of Forest Goods and Services
 - : State Forest Leaseholds

		<ul style="list-style-type: none"> : Management of Local Authority Forests : Conservation of Biodiversity : Protection of Forests : Community Participation in the Conservation of Forests
PART IV	-	FORESTRY FUNDS <ul style="list-style-type: none"> : Forest Management Fund : Reforestation and Tree Improvement Fund
PART V	-	OFFENCES AND LIABILITIES <ul style="list-style-type: none"> : Offences : Prosecutorial Powers : Counterfeiting or Affixing Marks : Compounding Offence : Presumption Concerning Forest Produce
PART VI	-	MISCELLANEOUS PROVISIONS <ul style="list-style-type: none"> : Rules
PART VII	-	TRANSITIONAL PROVISIONS

The mode of drafting is often loose-textured, and will call for some tightening. Examples will be seen in Clauses 1.3.3, 1.3.7, 1.3.9, 13.1.3, 13.1.6 and 15.2. All the numbering given for the various clauses is not in conformity with the standard mode of numbering sections of statutes.

3.5 The Forestry Bill, and the Operative Policy

Today's forestry policy goals may be summarised as follows:

- (a) the introduction of economic rationality into the management of the forestry sector;
- (b) the conservation of the country's indigenous forest estate;
- (c) the enhancement and diversification of the country's forests, for the stabilisation of soils, water and ecological cycles;
- (d) meeting the demand/needs for industrial, domestic and commercial wood through the maintenance of a dependable supply of forest products;
- (e) the conservation and protection of biodiversity through the maintenance of a well-kept forest habitat;
- (f) the sustainable utilisation of forests and forest products;
- (g) the involvement of local communities in the management of forests;
- (h) the pursuit of public education strategies favourable to the sustainable utilisation of forests; and,
- (i) the enhancement of professional management in the forestry sector.

Thus, to what extent does the Draft Forestry Bill respond to the foregoing policy goals?

The Bill declares itself to be a Bill for "An Act of Parliament to provide for the establishment, development [and] sustainable management (including conservation and rational utilisation) of forest resources for the socio-economic development of the country". The Bill is thus, mindful of the broad policy goal which the legislation aims to realise.

The Bill goes on to incorporate in its statement of objects the following:

- : to increase the forest and tree cover of the country in order to ensure increasing supplies of forest products and services for meeting the basic needs of present and future generations, and for enhancing the role of forestry in socio-economic development;
- : to conserve biodiversity by protecting natural habitats and rehabilitating the habitat where necessary;
- : to conserve soil and water resources, sequester carbon-dioxide and ameliorate climate by tree-planting and forestry management, all this in turn to contribute to sustainable agriculture and other land-uses;
- : to maximise the benefits of a viable and efficient forest industry for national economic development;
- : to contribute to the alleviation of poverty and the promotion of rural development through the provision of employment and income based on forest and tree resources, and by promoting equity and participation for local communities;
- : to promote relevant research in the conservation of forests, and to facilitate training and the provision of technical assistance for those engaged in forestry activities.

The Bill sets up four categories of forests, to be the basis of national forestry management. These are: (a) State Forests; (b) Local Authority Forests; (c) Community Forests; and (d) Private Forests.

State Forests are to be created by Ministerial Order, following the recommendations of a Forest Management Board. These forests are to be created from unalienated Government land, or from purchased private land, or from trust land set apart for afforestation by a local authority, or from compulsorily acquired land. The Minister has powers to declare any local authority forest a "Provisional Forest" or community forest or private forest, which is being mismanaged and where the said forest is an important biodiversity habitat, an important catchment area, an economically important forest, or a forest that is of special cultural or scientific significance.

The Minister still retains the power (exercised following the resolution of the Forest Management Board) to excise existing forests, to alter forest boundaries, or to exchange a forested area with private land; provided that such actions may only be taken in the public interest. Besides, members of the public may raise objections to such intended courses of action — such objections initially to be decided by the Board subject to appeal in the High Court.

Apart from the various modes of establishing and conserving forests, provision is made for Presidential protection orders for particular species: "The President may, by an order published in the *Gazette*, declare any tree species or family of tree species to be protected either in the whole country or in specific regions".

Overseeing of the sustainable production of forest goods and services is the responsibility of the Director of Forestry. The Forest Department is required to design and implement a system of environmental monitoring and evaluation for forest developments and for land-uses having a bearing on forestry.

The Bill contains criminal sanctions against all conduct that prejudices the administration of the forestry law, and that has the effect of causing damage to forests. The Bill empowers the Director of Forestry to enlist the co-operation of local communities in the protection of forests against harm caused by illegal harvesting of produce, fire outbreaks, among other factors.

The greatest merit of the Draft Forestry Bill is that, it has squarely addressed the cardinal policy goals of the Government. It has fairly comprehensive provisions for facilitating initiatives for the expansion of the forest estate, for conserving forests, and for the sustainable utilisation of forests.

There is, however, one aspect of the policy statements which is not accorded any significant treatment in the Bill. This is the subject of the public's role in forest management. Although the Bill permits members of the public to raise any objections regarding a ministerial decision to excise a forest for other uses, and it empowers the Director of Forestry to involve members of the public, for example, in the protection of forests against fire outbreaks, it does not appear to contemplate a mode of participation that places the initiative in the hands of the members of the public.

The concept of public participation should be considered to be much wider than the position taken in the Bill. Forests, like other sectors of the environment, cannot be effectively conserved in every respect through formal administrative structures, and top-down-oriented mechanisms by

themselves. Conservation activities ought in principle, to involve certain initiatives coming from the community itself.

Furthermore, community participation in environmental conservation should be regarded as incorporating some direct benefit, in the form of income or material, reaching members of the community in return for their conscientious inputs into conservation.

Although these aspects of community participation are not accorded significance in the Bill they will call for consideration, with a view to either incorporating some of them or designing management programmes and formulating documents that incorporate them.

As already noted, there are several categories of forests such as indigenous forests, industrial plantation forests and farm forests. These have their own peculiarities and will require special approaches to community participation in conservation. It will be necessary to investigate the specific requirements of the various categories of forests, and to formulate detailed rules to regulate the modalities of community participation in their conservation.

3.6 The Forestry Bill, and the Relevant Institutional Issues

As already remarked (*Section 3.2 of this Report*), the success of a new law on forests when it is passed, will depend primarily on the institutions it establishes and on their mode of operation. Undoubtedly the meritorious policies and strategies conceived by the Government (*Section 3.1 and 3.5 of this Report*) can only be fulfilled if the institutions of management are so designed as to facilitate and effectuate their implementation.

The institutional arrangement provided for in the Bill calls for one criticism right at the beginning. Nine different institutions are proposed; these (in the order in which they occur in the Bill) are:

- (a) the Forest Management Board;
- (b) the Forest Department;
- (c) the Forest Conservation Committees;
- (d) The Forestry Management Fund;
- (e) the various Local Authorities;
- (f) the Reforestation and Tree Improvement Fund;
- (g) the National Forest Examination Council;
- (h) the Kenya Forestry College;
- (i) the Minister.

These several institutions do not appear to have any organisational link running through them; and thus, their

mode of operation is destined to prove random, and ill-gearred to achieve the implementation of the much more coherent policies and strategies that have been formulated by the Government.

These various institutions ought to be functionally related, and their incorporation into the Bill, should occupy one Part and also have one overall design. In the first place, this one Part could start with the “central direction of forest administration”, under which concept, appropriate statutory provisions should be made for: (i) the Minister; (ii) the Forest Authority; and (iii) Local Authorities. Secondly, under the Part on “Institutional Arrangements”, appropriate provisions should be made on the “independent advisory and management boards”, namely, (a) the Forest Management Board; and, (b) the Forest Conservation Committees. Thirdly, the Part on “Institutional Arrangements” should provide for the “autonomous forestry funding agencies” thus: (a) the Forestry Management Fund; and, (b) the Reforestation and Tree Improvement Fund. Lastly, the Part on “Institutional Arrangements” should provide for “professional and capacity building arrangements”, and this should cover (a) the Kenya Forestry College; and, (b) the National Forestry Examination Council.

Thus, re-organised, the proposed institutional set-up does not appear too cumbersome, and indeed it shows elements of rationality which would well justify giving it a try. The first aspect of the institutional arrangement underlines the importance of central policy-making in the forestry sector. The second aspect introduces the element of autonomy in advisory and management issues. The third aspect is concerned with the establishment of independent funding sources, especially to facilitate the development and management of non-State forests. The fourth aspect is concerned with training for forestry development and management, as well as the evolution and maintenance of professional standards to serve the forestry sector.

The institutional model proposed in the draft Bill is a “governmental” one, quite unlike the wildlife model which prevails today under the Wildlife (Conservation and Management) Act (Cap. 376). Under that Act the Kenya Wildlife Service is constituted as a public corporation with substantial independent authority to manage wildlife. The scheme contained in the draft Bill would not be justified, given the well-known short-comings of the present mode of operation under the Forest Department. It will be essential that forestry should be managed in conditions of greater autonomy rather than under regular bureaucracy.

The Draft Bill proposes a Forest Management Board whose membership is largely made up of public servants, to be the primary body responsible for forest management, operating

under a Minister who is also the head of the Forest Department. This Department, under the present order of governmental portfolios, is just one of the divisions within the Ministry of Environmental Conservation.

Is this management model the most appropriate, given the new policy goals formulated by the Government? It may be so, especially if the primary consideration is the ecological aspect of the Government policy; but this may not be the case with regard to the economic aspect of the Government policy. It cannot be assumed that an institutional arrangement so government-oriented will be the most sensitive to market-type efficiency considerations in forestry.

The Bill proposes that the Forest Management Board will conduct its operations through Forest Conservation Committees, under the superintendency of the Forestry Department, the chief officer of which is the Director of Forestry.

Another factor deserving consideration, in the choice between the government and the autonomous model of management institutions, is the likely inter-play between forestry and other sectors of the national economy. A pertinent example is the overlap between forestry and wildlife, over the common element of *habitat*. The primary habitat is the forest, for flora, fauna and microbial species. The new law should be guided by the principle of promoting harmonious management between such overlapping areas of national activity.

The *Price Waterhouse Report* referred to this Report recommended the adoption of a “commercially oriented and profitable plantation sector”, as well as a regulatory scheme vested in a “forest authority with ultimate responsibility for overseeing the conduct of all activities and operations within the forestry sector”. It was further recommended that the “forest authority” should be responsible for maintaining “records pertaining to forest area and the monitoring of harmful agents which may affect Kenya’s forests currently or in the future”.

The basic principle of the fore-going recommendation should be considered and adopted; but it is important to recognise that the said principle will require that industrial forest plantations be essentially managed by a commercial body, on economic principles, though within the framework of that broad oversight of the proposed “forest authority”. The primary responsibility of the “forest authority” should be the protection and sustainable use of the indigenous forests, with their special role in the functioning of the ecological cycles.

The proposed “forest authority” should be the umbrella forest management agency, and it should be responsible for overall

stewardship over the nation's forest resources. It should provide a major data base on forest resources, and should be the central point for a natural resource accounting process, working in liaison with the management bodies for other natural resource sectors such as water, wildlife, minerals, among others.

3.7 Need to Reconsider and Revise the Draft Forests Bill

This Report, under Section 3.4 and 3.5 provides suggestions to guide the reconstruction and reformulation of the Draft Forests Bill; but it is to be emphasised here that such revision must pay special attention to the concept of a "forest authority" to be the principal forest management agency. Is this "forest authority" to become a new entity, or just a reunion of the old forestry offices which had been in place under the Forests Act?

The "forests authority" should certainly have some novel elements. In particular, it ought to provide sufficient room for effective management of the industrial forestry sector by business and professional interests, in the general context of community participation; but the core of the responsibility of the "forests authority" should revolve around the conservation of indigenous forests.

In view of the fact that the conservation of indigenous forests is more in the nature of natural resource stewardship than of a purely economic concern, it will be desirable that the public sector (in relation to governmental decision-making) be prominently involved in its functioning, though, of course, with a fair input of community participation.

Currently the Forests Department has co-operated in carrying out its tasks with related public agencies, such as the Kenya Wildlife Service, on the basis of a Memorandum of Understanding. This was necessitated by two main

considerations: Firstly, forestry is a convergence point of several natural resource systems — water, wildlife, agriculture, among others; and, secondly, such other related systems have in many cases been organised into different political and administrative portfolios each claiming its own autonomy. In these circumstances it made all practical sense that those who manage the different environmental sectors should formulate special protocols to govern their working relationships. Now in the event that the idea of a "forest authority" with its own corporate status is adopted, how should it relate to the other environmental resource management institutions?

In an ideal situation natural resource portfolios should be amalgamated as much as possible, to facilitate the housing of cognate resource functions under the umbrella of one Ministry. In this regard, forestry and wildlife ought to belong together under one Ministerial outfit. This would facilitate control and regulation in issues that have a direct bearing on the management of forestry resources.

If the suggestion in paragraph 3.7 is not adopted, then a new body such as the proposed "forests authority" would have to continue to work with agencies in charge of cognate portfolios on the basis of special protocols.

In the light of the fore-going recommendation which favours the establishment of a "forest authority", it follows that it would be necessary to cut down on some of the institutions that have been proposed under the present draft of the Forests Bill. In particular there will be no need for a Forestry Department, or the Forest Conservation Committees. Alternatively, should it be necessary to establish such committees, this should be a matter for incorporation in internal working regulations, rather than in the Act itself. The Act could simply provide an empowerment for the establishment of such committees.

CHAPTER FOUR

SUB-REGIONAL CO-OPERATION AND THE HARMONISATION OF LAW AND POLICY

As already noted under Chapter one of this country report, environmental phenomena, in their peculiar nature, are not limited by political boundaries, and as a result they are best considered in their wider perspective, that is, beyond national territories. Firstly, what is the scope for East African sub-regional co-operation in relation to the sustainable management of the forestry sector? Secondly, would the harmonisation of laws and policies be a strategy in aid of sub-regional environmental co-operation, in this case, with respect to forestry? These are the two main issues considered in this Chapter of the Report. A third issue also considered is the possibility of national interest-group participation in such matters of regional co-operation.

4.1 The Scope for Sub-Regional Co-operation in Forestry Issues

Effective sub-regional co-operation requires a consensus among the individual states within a sub-region. The possibility of arriving at such a consensus is a matter of political choice under conditions of free will.

In the perspective of history, the three East African countries have had rather much more to share than would normally be the case among most neighbouring states. There was a long lasting economic co-operation that brought these countries into a near-perfect working relationship in matters such as railways and harbours, air transport, posts and telecommunications, monetary union, among others, that went on from the colonial period into the post-independence period. Many of these collaborative enterprises were continued into the post-independence period, under the 1967 Treaty for East African Co-operation, and functioned

reasonably well up till 1977, when the East African Community collapsed owing mainly to lack of political will.

In 1991, by which time the political climate had significantly changed, the Heads of State of the three countries executed the Agreement to Establish a Permanent Joint Commission for Co-operation between the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya. The object of this Commission was stated as "to promote co-operation in various fields including political, economic, commercial, trade, customs, transport and communications, tourism, social, cultural, educational, scientific, technical, legal and security [matters] among the three states for their mutual benefit". The Tripartite Commission is required to promote co-operation in various fields among the States Parties and to be in particular responsible for "the planning and representation of tripartite programmes of co-operation in order to encourage and promote the development of the States."¹

At their meeting which took the decision to re-establish sub-regional co-operation, on November 22, 1991, the Heads of State appointed a three-man committee of Foreign Ministers to define in detail the form that the new co-operation should take. At the meeting of the Ministers, which took place in January 1992, certain areas of co-operation were identified, and one of these was *environment and natural resources*. The specific items recommended under this head were the following:

- (a) Conservation and biodiversity;
- (b) control of pollution of shared inland waters;
- (c) control of marine pollution;

¹ Art. 3.01(a)

- (d) control of trans-boundary movements of hazardous waste;
- (e) studies of the effects of climate changes;
- (f) conservation of forests and re-afforestation;
- (g) training and research in forestry.

Forestry was accorded a central place in the Ministers' plans on sub-regional co-operation. Such co-operation would bring together, for greater effect, the national scientific and professional contributions into the overall scheme of sub-regional forest conservation and management.

4.2 A Case for Harmonisation in Sub-regional Policies and Laws relating to Forestry

The phrase "harmonisation of laws", in the context of East Africa, and especially when applied to forestry law, has two distinct significations. In virtually the whole of East and Central Africa, forest laws raise special problems in relation to management initiatives, because their regimes and the bodies they establish, end up being trumped by the regimes and agencies established for related environmental sectors, in particular water resources, agriculture, mineral resources, among others. As a result, the agencies established by the Forest legislation find themselves practically unable to protect and suitably manage forests, in the face of contrary claims coming from the parallel regimes of law. This is an undesirable situation, because it nullifies all prospects of effective forest management. In these circumstances, it becomes vital that within each country, there should be a formula for harmonising the operation of forest laws with that of laws relating to water resources, agriculture, mines, road construction, wildlife, among other sectors.

Such "internal harmonisation" of laws is itself desirable, and as an entry point to any endeavours with the objective to achieve regional harmonisation. This latter kind of harmonisation is essentially horizontal in character, as opposed to internal harmonisation which may be deemed to be vertical in character. Sub-regional harmonisation is an incident of the policy on sub-regional co-operation in forestry management (discussed in Section 4.1.0 of this Report).

As was noted earlier (Chapter 3 of this Report), Kenya's forestry policy may be reduced to a tetrad of principles, namely: (a) expanding the forest estate; (b) introducing market efficiency into the forestry sector; (c) conserving and enlarging catchment forests; and, (d) sustainable management of forests. Effective co-operation in forestry between Kenya, Uganda and Tanzania requires comparability in the respective policies adopted by these countries. Where an optimal translation of such policies into the regime of law does take place, it will provide a basis for the harmonisation

of forest law and its administrative machinery for all the three countries. Thus harmonised, the laws and policies will provide a propitious climate for sub-regional co-operation in the sustainable management of forests.

Such harmonisation of forest conservation strategies carries advantages not only for the national governance systems of the region, but also for the local communities in their purely civil capacities. The communities stand to benefit from stabilised ecosystems which provide them with assured supplies of environmental amenities (water, soils with agricultural potential, healthy atmospheric conditions, aesthetically sound neighbourhoods), as well as reliable supplies of vital economic products (timber, energy, forest-goods).

Thus, in the designing of co-operative arrangements among the East African countries, for the effective conservation of forests, it will be necessary to adopt policies which provide for the participation of local communities, as well as local interest groups.

Forestry conservation in the three countries of the Sub-Region is everywhere confronted by similar challenges. The main challenges in this category are the following:

- (a) decimation of indigenous forests with their considerable wealth of biological diversity;
- (b) destruction of catchment forests, causing disruption of hydrological cycles;
- (c) uneconomic management of industrial forests;
- (d) forestry not being regulated under one coherent scheme of governmental policy;
- (e) inappropriate policy choices or directives affecting forestry;
- (f) failure to keep and manage forests on a sustainable basis;
- (g) population pressure, with a bearing on land-use especially for forestry;
- (h) widespread poverty and the consequent inability to afford energy sources other than biomass;
- (i) indiscriminate tree felling for commercial and domestic use;
- (j) widespread occurrence of forest fires;
- (k) over-grazing, degradation of vegetation cover and leading to soil erosion;
- (l) ineffective environmental governance, often occasioned by weak leadership and the influence of corruption upon public decision-making;
- (m) lack of policy on the management of forests on private lands;
- (n) outdated laws and regulations relating to the conservation of forests;

- (o) inadequate penal sanctions attached to offences relating to forestry conservation;
- (p) lack of *locus standi* for private citizens to pursue judicial action for the conservation of forests;
- (q) lack of incentives to encourage better forest management; and
- (r) lack of local community participation in forestry management.

Such common crucial short-comings in the forestry sector justify a sharing of information and experiences, as well as attempts to find common solutions through policy, law and administration.

This is a further basis for attempts at a harmonisation of forestry conservation initiatives within the Sub-Region.

A strong case exists for the harmonisation of the scheme for forestry management within the East African Sub-Region. This case may be stated in specific points as follows:

- (a) Forests are linked to various environmental phenomena that pay no heed to political boundaries. The effect of forests on climatic patterns, for instance, operates in broad movements covering the entire Sub-Region.
- (b) There are important forests that straddle borders between the individual countries, for instance, the mangrove forests in the coastal belt. Such forests constitute unified ecosystems and may provide natural amenities of regional application, for example, wildlife corridors. Such forests can only be managed sustainably if the neighbouring countries agree to implement harmonised management strategies.
- (c) In certain cases, forests have an economic and social significance for communities that straddle political boundaries. For the balanced treatment of community rights and interests in such situations, it is important that the relevant neighbouring countries adopt harmonised policies, laws and administrative arrangements.
- (d) The control of factors of forest destruction such as fire, pests or alien species, would benefit from joint sub-regional strategies. The organisational framework for such joint initiatives should be established in harmonised policy and management structures.
- (e) Sub-regional co-operation in forest management would lead to better and more economic regulation and control of forestry, so as to open up greater opportunities for international trade in forest products, including non-wood commodities such as herbs and medicine.
- (f) Joint sub-regional initiatives in forestry are likely to provide a better scheme for the protection of intellectual property and related rights linked to forest products, with benefits accruing to individuals within the different countries.
- (g) The common heritage of the three countries has led to their having forestry laws with similar features. A harmonised approach to forestry law reform would provide a good opportunity for sharing experiences and techniques of management.
- (h) A harmonised scheme of forest management would enhance the capacity of each of the countries of the Sub-Region to comply with the terms of the forestry treaties to which it is party.
- (i) Harmonisation of national forest laws would give fulfilment to the principles of co-operation adopted under the recent East African Co-operation Agreement.

CHAPTER FIVE

RECOMMENDATIONS

From the account set out in this report, and from the deliberations of the three workshops which took place, a number of specific recommendations have emerged. These recommendations may be set out under three sub-headings, namely: (a) issues of policy and practice; (b) issues of law; and, (c) issues relating to sub-regional harmonisation. The adoption of these recommendations, it is hoped, will enable Kenya not only to reform its policy and legal framework so as to ensure more effective and efficient forest management, but also to establish a functional scheme of co-operation with its sub-regional neighbours.

5.1 Issues of Policy and Practice

All endeavours should be pursued to enhance the income levels of the population to enable the people to afford secondary and non-biomass sources of domestic-use energy. The common energy consumption mode (namely, the use of woodfuel) should be recognised as the central issue in forest conservation initiatives; and on this account, statistics on woodfuel use should constantly be kept in reference, in the compilation of national economic indicators. In this way the basis support to the formulation of economic and social welfare policies that reflect popular practices, will be in place. Effective technological policies should be formulated, aimed at bringing about greater use of renewable energy sources.

Better forestry administration should be sought, through a rationalised ministerial portfolio structuring, which places under harmonised and co-ordinated management such cognate resource functions as, for example, (i) forestry and wildlife; (ii) forestry and water resources; (iii) forestry and farming; among other aspects.

Government policy should seek to enhance efficiency of management for all the main categories of forestry, namely; (i) indigenous forests; (ii) industrial forests; and, (iii) farm forests.

In the case of indigenous forests, special uses such as for ceremonial, scientific or touristic purposes can be developed to economic levels; and in the case of industrial and farm forests, commercial rationality may be regarded as the guiding principle.

Encouragement should be given to farmers and private land-owners to develop farm forests, and such forests should be accorded efficient marketing programmes in the same way as industrial forests. Where the management of industrial and farm forests responds to market demands, it is likely to encourage sustained production, which will enhance wood supply as well as help to ease some of the demand-stress currently bearing on indigenous forests.

As the maintenance of a substantial forest estate is bound to compromise other land-use claims, it is desirable that the Government should formulate an appropriate land-use policy, on the basis of broader national economic priorities, and should keep such policy under constant review.

There should be a commitment to the conservation of natural forests, for their biodiversity-habitat functions, water catchment roles as well as cultural functions. In this regard the country's main forests that serve watershed protection roles should be identified and accorded special protection.

Individual farmers and private land occupiers should be encouraged to develop and maintain indigenous forest plantations, if possible through awards, decorations or other marks of recognition and encouragement. Plant diversification on farms, with the use of scientifically recommended trees, should be encouraged.

Education and public awareness should be inculcated among local communities, favouring the goal of forest and tree conservation. The programme of agricultural training for farmers should incorporate suitable aspects of silviculture.

Local communities should be actively involved in forest conservation. Such communities should be allowed to have controlled access to the forests for cultural purposes, and they should be encouraged to perceive themselves as “co-owners” of these forests.

5.2 Issues of Law

The law relating to forestry, in its general design, should not be merely prohibitory of certain courses of conduct affecting forests, but should incorporate or run alongside specific economic or social incentives favouring the conservation and prudent use of forest resources.

The detailed scheme of protection for forests under the law should not be limited to State forests, but should be extended to cover also forests on private lands and on trust lands.

The declaration of forest status, and termination of such a status by virtue of the law, should in all cases be preceded by commercial and professional inputs from designated bodies and from interested individuals.

For the protection of forests on public lands, the law should require that tenure over such lands be defined in title deeds held in trust by a designated public officer.

The primary law of forests should be consolidated into one statute, with a coherent set of institutions accorded autonomy and duly empowered to work in harmony with agencies entrusted with responsibility for cognate resource sectors. This law should define the various categories of forests, provide for the public's role in forestry development and conservation, and create legal standing for the citizen to invoke judicial and other institutional processes for the protection of forests.

The new law should be set out in seven basic parts: PART I - PRELIMINARY; PART II - INSTITUTIONAL ARRANGEMENTS; PART III - CREATION AND MANAGEMENT OF FORESTS; PART IV - FORESTRY FUNDS; PART V - OFFENCES; PART VI - MISCELLANEOUS PROVISIONS; PART VII - TRANSITIONAL PROVISIONS.

The Preliminary Part should give definitions and set out the objects of the statute. Under Institutional Arrangements, an independent forest authority should be set up, the powers of its officers defined, and provision made for the forest conservation committees, the Forestry Conservation Practitioners Board and the Kenya Forestry College. Under Creation and Management of Forests, provision should be made for such matters which among other aspects include the creation of forests, conservation of biodiversity, (see para.

3.4.11 of the Report). Under Forestry Funds, the various funding arrangements should be spelt out. Under Offences and Liabilities, the prosecutorial powers and the various sanctions should be stated out. The penalties provided for should be designed to serve as a deterrent, and should not be merely nominal. Under Miscellaneous Provisions, the rule-making powers under the Act should be outlined, as well as any other matters properly falling in this category. Under Transitional Provisions arrangements should be defined for the transfer of functions from the scheme of the current Forests Act to that of the new law.

The basic forestry law should be formulated in a proper legislative context, through the prior enactment of a national environmental statute which establishes standard - setting and monitoring agencies, as well as such vital mechanisms of environmental management as environmental impact assessment (EIA).

Endeavours should be made to fulfil current treaty obligations with respect to forestry and biodiversity conservation; and to this intent Kenya should have in place a framework environmental statute, as well as a comprehensive statute on forests.

5.3 Issues relating to Sub-Regional

Harmonisation of forest management initiatives in the East African Sub-Region cover four distinct issues, namely: (i) forest management; (ii) community involvement; (iii) law enforcement; and, (iv) capacity building. The relevant recommendations are outlined under the different sub-headings.

5.3.1 Forest Management

- (a) It is necessary to revise the forestry law in the individual East African countries, so as to reflect modern views about the multiple economic, social and ecological roles of forests. Existing forest laws are rather too narrowly focused on the exploitation and policing of government forests.
- (b) Forest laws should be holistic in character, addressing the integrated management of forest resources on a national basis, rather than focusing solely on gazetted forest areas.
- (c) As in the case of wildlife and other natural resources, forests cannot be managed on a narrow sectoral basis. Effective national forest management will require internal harmonisation of policies, laws and institutions across sectors, including agriculture, water resources, wetlands, wildlife. Such internal harmonisation will provide a firmer basis for effective sub-regional harmonisation.

- (d) An essential step in achieving internal harmonisation is the enactment of framework environmental legislation. Kenya and Tanzania have not yet enacted such legislation, and they will need to take expeditious action in this regard.
- (e) Forest legislation should clearly spell out the objectives of forest management.
- (f) Forest legislation should make provision for the different categories of forests, and establish differing management regimes as may be compatible with the purposes of each category. Current forest laws tend to treat all categories of forests alike.
- (g) The individual countries of the Sub-Region should, on the basis of a systematic inventory and planning process, and individually as well as in consultation with one another, identify valuable forest areas that require a greater degree of legal protection than they are presently being accorded.
- (h) The countries of the Sub-Region should agree on a common protection and management regime for forests that straddle national boundaries.
- (i) Environmental impact assessment (EIA) should be adopted as an integral part of forest management within the Sub-Region. The requirements and procedures for the EIA process should be embodied in the framework environmental law and should be implemented by central national institutions established by the legislation. In those situations (as in the case of Kenya and Tanzania) where such a statute is not yet in place, interim provisions should be made in sectoral legislation. The role of EIA should be considered for such activities as the excision or de-gazettement of forest reserves, the establishment of industrial plantations, and other major changes in land use.
- (j) Legal provisions should be made for forest-area management plans; and there should be a requirement for the utilisation of such forests (including the issuance of licences and permits) to comply with such plans.
- (k) The countries of the Sub-Region should collaborate along or on common strategies to assess and control the introduction of new and exotic tree species.
- (l) The laws in place in the countries of the Sub-Region should reflect a common policy toward the sustainable management of indigenous forests.
- (b) Public consultation should be required by law for all major actions affecting forest resources. Such consultation should address matters of substance and should not be a mere formality. Notices for the relevant meeting should be effectively transmitted to all interested parties, in local languages, through the electronic and print media, and in the form of public displays as well as other modes of expression. Open public hearings in the proximity of the affected area should be held well in advance of any major decision being finalised.
- (c) Community involvement in the development of local forest management plans is a specific type of consultation that should be given consideration. This will ensure that planning is guided by the aspirations, needs and traditional knowledge of the local people.
- (d) Forest management laws should provide more effective mechanisms for the direct involvement of the local people. Provision should in particular, be made for:
 - i) the use of joint management agreements in public forests, with an equitable sharing of rights, benefits and responsibilities; and,
 - ii) incentives for the establishment of forests on community or private land.
- (e) Countries of the Sub-Region should review their laws relating to land tenure and land-use, to the extent that they do identify and address potential constraints to the promotion of private and community forestry.

5.3.3 Law enforcement

It is necessary to revise the penalty structure for forestry - related offences, and to harmonise them among the countries of the Sub-Region. Current penalties are essentially nominal in character, and thus, will not deter criminal behaviour.

The definition of offences, and the judicial and administrative procedures that apply to them need to be harmonised among the three countries. Public-interest suits to enforce forest-related laws should be encouraged through broadened rules of *locus standi*, to facilitate better implementation of the forest conservation laws. It will be desirable that the three countries consider reducing the filing fees for cases falling in this category.

5.3.2 Community involvement

The following are the main recommendations under this sub-heading:

- (a) National laws should establish the right of all people to participate meaningfully in decisions regarding the

management of forest resources in their communities.

5.3.4. Capacity building

The countries of East Africa should promote joint programmes for research, training of personnel, and exchange of information concerning forest resources.

The countries of East Africa should collaborate on the development of harmonised curricula for forest-related training institutions. The three countries should each develop national resource centres on environmental law, including forestry - related law.

Efforts should be made to increase overall public awareness on the environment and natural resource issues, through targeted and harmonised curriculum reform, throughout the educational systems of the Sub-Region.

It will be necessary to educate prosecutors, judges, magistrates, parliamentarians and other public officials on laws related to forests and other natural resources.

Each of the three countries should consider establishing specialised units within the judicial apparatus and within the State Law Office, to deal with environmental and natural resource issues including forestry.

Each country should formulate and keep up-to-date forest-resource inventories, and should be ready and willing to exchange the relevant information.

The three countries should collaborate on research into alternative and renewable energy sources.

5.3.5 General recommendation

- a) The countries of East Africa should collaborate in ensuring that the harmonisation of forestry management schemes is a continuous process. This object can be best accomplished through sub-regional consultation and the sharing of advice and comments whenever relevant laws are being drafted or revised in a particular country.

APPENDIX

TEXT OF THE DRAFT FORESTRY BILL, 1995

- 1.1 An Act of Parliament to provide for the establishment, development, sustainable management (including conservation and rational utilization) of forest resources for the socio economic development of the country.
- 1.2 This Act may be cited as the Forests Act, and its provisions shall apply to:

- a) State Forests
- b) Local Authority Forests
- c) Community Forests
- d) Private Forests

- 1.3 The primary objectives of the Forest Policy which are hereby adopted by this Act shall be to:-

- 1.3.1 Increase the forest and tree cover of the country in order to ensure increased supply of Forest products and services for meeting the basic needs of present and future generations, and for enhancing the role of Forestry in socio-economic development.
- 1.3.2 Conserve biodiversity by protecting natural habitats and rehabilitating them where necessary.
- 1.3.3 Conserve soil and water resources, sequestration of carbon-dioxide, and amelioration of climate by tree planting and sound Forestry management, thereby contributing to sustainable agriculture and other land-uses.
- 1.3.4 Maximize the benefits of a viable and efficient forest industry for economic development of the nation.
- 1.3.5 Contribute to the alleviation of poverty and promotion of rural development through provision of employment and income based on Forest and tree resources and by promoting equity and participation by local communities.
- 1.3.6 Manage the forest resource efficiently for the

maximum sustainable benefits, taking into account all direct and indirect economic and environmental impacts, and also review the ways in which forests and trees are valued, in order to facilitate management decisions.

- 1.3.7 Carry out relevant research in the conservation of forests, offer training and technical assistance to those engaged in forestry activities and mount extension campaigns to propagate knowledge, acceptance and appreciation of the value of forests and the need to conserve natural resources throughout the country.
- 1.3.8 Fulfil national obligations under agreed international environmental and other Forest related conventions and principles.
- 1.3.9 The Government aims at self reliance and competitive self sufficiency in its Forest management and development, and hereby adopts the Kenya Forestry Master Plan and other programmes as a basis for attaining these goals.

2. DEFINITIONS

- 2.2 In this Act, unless the context otherwise requires -

- (i) "cattle" means horned cattle, goats, sheep, asses, horses, mares, geldings, camels, pigs, and includes the young thereof;
- (i) "Director of Forestry" means the person, for the time being, performing the duties of the Director of Forestry;
- (iii) "firewood" includes parts of trees made up into bundles or loads, or cut up in a manner in which it is usual to cut wood for burning, and refuse wood generally, but does not include sound straight timber logs or poles of any kind;

- (iv) “forest” refers to any land containing a vegetation association dominated by trees of any size, exploitable or not capable of producing wood or other products potentially capable of ameliorating climate, exercising an influence on the soil, water regime, and providing habitat for wildlife;
- (v) “forestry” refers to the science of establishing, tending, utilising and protecting forest and tree resources;
- (vi) “forestry area” means an area of land declared under section — to be a forest area; and/or any land containing vegetation dominated by trees of any kind;
- (vii) “forest officers” means Director, Deputy Director, Assistant Director, Forest Officer, or Forester, Forest Assistant, Forest Guard;
- (viii) “Honorary Forester” means agriculturists, game warden, chiefs, Police and other civil servants involved in forestry protection and upon whom the Director may confer the powers and title of Honorary Forester;
- (ix) “forest produce” includes bark, bee-wax, canes, charcoal, creepers, earth, fibre, firewood, fruit, galls, grass, gum, hone, leaves, limestone, litter, moss, murrum, peat, plants, reeds, resin, rushes, rubber, sap, seeds, spices, stones, timber, trees, wax, withies and such other things as the minister may, by notice in the gazette, declare to be forest produce for the purposes of this Act;
- (x) “timber” means any tree which has been felled or which has fallen, and the part of any tree which has been cut off or fallen, and all wood whether sawn, split, hewn, or otherwise fashioned;
- (xi) “trees” include not only timber trees, but other trees, shrubs, bushes of all kinds, seedlings, saplings and re-shoots of all ages, bamboo, and any part of a tree;
- (xii) “unalienated Government land” means land, for the time being, vested in the Government which:
 - (a) is not the subject of any conveyance, lease or occupation license from the government;
 - (b) has not been dedicated or set aside for the use of the public, but includes out-pans; and,
 - (c) has not been declared to be a state forest;
- (xiii) “state forest” refers to any forest:
 - (a) declared by the minister to be a central forest, a forest area or nature reserve before the enactment of this Act and which has not ceased to be such a forest or reserve;
 - (b) any forest declared upon the resolution of the Forestry Management Board and declared by the minister in the Kenya Gazette to be a state forest in accordance with the provision of section — of the Act;
- (c) any trust-land area set apart by the authorised country council for afforestation by the forest department and not yet gazetted as a forest in accordance with (a) and (b) above.
- (xiv) “community forest” refers to a forest set aside for the exclusive use and management of a community by the Forestry Management Board or Local Authority in accordance with provisions of section — of this Act;
- (xv) “private forest” refers to any forest owned or managed privately by an individual, institution or corporate body;
- (xvi) “provisional forest” refers to any forest which has been declared a provisional forest by the minister in accordance with the provisions of section — of this Act;
- (xvii) “Local Authority forest” refers to:
 - (a) any forest on trust-land which has been set aside as a forest by a Local Authority and pursuant to the provisions of the trustland Act;
 - (b) any forest declared as a local authority forest by a local authority in accordance with the provisions of section — of this Act;
- (xviii) “leasehold” refers to a lease of a state or local authority forest pursuant to a Forest Management Agreement;
- (xix) “Forest Management Agreement” refers to an agreement between the Forest Management Board and a company, business firm, non governmental organization, professional association, cooperative society or private individual pursuant to which a state or local authority forest is leased;
- (xx) “Forest Management Plan” refers to a systematic program showing all activities to be undertaken in a forest block during the period of the plan, and includes planting, harvesting, pruning, improvement cutting, protection, road construction and all silvicultural operations;
- (xxii) “felling plans” refers to a schedule describing the harvesting regimes of specific/defined forest blocks, showing hectareage to be clear-cut, thinned or selectively cut, estimated volume to be removed annually and during the plan period;
- (xxiii) “mini-forest” refers to a woodlot or group of trees occupying less than one hectare of land;
- (xxiv) “catchment area” refers to a land area drained by a river, stream, or fixed body of water and its tributaries having a common source of surface run-off;
- (xxv) “selection system” refers to selective harvesting of over-mature, mature, diseased and defective trees in an indigenous forest in such a manner that an adequate volume of healthy residual trees of the desired species, necessary to assure a future crop of timber and forest cover for the protection and conservation of soil, water and wildlife;

- (xxvi) "sustainable supply" refers to meeting the ever increasing needs of the present generation of the population without limiting the options of future generations; in accessing goods and services from the forest;
- (xxvii) "sustained yield" refers to managing a forest estate so as to yield a constant or increasing supply of goods and services;
- (xxviii) "clear-felling/clear-cutting" refers to cutting or felling all tree vegetation in a forest and replacing it either by replanting or natural regeneration;
- (xxix) "farm forestry" refers to the practice of raising of trees on farms whether singly, in rows, lines, boundaries, or in woodlots;
- (xxx) "biodiversity" refers to the variety of species (plants and animals), the genetic variation within each species and the ecological associations and complexes in which they occur;
- (xxxi) "tree under presidential protection or protected trees" refers to a tree species declared in the Kenya gazette, which may not be cut down, harmed, damaged in any way or removed after felling without the permission of a responsible authority;
- (xxxii) "property mark" means a mark placed on a log or timber to denote that it belongs to the Government, Local Authority, leasehold or other scale owner marked with an instrument such as a marking hammer;
- (xxxiii) "diameter" means the diameter of a tree taken at 1.3 m above ground level (breast height) or at a point above 0.25 m above a buttress root.

3 INSTITUTIONAL ARRANGEMENT AND FOREST ADMINISTRATION

3.1 Forest Management Board

There is hereby established a Forestry Management Board (herein after called the Board).

3.1.0 Functions of the board

- 3.1.1 Establish state forests;
 - (a) on unalienated Government land;
 - (b) purchase private land;
 - (c) compulsorily acquired land.
- 3.1.2 Determine and alter boundaries of state forests.
- 3.1.3 Declare that a state forest shall cease to be a forest area.
- 3.1.4 Make policy decisions affecting forest practice and development in the country.
- 3.1.5 Approve all forest management agreements.
- 3.1.6 Approve all licences for commercial logging in state forests.

- 3.1.7 Negotiate for the financial resources and other incentives for advancement of private/company and local authority/urban forestry activities.
- 3.1.8 Advise the Government on all matters pertaining to the establishment, development, conservation and utilization of forests in Kenya.
- 3.1.9 Examine and recommend the policies for export and import of forest products.
- 3.1.10 Make rules and regulations required for the accomplishment of the above functions.
- 3.1.11 Issue, amend, and rescind forestry regulations.
- 3.1.12 Coordinate and monitor inter-agency afforestation and management activities in the country.

3.2.0 Membership of the Board

The Board shall consist of the following:

- (a) The Chairman appointed by the President.
- (b) The Permanent Secretary in charge of forests.
- (c) The Permanent Secretary Finance or his representative.
- (d) The Director of Forests.
- (f) The Director of Kenya Wildlife Service.
- (g) The Director of K.E.F.R.I.
- (h) Chief Executive Permanent Presidential Commission of Afforestation and Soil Conservation.
- (i) One member representing wood using industry elected by an association wood using firms.
- (j) One Member not being civil servant, appointed by the Kenya Forestry Association.
- (k) One Representative of NGOs appointed by the NGO Coordination Council.
- (l) Two Members appointed by ALGAK.
- (m) One prominent Farmer elected by K.N.E.U.
- (n) One Member drawn from financial institutions specialised in financial matters.

3.3.0 Committees of the Board

- 3.3.1 The Board may from time to time establish committees to advise it on carrying its functions.
- 3.3.1 (a) Members of the committee so created shall be determined by the Board, provided that any committee so created shall have at least two members the Board.
- 3.3.1 (b) In determining the membership of a committee, the Board may co-opt members from the Forestry Department, Public Universities, Training Institutions, and any qualified private citizens.

3.3.2 Standing Committees of the Board

- 3.3.2 (a) The committees whose membership and functions are detailed below shall be the standing committees of the Board.
- 3.3.2 (b) Other committees of the Board shall be known as adhoc committees and shall deal with special issues which cannot be completely covered by the standing committees.

3.3.3 (c) (i) The Financial Committee

The functions of the financial committee shall be as follows:

- (a) Determine the value of leaseholds.
- (b) Negotiate for financial resources and other incentives for private and local authority forests.
- (c) Advise the Board on all financial matters and on how to finance forest activities.

Membership

The membership of the financial committee shall be as follows:

- (a) Chief Economist, Ministry of Finance Chairman
- (b) Director of Forests
- (c) Chief Valuer, Ministry of Lands and Settlement.
- (d) Forest Economist.
- (e) Member of Board appointed from financial institutions
- (f) A Member well versed in forestry valuation, from public universities

3.3.2. (c) (ii) Technical committee

The functions of the Technical Committee should be to advise the management Board on:

- (i) policy on forestry practice and development in the country;
- (ii) approve plans on behalf of the Board of Management and Felling;
- (iii) determine conditions under which licences may be granted and revoked;
- (iv) prescribed the forms of all licences, permits, agreements and other instruments dealing with use of forest resources; and,
- (v) conservation and utilization of forest resources.

Membership

- (i) Director of KEFRI chairman.
- (ii) Director of Forests.

- (iii) One Member from Kenya Forestry Association
- (iv) One Member well versed in forestry practice and drawn from either public university of private practice.
- (v) Member representing wood-using industry.
- (vi) Officer in-charge of Forestry.

3.3.2 (c) (iii) The Administrative Committee

Functions:

- (a) Coordination of integration of afforestation and management activities in the country.
- (b) Personnel administration and discipline.
- (c) Gazettement, excisions, and exchanges.
- (d) Policies on export and import of forest products.

Membership of the Committee

- (i) Permanent Secretary MENR Chairman.
- (ii) Permanent Secretary Finance.
- (iii) Directorate of Personnel Management.
- (iv) Deputy Director of Forests Administration.
- (v) Representative Kenya Forest Association.
- (vi) Representative NGO.

3.4 Meetings of the Board

- 3.4.1 The Board shall hold meetings at least once quarterly.
- 3.4.2 The Chairman may call a special meeting of the Board whenever there is an urgent issue to be discussed.
- 3.4.3 Five or more Members of the Board may petition the Chairman for a special Board meeting whenever there is an urgent issue to be discussed.
- 3.4.4 Upon receipt of such a petition, the Chairman shall call a special Board meeting within two weeks.
- 3.4.5 Where the Chairman fails to call the said meeting, the Vice-Chairman shall call the meeting.

3.5 QUORUM

- 3.5.1 The quorum at all meetings of the Board shall be eight.
- 3.5.2 Decisions of the Board will be made by two thirds majority of those attending.

3.6 Officials of the Board

- 3.6.1 Chairman shall be appointed by the President
- 3.6.2 The Vice-Chairman shall be a non-civil servant elected by all Board members at the first meeting of the Board every year.
- 3.6.3 The Director of Forestry shall be the Secretary and Chief Executive to the Board.

3.7 Forestry Department

The Forestry Department shall be the government agency responsible for conserving forest resources in the country.

- 3.7.1 The functions of the Forest Department shall be to:
- (a) manage on sustainable basis all state forests that have not been leased pursuant to the provisions of section - of this act;
 - (b) formulate for approval by the Board policies regarding the management and utilization of all types of forests and forest areas in the country;
 - (c) manage all provisional Forests in consultation with relevant authorities;
 - (d) protect all forests in Kenya in accordance with the provisions of this Act;
 - (e) provide extension services;
 - (f) provide professional, technical and vocational training for forestry personnel;
 - (g) collaborate with KEFRI in identifying and applying research findings;
 - (h) draw management and felling plans for state and local authority forests for approval by the Board;
 - (i) assist farmers and communities to manage tree resources on agricultural lands;
 - (j) enforce the conditions and regulations pertaining to logging and other utilization activities in the forest;
 - (k) collect all revenue and charges due to the government;
 - (l) make rules and regulations necessary for enforcing the provision of this Act.

4. Officials of the Department

The Director of Forestry shall be the executive head of the Department. In carrying out this functions, the Director shall be assisted by Deputy Directors, Assistant Directors, and other Forest Officers as defined by the Act.

5. Forest Conservation Committees

- 5.1 There shall be established in each District a Forest Conservation Committee.
- 5.2 The functions of the committee shall be to:
- 5.2.1 inform the Forest Management Board about the ideas, desires and opinions of the people of the district, in all matters relating to conservation and utilization of forests;
- 5.2.2 monitor the provisions of the Forest Act and other regulations in the district;
- 5.2.3 review and recommended to the Forest Management

Board applications for new forest licenses and renewals.

5.3 Composition of the Committee

- 5.3.1 The Committee shall consist of the following:
- (a) District Commissioner as Chairman.
 - (b) District Forest Officer as Secretary.
 - (c) Foresters from stations where exploitation is being done.
 - (d) Foresters in-charge of forest extension services.
 - (e) The Head of the Local Authority.
 - (f) The Clerk to the Local Authority.
 - (g) 2 elected Councillors.
 - (h) 1 Member of the wood-using industry.
 - (i) 2 prominent Farmers well versed in forest matters appointed by Permanent Secretary.
 - (j) The District Agricultural Officer.
 - (k) The District Warden.
 - (i) The District Water Officer.
 - (m) The District Environment Officer (or D.O. environment)

6. Creation of Forests

6.1 State Forests:

6.1.1 Upon a resolution by the Forest Management Board, the Minister shall, by an order published in the gazette declare:-

- (a) any unalienated Government land;
- (b) purchased private land;
- (c) trust-land set apart for afforestation by a Local Authority; and,
- (d) compulsorily acquired land to be a State Forest.

6.1.2 The Minister shall by an order published in the gazette, declare any mis-managed and neglected of:

- (a) Local Authority Forest;
- (b) Community Forest/Forest on trust lands; and,
- (c) Private/company Forest, to be a Provisional Forest.

6.1.3 PROVIDED that such a declaration will only be made where:

- (a) the forest is an important catchment areas or the source of water springs;
- (b) the forest is rich in biodiversity and contains rare and threatened species;
- (c) the forest is of cultural or scientific significance;
- (d) the forest supports an important industry and is the source of livelihood for the surrounding and other communities; and,

- (e) the Director of forests has issued a notice requiring the owner to under-take specific forestry cultural practice to improve any such forest and such notice has not been complied with, or where the forest owner does not have the resources to under-take the specified forestry practices.

- (b) such exchange is equitable;
- (c) the forest area to be exchanged does not contain rare or threatened species;
- (d) 60 days notice of the exchange has been published in the Kenya gazette; and,
- (e) such an exchange does not impact adversely on the environment.

6.2 Alteration of Boundaries, Excisions and Reversions

- 6.2.1 Upon a resolution by the Forest Management Board, the Minister shall by notice in the gazette declare:
- (a) that a State Forest shall cease to be a forest;
 - (b) alter boundaries of a State Forest; and,
 - (c) exchange forest land with private land.

- 6.2.2 Provided that no State Forest shall cease to be a State Forest, unless such cessation:

- (a) is for education, health or research purposes;
- (b) does not have adverse environmental impacts;
- (c) occurs when the relevant District Forest Conservation Committee has issued a certificate to the Board recommending such cessation; and,
- (d) is effected after 60 days' notice of the intention to declare cessation of a forest has been published.

- 6.2.3 Any member of the public may file an objection to the intended declaration with the Forest Management Board before expiry of the 60 days notice.

Upon receipt of such an objection, the Board shall give the objector a hearing and deliver its decision within 30 days from the hearing.

If an opposer to the declaration is aggrieved by the decision of the Board, he may appeal to the High Court within 30 days after receipt of the Boards decision.

6.2.4 Alteration of Boundaries

The boundaries of a State Forest may be altered if:

- (a) such alteration is necessary for the efficient management of the forest
- (b) such alteration enhances forest protection; and,
- (c) 45 days notice of the intention to alter has been published in the gazette.

6.2.5 Exchange of Forest Land with Private Land

Part of a Forest-land may be exchanged with private land if:

- (a) such an exchange results in the efficient management and protection of the forest;

6.2.6 Reversion of Provisional Forests

A Provisional Forest shall revert to the owner where:

- (a) the said forest has been adequately rehabilitated; and,
- (b) the owner has given an under-taking to efficiently managed the forest.

6.3 Local Authority Forests

- 6.3.1 A Local Authority may declare any trust-land to be a Local Authority Forest upon the advice of the District Forest Conservation Committee where:

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

6.3.2. Alteration of Boundaries Exchange and Reversions

A Local Authority may, by posting the necessary notices, declare:

- (a) that a Local Authority Forest shall cease to be a forest;
- (b) alter the boundaries of a Local Authority Forest; and,
- (c) exchange forest land with private land.

Provided that no Local Authority Forest shall cease to be a Forest, unless such cessation:

- (a) is for education, health or research purposes;
- (b) does not have adverse environmental impacts;
- (c) the relevant District Forest Conservation Committee has issued a certificate to the Board recommending such cessation; and,
- (d) is effected after 60 days' notice of the intention to declare cessation of a forest has been published.

7.1 Creation of Arboreta, Recreation Parks, Miniforests, etc

- 7.1.1 Every Local Authority shall establish arboreta, mini-forests or recreation parks for the use of local residents.
- 7.1.2 Every estate developer shall make provision for the establishment of a mini-forest in the estate at the rate of at least one hectare per population of ten thousand people.
- 7.1.3 Every Local Authority shall establish a tree recreation park in every market within its jurisdiction.
- 7.1.4 Every local authority shall include in its yearly estimates the necessary funds for the establishment and maintenance of its mini-forests, recreation parks and arboreta.
- 7.1.5 The Forest Department shall facilitate and initiate the planning and provide the necessary technical assistance in the establishment and maintenance of Local Authority mini-forests, recreation parks, and arboreta.
- 7.1.6 No mini-forest, arboreta or recreation park shall be converted to any other use nor exchanged for any other land, before the local residents have voted through a referendum sanctioning the change/exchange.

8. Community Forests

- 8.1.(a) Households neighbouring a forest area and who jointly as a community have an interest in forest conservation and signified their interest in being involved in managing a forest, shall be regarded as constituting a community.
- 8.1. On unalienated Government land, or where land adjudication has not been under-taken on trust-land and upon recommendation by the District Forest Conservation Committee, the Forest Management Board or Local Authority may set aside riverine forests, hill-tops, water springs, swamps, dry community pasture and areas of cultural significance, for the use of surrounding communities as Community Forests.
- 8.1.1 The surrounding community shall be entitled to the use of a Community Forest without hindrance from any authority by provided that the guidelines jointly agreed upon between the community and the Forest Department are strictly adhered to.
- 8.1.2 Members of the community shall own and hold Community Forests as tenants and enter into joint forest management agreement between the community and the Forest Department.
- 8.1.3 In return for the benefits accruing to the community from the forest, the community shall be responsible for:
 - (a) the efficient management and conservation of the forests;

- (b) the protection of the forest from illegal harvesting, fire, pests, and other harmful agents;
 - (c) the protection of all wildlife found within the forest; and,
 - (d) the re-stocking and regeneration of the forest.
- Provided that:
- (a) no Community Forest shall be sub-divided into individual titles during its existence; and,
 - (b) no member of a community may settle in a Community Forest.

8.2 Cessation of Community Forests

- 8.2.1 The Forest Management Board or the District Forest Conservation Committee, as the case may be, shall declare in the gazette a cessation of a Community Forest where circumstances and conditions change in such a manner as to render the Community Forest no longer useful to the community.
- 8.2.2 Where the Community Forest in question is on unalienated government land, it shall only cease to be such a forest after the relevant District Forest Conservation Committee has submitted a certificate of cessation to the Forest Management Board.
- 8.2.3 Where the Community Forest in question in trust-land, it shall only cease to be such a forest after the relevant District Forest Conservation Committee has submitted a certificate of cessation to the concerned local authority; and the same has been approved.
- 8.2.4 Provided that one third of the members of a community petition the District Forest Conservation Committee to issue a certificate of cessation where they think that the forest in question no longer serves the interest of the community.
- 8.2.5 Upon receipt of such petition, the District Forest Conservation Committee shall immediately conduct an investigation into the claims of the petitioners.
- 8.2.6 Where the Committee after investigation concludes that the claims of the petitioner have merit, it shall issue a certificate of cessation to the relevant body for approval.
- 8.2.7 Where the Committee after investigation concludes that the claims of the petitioner lack merit, it shall dismiss the petition.
- 8.2.8 No appeal shall derive from:
 - (a) a refusal by the Board or Local Authority to approve a certificate of cessation;
 - (b) a dismissal of a petition by the District Forest Conservation Committee.
- 8.3.2 The Forest Management Board shall specify the optimum width of such Community Forest, the silvicultural practices to be implemented and the conditions governing such Community Forests.

9 DEVELOPMENT OF OTHER FORESTS

9.1 Bequests for Forestry

- 9.1.1 Any person being a registered proprietor of land in accordance with the provisions of the relevant law may bequeath part or all of that land to the State or Local Authority or educational institutions for the development of forestry.
- 9.1.2 The bequest of land for forestry may be made either during the life-time of the proprietor or by a will.
- 9.1.3 The forest established on the bequeathed land shall be gazetted and named after the person who made the bequest, unless the instrument states otherwise.
- 9.1.4 Provided that no land so bequeathed shall be used for any purpose other than the establishment and conservation of forests as originally desired by the person.

9.2 Forest Conservation Covenants

- 9.2.1. The Director of Forests may enter into a covenant with any person or institution owning land to the effect that, such land or any part thereof shall not be otherwise used other than for the growing and conservation of trees, for commercial production of forest produce, and conservation of biodiversity.
- 9.2.3 Where the owner of any land enters into a covenant with the Director of Forests in accordance with Sub-Section (1) of this section. Such a covenant will be enforced against the covenantor and against his successors in title, and assigns and all persons deriving title from him.
- 9.2.4 Nothing in this section shall render enforceable any covenant entered into under Sub-Section 2, where the use of such land in accordance with such covenants, contravenes the provisions of any law for the time being in force, or inconsistent with any prior covenant relating to the use of such land, and binding on such owners, and his successors in title and persons deriving title from him.

10. Private and Urban Farm Forestry

- 10.1 Any person or body corporate being a registered proprietor of land, may establish a forest on his land.
- 10.2 The person or body corporate who establishes a forest on private land, shall be entitled to conserve, develop, manage and utilize the forest in accordance with sound forest management principles without hindrance by any authority.
- 10.3 Any person or body corporate who establishes a forest on his land shall be entitled to the following:
 - (a) Free technical advice by the Forest Department

on appropriate species to be planted for the owners objectives such as boundary-planting, road-side, woodlots, and necessary tending and harvesting techniques.

- (b) Soft loans from the East Management Fund for the development of his forest, subject to availability of funds- provided that the funds are obtained and utilised accordingly to the procedures set out by the Forest Management Board.
- (c) Exemption from land rates if the land is in an urban area.
- 10.4 To ensure that farmers obtain rightful dues from the sale of their forest products and the forest extensions staff should acquaint the farmers with on going prices of forest products; otherwise prices of farm forest products should be based on market forces.
- 10.5 Any conflicts arising out of in appropriate farm forestry practices, such as where trees planted along a common boundary become a nuisance to the neighbour, shall be arbitrated by professional forestry trained on arbitration of conflicts.

11 Forestry Management Fund

There is hereby established a Forest Management Fund (hereinafter called "The Fund")

11.1 The fund shall be used for:

- (a) The maintenance and conservation of indigenous forests on privately owned land.
- (b) The development of forestry in general on privately owned land.
- (c) The rehabilitation of Provisional Forests.
- (d) The provision of extension services in Community Forests.
- (e) The promotion of community based projects such as health, education, and shall scale forest enterprises in forest areas.
- (f) The facilitation of education and research activities in Community Forest areas.
- (g) The establishment of arboreta and botanical gardens in towns and other areas.
- (h) The maintenance of sacred graves and other areas of cultural and scientific significance.

11.2 Sources of Funds

The fund shall be maintained by:

- (a) monies voted by parliament from the consolidated fund;
- (b) monies levied upon all forest users as determined by the Minister and published in the gazette;

- (c) income from investments made by the trustees of the fund;
- (d) voluntary grants from private individuals, bodies corporate, and non-governmental organizations.

11.3 The Fund's Board of Trustees

11.3.1 There is hereby established, a Board of Trustees

11.3.2 The Board of Trustees shall comprise:

- (a) Permanent Secretary
- (b) Director of Forests
- (c) A Member of Forest Management Board appointed from financial institutions.
- (d) One person having the necessary knowledge in financial matters appointed by the Minister for Finance.
- (e) A Member of the Nairobi Stock Exchange, well versed in investment matters appointed by the Chairman of the *Nairobi Stock Exchange*.
- (f) A Member of the Parliamentary Public Accounts Committee appointed by the Chairman of the Committee
- (g) A Member of the Kenya Forestry Association appointed by the Association Forest Economist, Ministry of Environmental and Natural Resources.
- (h) A Member of the Parliamentary Public Investment Committee, appointed by the Chairman of the Committee.
- (i) Member representing wood-using industry elected by the Association of wood-using industry.
- (j) A prominent tree Farmer elected by K.N.F.U.

11.4 Powers of the Board of Trustees

The Board of Trustees shall:

- (a) make all decisions regarding the running of the fund for the achievement of the purposes for which the fund was meant for;
- (b) determine the amounts of money payable to any of the sectors for which the fund was established, and to formulate the conditions for such disbursements;
- (c) make the necessary investments from the fund for the realization of the purposes;
- (d) maintain audited accounts of the fund;
- (e) publish annual accounts of the fund in the daily press;
- (f) submit periodic reports to the Forest Management Board detailing operations of the fund; and,

- (g) take any other action necessary for the attainment of the objectives of the fund.

11.5 Officials of the Board of Trustees

Permanent Secretary forests shall be the chairman of the board.

Director shall be Secretary and Chief Executives to the Fund.

The vice-chairman shall be elected at every first annual meeting of the board.

11.6 Meetings of the Board

The Board shall meet at least quarterly.

The Board shall determine its own procedures for the meetings.

12. Conservation of Biodiversity

12.1 Nature Reserves:

12.1.1 The Minister may, by notice in the gazette, declare any part of a State Forest or any part thereof, which upon recommendation by the Forestry Management Board, has particular environmental, cultural, or scientific significance or other special significance to be a nature reserve for the purpose of preserving the biodiversity therein and natural amenities thereof. He may also declare that a nature reserve shall cease to be a nature reserve.

12.1.2 The Director shall prepare Ecological Monitoring Plans prescribed for the study of ecological changes in a nature reserve and submit the same to the Forestry Management Board for approval.

12.1.3 The District Forest Officer in whose District the nature reserve is, shall implement the prescriptions contained in the Ecological Monitoring Plan.

12.1.4 Except in plots established for the purpose of inventorying biodiversity therein and other research survey to monitor disturbance on the ecosystem and those for enhancing the amenity of the Nature Reserve, no cutting, grazing, removal of forest produce, hunting, fishing, will be allowed in a Nature Reserve (except where this is performed to conserve biodiversity).

12.1.5 Any community, socio-cultural, education and research institution desirous to utilize, develop, conserve sacred grooves and any State Forest of cultural or religious significance or for any of the above functions on a regular basis, shall submit an application to the Director of Forests mentioning the area, and the boundaries of the forest desired, the activities to be carried out in such a forest, and particulars as prescribed in a management agreement.

12.1.6 On receipt of such application, the Director of Forests shall make enquiries about the authenticity of the group and the suitability of the site sought for the functions desired. Where the director refuses to authorize to any group, he shall state the reasons for refusal and the group may appeal to the Forest Management Board.

12.1.7 All development under-taken in any such forest such as planting, fencing, road-making and clearing, shall be approved by the Director before the same is under-taken. In consultation with the group, the Director will draw rules and conditions of use, and the rights the organizations will be honoured by the Forest Department.

12.1.8 Sacred grooves and scared trees found in any State Forest, Forest Reserve, Local Authority Forest, or Private Forest-land, shall not be wilfully interfered with the Forest Department, Local Authority and private owners shall utmost ensure that the sacredness is respected and preserved.

12.2 Presidential Protection of trees

12.2.1 The President may, by an order published in the gazette, declare any tree species or Family of tree species to be protected either in the whole country or in specific regions.

Any person who without lawful authority fells, cuts, damages or removes any protected trees and regeneration thereof, shall be guilty of an offence.

13. Management for Sustainable production of Forest Goods and Services

13.1 State Forests

All forests shall be managed on sustainable basis for multiple-purpose production of goods and services, with the primary objectives of natural forests and supply of services, that of conservation of plantation forests, production of wood and other products. The multiple-purpose management shall be applied to both natural and plantation forests with respect to functional suitability of specific forest sites, and this should be reflected in the management plan of the area.

13.1.2 In pursuit of 13.1 above, the Director of Forests shall cause prepared forest management plans to: guide the planting, tending, protecting, utilizing and development of State Forests or Provisional Forests, to achieve the objectives of the National Forest Policy; all such management plans shall be approved by the Forest Management Board for both indigenous and plantation forests.

13.1.3 Where in the opinion of the Director, harvesting can be sustained in an indigenous forest without any danger to the other objectives of management, exploitation shall only be done where the cutting cycle, verifiable and allowable cut has been determined, the forest has been divided into periodic or annual coupes, and diameter limits according to species in the coupe has been specified and incorporated for a management block.

In protected forests, only dead and drying trees will be cut where needed, provided that the harvesting will not interfere with the objectives of soil and water conservation and other management objectives.

13.1.4 Silvicultural and harvesting systems ensuring sustainability of the forest ecosystem shall be promoted:

- (a) for plantation forests, clear-cutting and its variants, accompanied by compulsory plantation renewal (either through regeneration or promotion of natural regeneration);
- (b) for natural forests - a selection system and its variants determined by research findings shall be prescribed. The objective of the silvicultural system apart from production of forest resources shall also be to conserve biodiversity.

Adopted silvicultural systems and practices will be modified from time to time in accordance with advancements in forest management technology.

13.1.5 Roads and other infrastructures inside forest lands shall only be constructed where they are absolutely necessary. Logging roads shall be constructed in such a manner as to ensure least danger to the soils, regeneration and standing trees.

13.1.6 Power-lines, communication lines, and other infrastructures inside forest lands, shall be constructed after due consultation with respective District Forest Officer and the District Forest Conservation Committee, so as to reduce the damage or injury to the forest ecosystem.

13.1.7 Mining operations in Forest Reserves shall only be permitted where:

- (a) the estimated value of the mineral/quarry, less estimated rehabilitation costs, is greater than the sum of the value of standing and subsequent crops;
- (b) the forest area being mined/quarried is renewable;
- (c) the miner has undertaken to rehabilitate the site to a level prescribed by the Forest Management Board; and,
- (d) safety measures to prevent injury or death to human beings, cattle, and wildlife traversing the forest have been put in place.

- 13.2.1 Operations such as logging, grazing, construction of roads, water impounding dams, mining and similar under-takings must obtain Environment Compliance Certificate prior to being authorized in any forest block.
- 13.2.2 The Forest Department shall design and implement a system of environmental monitoring and evaluation for all forestry developments and forestry land-uses such as introduction of exotic species, silvicultural practices such as clear-cutting, among other activities.
- 13.2.3 Exploitation of indigenous species outside State and Local Authority Forests shall not be allowed except upon a written authority by the District Forest Officer. Saw-mills and other wood processing plants based on indigenous forests shall only be established if there is an assurance of sustainable supply of raw materials. Exploitation of any indigenous forest shall be permitted only after an inventory in which at least 5% of the area of the forest been sampled and has revealed the sustainable supply of the species to be exploited.
- 13.2.4 For all inventory reports on indigenous forests, Local Authority Forests and private forests, the person under-taking the inventory shall swear an affidavit to that effect before a commission for oaths or magistrate.
- 13.2.1 The Department may recommend incentives to be approved by the Forest Management Board for those who exploit wood and non-wood forest products such as resins, gums, frankincense perfumes and medicines, for instance, where such incentives can promote utilization.
- 13.3.5 Community based forest industries such as basket-making, charcoal-making, shall be promoted through provision of credit facilities and technical training.

13.4.1 Concessions

Where the Forest Management Board is satisfied that the exploitation of an indigenous forest can efficiently be done through granting of concessions, the same shall be granted subject to the grantee fulfilling his duties as stated below.

13.4.2 Duties of the Grantee

- 13.4.2.1 The grantee shall be responsible for the protection of his concession area from destruction and encroachment by other persons.
- 13.4.2.2 He shall also ensure that the forest areas under his management are maintained for wood production.
- 13.4.2.3 The Forest Department together with the grantee shall clearly demarcate the boundaries of the concession on the ground.

- 13.4.2.4 The grantee shall be responsible for the maintenance of the boundaries of his concession on the ground.
- 13.4.2.5 The grantee shall be responsible for any damages arising directly from his operations on land for which timber rights have been obtained.
- 13.4.2.6 The grantee shall take precautions to prevent the occurrence and spread of forest fires in connection with any and all of his operations within and outside his concession area. The grantee shall be responsible for any damage resulting from the negligence of his employees.
- 13.4.2.7 The grantee shall only fell trees specified in his license.
- 13.4.2.8 Natural regeneration and saplings shall be protected and any operation prescribed by the Forest Department to promote natural regeneration shall be under-taken as prescribed.
- 13.4.2.9 All structures, facilities constructed or operated by the grantee in connection with his industry shall be maintained according to specified conditions in his licences

14. State of Forest Leaseholds

- 14.1 Where the Forest Management Board is convinced that part or all of a State Forest can best be managed through a leasehold arrangement, it shall place an advertisement in the Daily Press calling for application.
- 14.2 The Forest Management Board may, upon application by a company, business firm, professional association, non governmental organization, co-operative society, or private individual, and pursuant to a duly approved Forest Management Agreement, lease part or all of a State Forest to the applicant for the efficient and productive management of the forest.
- 14.3 The Forest Management Agreement shall state *inter alia*:
 - (a) the period for which the forest shall be leased;
 - (b) the terms and conditions under which the lessee will manage the forest;
 - (c) any charges payable to the Forest Department based on the value of the leasehold;
 - (d) the machinery for dispute settlement; and,
 - (e) the conditions under which the lease may be terminated.

The value of the leasehold shall be determined by financial committee of the Forest Management Board. In determining the value of the leasehold, the financial committee shall call for independent inventory of the forest resources and other relevant data to enable it determine base value of a leasehold as a basis for applications or as a basis for negotiations and tendering.

14.3 Leases shall be for periods of 33,66 and 99 years for fuskwoos, exotic soft-wood and indigenous hard-wood, respectively; of for other periods determined by the financial committee of the forest management Board.

Provided that:

- 14.4 (a) no State Forest shall be leased for any purpose other than for forestry development;
- (b) No lessee may assign, exchange, transfer or convey the lease or any part of his rights or interests therein without the prior written consent of the Forest Management Board;
- (c) the applicant/leasee has under-taken to employ qualified Kenyan nationals for any position within the organization, in the absence of which he is entitled to employ qualified non-Kenyan nationals.
- (d) the lessee shall be allowed to assign, exchange, transfer or convey his lease only if the Forest Management Agreement has been in existence for at least three (3) years, the lessee has not violated any provisions of this act, and has faithfully complied with the terms and conditions of the agreement, and the assignee possesses all the qualifications of the lessee.

14.4 Special Leaseholds

The Director of Forests may in the course of managing any state forest, lease a part or parts of the State Forest to a person or body corporate, a site or sites for a factory or factories or other buildings or houses, if in his opinion such a lease will be in the interest and furtherance of forestry.

Provided that:

- (a) the lease of the site shall be consistent with the provisions of the Government Lands Act and any other written law; and,
- (b) The Director has forwarded to the Forest management Board the lease agreement and the same has been approved by the Board.
- The Director of Forestry may lease part or parts of a State Forest Reserve for recreation or other purposes, which in his opinion are of public interest, provided that he has forwarded his recommendation to the Board and the same has been approved.

15. Management of Local Authority Forests

15.1 Each Local Authority shall be responsible for the establishment, protection and management of all forests under its jurisdiction. It shall finance all management and silvicultural practices and collect

revenue from the goods and services from its forests.

15.2 All Local Authority Forests should be managed in sustainable basis for multiple purposes production of goods and services in management plans agreed upon by the District Forest Conservation and Management Committee and approved by the Provincial Forest Officer.

15.3 Exploitation in the Local Authority Forests shall strictly be based on felling plans in the case of plantations, or on a felling schedule detailing annual or periodic coupes for indigenous forests after determining the sustainable allowable cut, and specifying the diameter limits for every species to be harvested in each crop.

15.4 Local Authorities with large areas of forests within its jurisdiction shall appoint a professional Forest Officer to manage its forest resources.

A Local Authority may seek assistance from the Forest Department for specialized functions such as determination of allowable cut, inventory or the forests, and preparation of felling plans.

15.5 Provisions contained in Clauses No. 13.1.1. to 13.1.7 for the management of State Forests will also apply to the management of Local Authority Forests.

15.5.1 The District Forest Officer in whose District a Local Authority Forest shall make inspection visits at least twice a year to assess the condition and management of Local Authority Forest. He shall produce a report to submit to the Council with copies to the Director and to the District Forest Conservation Committee indicating whether the forests are being managed according to approved plans and in accordance with sound forest management principles.

15.5.2 Where reports from the District Forest Officer are adverse regarding the management and condition of a Local Authority Forest, the Director of Forests may seek an audience with the Local Authority until necessary improvement is attained.

15.5.3 Where the Minister, after receiving the Director's report, is convinced that it is in the public interest that such Local Authority Forests be managed by the Forest Department, he may by order published in the gazette, declare that such forests shall cease to be managed by the Local Authority and be managed by the Forest Departments as a Provisional Forest.

15.5.4 Any Provisional Forest shall be managed with the full participation of the owner and any profits shall be paid directly to the owner. The Forest Department will, however, deduct expenses incurred directly in the forests management.

15.5.5 The Local Authority shall assign an accounting expert the duties to keep the accounts of a Provisional Forest and reporting on financial status every year to the Forest Department and the Local Authority.

15.5.6 Whenever the District Conservation Committee is satisfied that a Provisional Forest has been rehabilitated and the Local Authority is in a position to resume full management, the Committee shall write to the Director informing him of the improvement. The Director after consultation with the Forest Management Board shall table the report to the Minister for the Forest to cease to be a Provisional Forest.

15.6 Local Authority Forest Leaseholds

A Local Authority may, upon application by a company, business firm, professional association, educational institution, non-governmental organization, co-operative society, or private individual, and pursuant to a duly approved Forest Management Agreement, lease part or all of a Local Authority Forest for efficient management of the forest.

The Forest Management Agreement shall state *inter alia*:

- (a) the period for which the forest shall be leased;
- (b) the terms and conditions under which the lessee will manage the forest;
- (c) any royalties and charges payable to the Local Authority and/or Government; and,
- (d) the machinery for dispute settlement

Provided that no Local Authority Forest shall be leased for any purpose other than for forest development.

15.0 REFORESTATION AND TREE IMPROVEMENT FUND

15.1.1 There is hereby established a fund to be known as "Reforestation and Tree Improvement Fund", which shall be administered by the Forest Management Board for silvicultural operation in state and provisional forests and the clerk to each local authority for Local Authority Forests.

15.1.2 The Director of Forests Clerk to the local authority with the approval of the Forest Management Board, or financial committee of the local authority shall make payments from time to time from the fund for the:

- a) establishment of nurseries and production of seedlings including seed collection, site preparation, and plantation establishment;
- b) tending, pruning, thinning, improvement cuttings, and tree improvement.

15.2 Monies to the Fund shall be contributed by:

- a) wood processing and wood-using industries, to be charged at a rate determined by the Forest Management Board/Local Board, which will be over and above royalty payments,

calculated as a proportion of the value of the volume harvested;

- b) a levy upon forest lessees;
- c) voluntary grants, individuals, non-governmental organizations, and bodies corporate.

15.3 All monies due to the fund shall be collected by the Director and paid into the Fund;

15.4 The Director/Clerk to the Council shall keep proper records in relation to the accounts of the Fund and shall, for each financial year, prepare a statement of accounts in such a form as the Forest Management Board and the Auditor General may approve. The Accounts shall also be subject to audit by the Auditor General.

15.5 Forest Management in the case of State and Provisional Forest and the District Forest Conservation and Management Committee Board, shall each year determine purposes for which the funds shall be used on the requirements put to it by the Director/Clerk.

The Minister may make regulations prescribing the mode of collections of monies due to the Fund, and the manner in which payments shall be made from the Fund.

16. PROTECTION OF FORESTS AGAINST ILLEGAL ACTIVITIES

Except as provided in this Act and subject to any rules made thereunder, no person shall, in a State or Local Authority Forest: (except under licence of the Director or Clerk to the Local Authority):

- (i) fell, cut, take, burn, injure or remove any forest produce;
- (ii) be or remain therein between the hours of 7 p.m. and 6 a.m. unless he is using a recognized by the Director of Forestry;
- (iii) erect any building or cattle enclosure;
- (iv) set fire to or assist any person to set fire to any grass or under-growth or forest produce;
- (v) smoke, where smoking is by notice prohibited, or kindle, carry or throw down any fire, match or other lighted material;
- (vi) depasture cattle, or allow any cattle to be therein;
- (vii) clear, cultivate or break up land for cultivation or use land for any other purpose;
- (viii) capture or kill any animal, set or be in possession of any trap, snare, gin or net, or dig any pit, for the purpose of catching any animal, or use or be in possession of any poison or poisoned weapon (but nothing in this sub-paragraph shall be deemed to prohibit the capturing or killing of an animal

- in accordance with the conditions of a valid license or permit issued under the Wildlife (Conservation and Management) Act);
- (ix) enter any part thereof which may be closed to any person;
- (x) collect any honey or bee-wax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or bee-wax, or enter therein for the purpose of collecting honey and bee-wax, or be therein with any equipment designed for the purpose of collecting honey or bee-wax. Others have argued that they should be allowed to do the following:
 - (ix) construct any road or path;
 - (xii) possess, bring or introduce any chain-saw or logging tools or equipment without lawful authority;
 - (xiii) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, boundary mark, fence, notice or notice board.
- (b) On unalienated Government land:
 - (i) fell, cut, take, burn, injure or remove any tree;
 - (ii) collect any honey or bee-wax or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or bee-wax, or enter therein for the purpose of collecting honey and bee-wax, or be therein with any equipment designed for the purpose of collecting honey or bee-wax; or,
 - (iii) light any fire or throw down any match or other lighted material within the vicinity of a forest area or state forest in such manner as to subject the forest area or state forest to the risk of fire.
- (2) Any cattle found in any forest shall be deemed to be there under the authority of owner thereof unless the owner thereof proves the contrary, and under the authority of the person, if any, actually in charge of the cattle.

17 Counterfeiting or Unlawfully Affixing Marks

Any person who without lawful authority:

- (a) marks any forest produce or affixes upon any forest produce a mark used by any forest officer to indicate that the forest produce is the property of the Government, or that it may be lawfully cut or removed;
- (b) alters, obliterates, removes or defaces any stamp, mark, sign, license or other document lawfully issued under the authority of this Act,

- or removes or destroys any part or a tree bearing the stamp or other mark used by any Forest Officer;
- (c) covers any tree stump in any state or Local Authority Forest or on any unalienated Government land with brush-wood or earth or by any other means whatsoever conceals, destroys or removes or attempts to conceal, destroy or remove such tree stump or any part thereof; or,
- (d) wears any uniform or part of a uniform or any badge, or other mark issued by the Forest Department to be worn by forest officers or other employees of the Forest Department, shall be guilty of an offence.
- (2) Any person who counterfeits or issues without lawful authority any license or other document purporting to be a license or document issued under this Act or any rules made thereunder, shall be guilty of an offence and with a minimum of five thousand shillings or five months imprisonment.

18.0 COMPOUNDING OF OFFENCES

18. (1) A Forest Officer empowered, by the Minister by notice in the Gazette may, with the consent of the Director of Forestry, if he is satisfied that a person has committed an offence under this Act, accept from that person a sum of money by way of compensation for the offence together with the forest produce, if any, in respect of which the offence has been committed: or accepts to work for a number of days in lieu of compensation provided

No offence committed pursuant to the provisions of section — of this Act shall be subjected to compounding proceedings.

The compounding officer shall effect the preparation of a record of the proceedings stating:

- (i) the name and particulars of the offender;
- (ii) the nature of the offence; and,
- (iii) the amount of compensation received.

A record so prepared shall be forwarded to the District Forest Conservation Management Committee to be certified.

The Director of Forests may from time to time review the amount of compensation where circumstances so require.

19.0 POWERS OF OFFICERS

A Forest Officer, Police Officer, Administrative officer, Chief, Magistrate, Game Warden may

- (a) demand from any person the production of an authority or license for any act done or committed by that person in a Central Forest area or unalienated Government land or in relation to any forest produce for which a license or authority is, under this Act or under any rules made thereunder, required;
- (b) require any person found within a Central Forest or forest area, or on unalienated Government land, and who has in his possession any forest produce, to give an account of the manner in which he became the possessor thereof, and, if the person fails to give a satisfactory account, he may be arrested and taken before a Magistrate or a Forest Officer authorized under sub-section (1) of Section — to compound offences.
- (c) arrest and search any person suspected of being guilty of an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and seize and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or his agent or servant.
Provided that, no person shall be arrested under this section unless the person authorized and seeking to arrest him has reasonable cause to believe that, that person will fail to appear in answer to summons, or unless that person refuses to give his name and address, or gives a name and address which there is reasonable cause to believe is false.
- (d) seize and detain any forest produce in respect of which there is reason to believe that an offence has been committed, together with any tools, boats, vehicles or cattle used in the commission of the offence.
provided that the person seizing the property shall forthwith report the seizure to the nearest Magistrate having jurisdiction, or to a Forest Officer authorized under sub-section (—) of Section — to compound offences;
- (e) seize and detain any cattle found without any person in-charge of them in a State Forest; cattle so detained shall be auctioned at the expiry of five days if the owners do not reclaim them;
- (f) destroy any honey barrel or any receptacle placed without authority in a State Forest or forest area or upon unalienated Government land.

- (g) the Director of Forests or any Forest Officer authorised may enter Local Authority or Private Forest-lands to assess the conditions of the forest thereof at any time, and to investigate or check any forest disease or any forest phenomenon which he considers to be curious, provided that the Local Authority or owner shall be notified in writing of the intention or date to enter the land, and provided further that due respect shall be paid to the property rights of the Local Authority or owner of the forest land.
- (h) a Forest Officer may enter the premises of any forest-based industry or forest produce dealers to inspect any forest produce placed or found within the premises, to satisfy himself that the dealers abide by the provisions of the licenses and lease of this Forest Act.
- (i) Forest Officers are empowered to administer oath, take acknowledgement in official matters connected with the functions of their office and take testimony in official investigations conducted under the stipulation of this Act, and the implementing rules and regulations.
- (j) a Forest Officer may cut, damage, prune, thin, tap or dispose of, make clearings, cultivate for the purpose of planting trees, improving the quality and growth of trees, or for better management of forests or for scientific investigation in consultation with the Director.
- (k) Forest Officers shall take all necessary steps to prevent the commission of an offence under the Forest Act.

20. **Prosecutorial Powers**

A Forest Officer who has satisfactorily undergone training in the art of prosecution may after empowerment, in that behalf by the Attorney General by notice in the gazette, charge and prosecute any person suspected of having committed an offence under the Act in a court of law.

21. **Presumption Concerning Forest Produce**

When in any proceeding under this Act, a question arises as to whether forest produce has been cut in or obtained from a forest area or Central Forest, it shall be presumed to have been so cut or obtained, unless the contrary is proved.

22.0 COMMUNITY PARTICIPATION IN THE CONSERVATION OF FORESTS

The Director may, pursuant to consultations with a community living adjacent to or around a State or Provisional Forest, require such a community to assist the Forest Department in the protection of the forest by:

- (a) preventing the illegal harvesting of forest produce;
- (b) participating in fire fighting activities;
- (c) reporting the presence within the forest of suspected offenders to the Forest Officer in-charge of the forest; and,
- (d) doing any other act that is necessary for the conservation of the forest.

In return for the community's participation in the conservation of the forests, the Director may authorize members of the community to:

- (a) collect fuelwood;
- (b) collect medicinal herbs;
- (c) harvest honey;
- (d) collect fallen timber for construction;
- (e) harvest the grass; and,
- (f) obtain any other benefits which may from time to time be specified by the Director.

The Director may make the necessary rules regulating all the above activities for the conservation of the forest, and for enhancing community participation and protection of the forest.

FORESTRY EDUCATION AND TRAINING

The minister may from time to time by notice in the gazette and upon the advice of the Director of Forests establish training colleges, centres in strategic parts of the country for technical and vocational training of forest officers and other personnel.

22.1 Penalties

Any person who:

- (a) commits a breach or fails to comply with the provisions of this Act or any rules made thereunder;
- (b) commits a breach or fails to comply with any of the terms or conditions of a licence issued to him under this Act or any rules made thereunder;
- (c) fails to comply with a lawful requirement or demand made or given by authorised officers;
- (d) obstructs a person in the execution of his powers or duties under this Act or any rules

made thereunder, shall be guilty of an offence and liable to a fine of not less than six thousand shillings or to imprisonment for a term not less than 6 months or to both and to the forfeiture of his licence.

22.2 Where a person is convicted of an offence, whereby forest produce has been damaged or injured or removed, the court may, in addition to any other penalty, order that person:

- (a) to pay to the Director by way of compensation, the value of the forest produce so damaged or injured or removed; and,
- (b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employed or another person, the court may order the other person to pay the compensation, unless after hearing that other person, the court is satisfied that the offence was not due to his neglect or default.

22.3 Where a person is convicted of an offence of occupying or cultivating land in a forest area without a licence, the court may order the person so convicted to remove any buildings, enclosure huts or crops within a period to be specified in the order; and if the person so convicted fails to comply with the order of the court within the period so specified the buildings, enclosure huts or crops shall be deemed to be the property of government and may be disposed of as the Director of Forests may deem fit.

The College Institutes and Vocational Training Centres so established shall also serve as educational centres for members of the public and forest user communities regarding forest policy, forest management and forest legislation and silvicultural.

23.1.3 FORESTRY CONSERVATION PRACTITIONERS BOARD

23.1.3 There is hereby established, Kenya Forestry Conservation Practitioners Board which is to register, vet, and to look into the professional performance of foresters and forestry conservation in the country in general.

23.1.4 The Board will establish National Forest Examination Council which will have the following functions:

- (a) set professional examinations for holders of University degrees and College diplomas in forestry and related fields, for holders to register as Registered Professional Forester;
- (b) award Certificates to successful candidates; and,
- (c) develop curriculum detailing all subjects and courses to be covered by prospective professional foresters.

NATIONAL FOREST EXAMINATION COUNCIL

There is hereby established the National Forest Examination Council (Hereafter called the "Council").

FUNCTIONS OF THE COUNCIL

The Council shall:-

- (a) to set professional examinations for holders of University degrees and College diplomas in forestry and related fields for registration as Registered Professional Foresters;
- (b) to award certificates to successful candidates; and,
- (c) to determine the fees payable by the candidates.

Composition of the Board

The Board shall be comprised of:

- (a) The Chairman elected by the Kenya Forestry Association.
- (b) The Secretary appointed by the Director.
- (c) The Treasurer appointed by the Director.
- (d) One Senior Teaching Staff of the Department of Forestry in Moi University, elected by the teaching staff members.
- (e) The Principal of the Kenya Forestry College.
- (f) The Director of the Kenya Forestry Research Institute.
- (g) Two Members elected by the Kenya Forestry Association.

The Council shall appoint annually a Board of Examiners to set and mark the necessary examinations.

23.2.1 Categories of Forest Conservation Practitioners

There shall be two categories of membership which shall be registered for practice by the Board, namely:

- (a) Registration Professional Forester; and,
- (b) Associate Forester.

To become a Registered Professional Forester one has to hold a degree in Forestry and pass an examination set by the Board after at least 3 years of field practice. Diploma holders who have worked as foresters for at least 10 years can qualify after passing an examination for membership to Registered Professional Forester. Associate Forester category will be open to diploma holders who have passed as examination set by the Board after 3 years field experience.

24.0 THE KENYA FORESTRY COLLEGE

24.1 There is hereby established, the Kenya Forestry College, with the responsibility of providing sub-professional training in the field of forestry, conducting examinations to enable persons to become qualified Foresters and Forest Assistants, promoting forestry training and research, preparing training materials, and any other matters connected with sub-professional forestry training in Kenya. Hence:

- 24.1 (2) The College may be managed by a Board of Governors.
- 24.1 (3) The Minister may by an order, prescribe the manner in which the College shall be managed and controlled by the Board.
- 24.1 (4) The Minister may make general regulations, which he considers necessary or desirable for the better management of the College.

24.2.1 Composition of the College Board of Governors

The Board shall consist of the following:

- (a) Chairman appointed by the Minister.
- (b) One person nominated by Moi University Department of Forestry and appointed by the Minister.
- (c) One person nominated by Kenya Institute of Education.
- (d) Kenya Forestry Research Institute.
- (e) Directorate of Personnel Management.
- (f) Kenya Wildlife Services.
- (g) Two persons elected by Kenya Forestry Association.
- (h) One prominent Farmer nominated by K.N.F.U.
- (i) One person representing wood-using industries elected by the Association of Wood Manufacturers.
- (j) The Permanent Secretary Ministry of Environment and Natural Resources.
- (k) Director of Forestry.
- (l) One person appointed by the German Embassy during the effective period of the College Project Agreement with G.T.Z.
- (m) The Principal who shall be the Secretary and Ex-official Member

24.2.2 The Governors shall hold the office for a period of 3 years with provision for rotational retirement of governments at the end of each year. Governors shall be eligible for reappointment, at most twice.

24.2.3 The Board shall hold meetings at least 3 times in a year and a special meeting may be summoned by the Chairman or at the request (written) of any three Governors. The quorum at any meeting shall constituted at least half the members.

24.2.4 In the absence of the Chairman, the Board may elect one of the members to chair the meeting. The Board may invite persons who are not members to attend any meeting thereof, but no such persons shall be entitled to vote on any matter.

24.3 FUNCTIONS OF THE BOARD OF GOVERNORS

The Board shall govern the College in accordance with the following:

- 24.3 (a) the provisions of this Act and of any rules and regulations made thereunder, but also generally recognising the basic requirements of the Education Act;
- 24.3 (b) the Public Service Commission Act on all matters relating to the employment of staff;
- (c) the provision of this order;
- (d) the Board shall, with the consent of the Minister, appoint suitable staff on terms and conditions of service approved by the Directorate of Personnel Management;
- (e) the Board shall administer and control all staff seconded for service at the College;
- (f) the Board shall not decide on a proposal to dismiss any person employed by the Board or to terminate his contract, or to request the Minister to terminate the secondment of any person seconded for service at the College, on grounds of misconduct or grave professional default, until the person concerned has been given an opportunity to appear in person before the Board, and the person so appearing may be accompanied by one other person;
- (h) subject to the provision of paragraph 12, and to the Minister's power to determine the general education of the College, the Board shall have the general direction of the conduct and curriculum used in the College, provided that nothing shall be done or resolved which contravenes the terms of any agreement in force entered into by the government with respect to the College;
- (i) all proposals and reports affecting the policy and curriculum of the College, made by the Board, shall be submitted formally to the Minister at least 21 days before such proposals

- (j) and reports are implemented by the Board; subject to any provisions of this Order, the Principal shall control internal organisation, management and discipline in the College, shall supervise the staff, and shall be personally responsible to the Board for fostering and maintaining proper and suitable standards of conducts and behaviorr among the staff and students in the college;
- (k) there shall be regular consultation between the Principal and the Director of Forestry on all matters relating to forestry training offered in the college; and,
- (l) the Principal shall make such arrangement as may be necessary and suitable for consultation with staff and students.

24.4 The board shall:

- (a) approve entry requirements for the various courses offered at the College and regulate admissions and exclusions of students to and from the College by the Principal; and
- (b) provide for the conduct of public examinations, and shall issue certificates and diplomas to students who have been successful in public examinations conducted by the College.

PART V - FINANCE

24.5.1 The Board shall prepare annual estimate of revenue and expenditure in such form and at such time as the Minister shall prescribe for submission to the minister;

24.5.2 The Board may incur expenditure for the purposes of the College in accordance with estimates which have been approved by the Minister;

24.5.3 the Principal shall control the day-to-day expenditure connected with the running of the College and present accounts, including an annual audited accounts, of such expenditure to the Board as when and in such a form as the Board may direct.

24.5.4 the Board shall receive any fees payable by or in the interest of student, receive all grants obtained from public funds, whether for capital or revenue purposes, and any subscription, donation or bequest made to the College;

24.5.4 the Board may with the approval of the Minister and subject to any restriction imposed by law, appeal to the general public for subscription, donations or bequest for benefit of the college. In addition:

- (b) where the Minister at the request of the Board, authorizes the Board to raise a loan for the benefit of the College, the Board shall make arrangements for

the raising of the loan, and shall ensure that the proper provisions are made for the payment thereof of any interest and other charges, in accordance with any directions given by the Minister;

24.5.6 any balance of income which is unexpected in any year may be carried forward to the accounts of the College for the next financial year, and the Board may make proposals for the final disposal of the unexpected balance which shall be at the discretion of the Minister, who may take such balances into account when assessing the following year's grant to the College;

24.5.7 the Board with approval of the Minister, determines the scale of fees payable by or in respect of students at the College.

GENERAL

24.6.1 All such movable and immovable property, shares, funds and securities as may from time to time become the property of the Board, shall be in the name of the Board of Governors of Kenya Forestry College, and shall be dealt with in such manner as the Board may from time to time determine; subject to the condition upon which any funds are derived from public funds for capital or recurrent purposes and the conditions upon which any endorsement, bequest, or donation is made for any purpose connected with the College. Provided the Board shall not dispose of any property without the consent of the Minister.

24.6.2 The common seal of the Board shall be in the custody of the Principal of the College and shall be signed by the Chairman of the Board or such other Governor as the Board may by resolution appoint.

24.6.3 It is an offence for any person to issue a certificate or diploma to any person indicating or purporting to indicate that the person has successfully completed a course of training in forestry at the College. Any person who issues a certificate or diploma without the authority of the Board shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or both such fine and imprisonment.

FUNCTIONS OF THE BOARD OF GOVERNORS

The board shall:-

- (a) determine and set the overall training policy for the college
- (b) seek and administer finance for the management of the college
- (c) set the terms and conditions for employment of the staff of the college

- (d) determine the fees payable by students admitted to the college
- (e) make rules generally for the efficient administration and management of the college.

MEMBERSHIP OF THE BOARD OF GOVERNORS

The board shall be comprised as follows:-

- (a) Chairman: The Permanent Secretary for the time being responsible for Forests
- (b) The Director of Forests
- (c) The Director of Personnel Management
- (d) A member of the Public Service Commission
- (e) The Principal of the College who shall also be the Secretary
- (f) The Dean, Faculty of Forestry Resources and Wildlife Management of Moi University
- (g) The Provincial Commissioner, Rift Valley
- (h) A member of the Kenya Forestry Association
- (i) A member of the Forest Management Board appointed by the Chairman
- (j) A member of the Kenya Saw millers Association who is a professional forester, elected by the Association
- (k) The Permanent Secretary, Ministry of Finance or his representative

25.0 *Locus Standi*

Any person being a Kenyan citizen or ordinarily resident in Kenya who has reason to believe that the provisions of this Act have been, or are being, or are about to be violated may petition the High Court for an order preventing the said violation.

The petition shall state *inter alia*

- (i) the particulars of the petitioner;
- (ii) the nature of the violation;
- (iii) the provision(s) of this Act which are being violated;
- (iv) the person, agency or body violating the said provisions; and,
- (v) specific orders or forms of relief being sought from the court.

The decision of the High Court shall be final and no appeal shall lie therefrom.

26.0 RULES

26.1 The Forest Management Board may make rules to be published by the Minister in the gazette in respect of all State Forests or any particular State Forest, for all or any of the following purposes:

- (i) Controlling the sale of and disposal of forest produce areas of State Forests where any or all forest produce may not be sold or removed; conditions of sale and disposal by tender, public auction, private treaty or otherwise and matters incidental thereto; fixing the royalties, fees either generally or individual cases.
 - (ii) Regulating the use and occupation of State Forest land for the purposes of residences, cultivation, grazing, camping, picnicking, cultural activities, industrial, or any other purposes of such nature.
 - (iii) Regulating and controlling the manner and circumstances by which licenses, permits, leases, may be applied for, granted, varied, refused or cancelled; and the manner in which a person to whom a license is granted shall exercise a right or privilege conferred upon him by the license, which provide for an appeal, and to take such measures as may be specified by the license.
 - (iv) Regulating the felling, working and removal of trees or forest produce, in areas where trees may be felled or removed.
 - (v) Regulating the entry of persons into a State Forest, the period during which they may remain there and conditions under which they may remain.
 - (vi) Closing paths/roads in a State Forest either persons or traffic or both.
 - (vii) Regulating entry into a nature reserve.
 - (viii) Providing for conditions of administration and management.
 - (ix) Providing for plant inspectors, and declaration of insects and fungal pests dangerous to forest produce, and prescribing measures to be taken to control or eradicate such notified pests.
 - (x) Providing for compulsory use of property marks by Local Authorities and owners of private forests for the purpose of identifying wood sold from Local Authority Forests and other woodlands.
 - (xi) Prohibiting or regulating lighting of fires, smoking or the carrying, kindling or throwing of any fires or light or inflammable material.
 - (xii) Prescribing the form for bequests and covenants.
 - (xiii) Prescribing conditions under which mis-managed or neglected forests may be declared Provisional Forests and conditions for reverting them to original owners.
 - (xiv) Regulating the establishment of forest-based industries.
 - (xv) Providing generally for the carrying out of the purposes and provisions in this Act.
- 26.2 Rules made under the provisions of this section may require acts or things to be performed or done to the satisfaction of the prescribing person, and may empower a prescribing person to issue orders to be performed or done or to impose conditions and prescribe periods and dates upon within or before which such acts or things shall be performed or such conditions shall be fulfilled.
- 26.3 Upon recommendation by the Council or District Forest Conservation Committee, the Minister for Local Government, may make rules applicable to any local authority forest which it maintains and controls prescribing for any forest or all of its forests any or all of the matters which the minister to the Local authority may prescribe or regulate under the provisions of para 16 (i), (ii), (iii), (iv), (v), (vi), (ix), (xi), (xix), (xv).
- 26.4 The Minister in-charge of forests or a Local Authority may, in making a rule under this section, prescribe a breach thereof, of a fine not less than five hundred shillings or imprisonment for a term not less than one month, or both such fine and term of imprisonment.

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TANZANIA COUNTRY REPORT

LIST OF ABBREVIATIONS

CFR	Community Forest Reserve
DFB	Draft Forest Bill
DFO	District Forest Officer
DPP	Director of Public Prosecutions
EIA	Environmental Impact Assessment
EOCA	Economic and Organized Crimes Act
FAO	Food and Agricultural Organization of the United Nations
GEF	Global Environment Facility
GoT	Government of Tanzania
JMA	Joint Management Agreement
LAFR	Local Authority Forest Reserve
NEMC	National Environment Management Council
NGO	Non Governmental Organizations
NFP	National Forest Policy
UNEP	United Nations Environment Programme
UNDP	United Nations Development Programme
VFR	Village Forest Reserve

EXECUTIVE SUMMARY

This report supplements an earlier report on the Forestry Component submitted to the UNEP/UNDP/Dutch Government Project on Environmental Law and Institutions in Africa. It was deemed to be imperative that a follow up report be prepared to take account for the recent developments in Forestry Sector in Tanzania. Hence, this report is not a substantive one but prompted by the need to update, supplement and improve the earlier draft report. Three main developments have formed this report as discussed below.

First, is the fact that in March 1998, the Government of Tanzania issued a new policy to govern the forestry sector and provide guidance to the review of the legal framework for management of forests. The fundamental principle of the Forest Policy, is to enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of her natural resources for the benefit of present and future generations.²

Secondly, as a result of the adoption of the policy the Forestry, the Beekeeping Division of the Ministry of Natural Resources

and Tourism formed a team composed of a Consultant and a support group to prepare a draft Bill for the Forest Act for submission to the Ministry of Natural Resources and Tourism. The proposed Bill has been drafted on the basis of policy directives as provided by the National Forest Policy and is intended to repeal and replace the earlier Forest Ordinance Cap. 389. The Bill introduces new concepts of forest management such as community participation and management planning.

Thirdly, this report takes into consideration recommendations given during the Workshop on the Development and Harmonization of Environmental Law on Selected Topics in East Africa held in Kisumu, Kenya from 2-10 February 1998. The recommendations given during that Workshop stemmed from reports submitted on this Component by consultants from Kenya, Tanzania and Uganda. It is important to note however, that areas of harmonization suggested during the Workshop should eventually be incorporated in the draft Forest Bill.

² See the Forest Policy at p. 14

CHAPTER ONE

THE EXISTING LEGAL FRAMEWORK ON FOREST MANAGEMENT

1. REVIEW OF LEGISLATION RELATING TO FORESTRY

1.0 THE FORESTS ORDINANCE, 1957, CAP. 389

The main legislation governing forestry in Tanzania is the Forest Ordinance Chapter 389 of the Laws of Tanzania. The Forest Ordinance was enacted in 1959 to consolidate and amend the law relating to the conservation and management of forests and forest produce and to amend the Mining Ordinance.

The Ordinance came into force on the 1st April 1959 and has extensive provisions for the establishment, management and control of forest reserves. But forests are also subject to other laws if they fall under protected lands governed by: the Ngorongoro Conservation Area, or in Game reserves or National Parks, or on individual or village lands.

Notably, the Ordinance is obsolete in view of recent development in natural resources management legislation. The ordinance lacks provisions on basic conservation tools such as environmental impact assessment, management plans, resource assessment, adequate provisions on licencing, public participation, among others. Important provisions of the Ordinance are being analysed herein below.

1.1 FOREST OWNERSHIP, TENURE AND ACCESS

Ownership, tenure and access to forest resources under the current legal framework is dependent upon the location of the resource itself and may be subject to various laws as indicated above. One thing that is apparent is that, there is no separate legislation governing non-timber resources.

Section 8 of the Forest Ordinance allows the Director of Forestry to issue permits to a forest produce with the

necessary conditions. The permits are issued to any person or group of persons, to exercise any rights in relation to forest produce if such right has been determined to be lawfully exercised.

Section 9 of the Forest Ordinance restricts creation of new rights in a forest reserve or intended forest reserve. The section allows occupation of land in a reserve if the same was granted under sections 6 or 11 of the then Land Ordinance, Chapter 113. The section also allows continuation of the right to forest produce if enjoyed immediately before the effective day of the notice (section 9 (3) (a)) and occupation of any land by any native or native community if the same was exercised according to customary law immediately before the effective date. These rights may be determined if a native abandons the land for a period of 3 months.

Section 15 (1) restricts consumptive utilization of forest produce without licence. Damage to forest produce, grazing, collection of bee products, construction and occupation without permit is also prohibited. The burden of proof is on the person found within or in the vicinity of a forest reserve without a lawful cause with an implement likely to be used in cutting or damaging forest produce. (section 15 (2))

Section 17 gives powers to the Minister to declare any tree in unreserved land to be a reserved tree and upon such declaration, no person is allowed to cut, remove or damage any such tree without a licence. Failure to comply with section 17 is an offence under s. 18 (1).

Section 18 (2) restricts utilization of trees in unreserved land for commercial purposes without a licence. There are a few exceptions enumerated by the Ordinance. These include trees are to be utilized for African arts or craft or for agricultural or "African cultivation".

As seen above, forest reserves may only be accessible subject to a licence or permit to a forest produce. On the other hand, a forest produce on unreserved land may be freely utilized if it is not part of the reserved trees. But "even the reserved trees can be used at low localised levels by or for traditional uses"³

1.2 RESOURCE ASSESSMENT

Despite the fact that resources assessment is a useful conservation tool, the Forest Ordinance does not provide for such a tool and therefore there is no established legal standards and methodologies for assessing forest resources in the current legislation.

1.3 SUSTAINABLE

1.3.1 Environmental Impact Assessment (EIA)

EIA is not provided for under the current legal framework on forestry. Generally, there is no comprehensive EIA legislation in Tanzania, though draft regulations on EIA have been prepared by the National Environmental Management Council. It is worth noting, however, that the new Mining Act, 1998 has made important strides by incorporating EIA provisions in the Act requiring mining operations to be subjected to substantive EIA requirements.

1.3.2 Forest Conservation Areas

Part II of the Forest Ordinance provides procedures for creating forest reserves. Section 5 (1) gives powers to the Minister subject to s. 6 (1) to declare any area of unreserved land to be a territorial forest reserve or a local authority forest reserve as from the date to be specified in the order. The Director of Forestry is required to demarcate the boundaries of a newly created territorial forest reserve (section 5 (2)). The same powers are given to the local authorities to demarcate local government forest reserves.

Section 6 (1) provides for certain pre-requisites to be fulfilled before the Minister declares a forest reserve. One of the requirements is a 90 days notice which must be issued before creation of a forest reserve. The notice is published in the gazette and exhibited at the office of every Area Commissioner whose district land form part of the reserve and the same notice is exhibited in a manner as may be customary to the area concerned. After the issuance of the said notice, the Minister has to take into account any ground of objection and satisfy himself that claims on land or forest produce are

investigated, determined and recorded or voluntarily surrendered. In case of the latter compensation has to be paid.

In case of an objection of claim by a person or group of persons, the same has to be lodged with the Area Commissioner with details of the grounds for objection and particulars of rights claimed. In case of the former, the Area Commissioner will forward the same to the Minister but claims of rights will be investigated by the Area Commissioner or any other official appointed by the Minister who shall determine the claims and notify the claimant in writing. Appeals on decision of the Area Commissioner lies with the Court of the area Resident Magistrate.

All unclaimed rights are deemed to be extinguished section 6 (7) and no claims shall be entertained after publication of the notice. Compensation if any are payable from funds set aside by the National Assembly in case of territorial forest reserve or funds set aside by the local government in case of a local authority forest reserve, as the case may be.

1.3.2.1 Measures applicable inside forest reserves

The use of forest produce is subject to licences issued by an authorised office under the Ordinance. The Director or any officer appointed and the local authority managing a local authority forest reserve may, under section 19 (1) of the Ordinance give licences subject to such conditions and fees as may be prescribed. These authorities are also empowered under section 19 (3) to cancel or suspend a licence if the holder has infringed on any of the conditions upon or subject to which the licence was granted and may vary the conditions of the licence at any time by agreement with the licensee.

There are no management planning provisions enumerated in the Ordinance and there are no detailed conservation related provisions in the Ordinance.

1.3.2.2 Measures Applicable outside Forest Reserves

Activities carried out outside the boundaries of a forest reserve are subject to various other laws. The Forest legislation as it is now does not address buffer zone approaches to protected forest regimes. Indeed management of forests outside the reserved areas is subject to land tenure laws governing the respective area. These areas more often than not are subject to village jurisdictions and tenure is guided by established village practices or customary laws.

³ Government of Tanzania, 1994, Report of the Presidential Commission of Inquiry into Land Matters Vol. I (Uddevalla, 1994) at p.265

1.3.3 Protection of endangered species

The Forest Ordinance does not provide for the protection of species which are endangered. It would seem therefore that the inclination of the Ordinance is towards regulation of timber resources and generation of revenue from forest produce and not biodiversity conservation and/or sustainable utilization of flora and fauna in forest- ecosystems .

1.3.4 Fire and Pest Control

Control of forest fires is catered for under Part V of the Forest Ordinance which deals with protection of forests and forest produce. Section 16 (1) stipulates the duty of the public to assist in protecting forest reserve from fire. Failure to abide by this duty is an offence punishable by a fine or imprisonment or both. The Forest Rules of 1959 are also relevant in this regard. Rule 14 contains a number of restrictions in respect of fire that anybody who lights a fire , smokes, carries, kindles or throws any fire or inflammable material in any forest reserve or area in any forest reserve where such acts are forbidden, commits an offence under the Rules. In addition to section 16 of the Forest Ordinance and Rule 14 of the Forest Rules, the provisions of the Grass Fires Ordinance Cap. 135 also applies.

With regard to the control of pests, there is no direct legal provisions in the Ordinance , but the Minister is empowered under section 30 (1) to make regulations " providing for the declaration of insect and fungal pests dangerous to forest produce and prescribing measures to be taken to control or eradicate such notified pests"

1.3.5 Transboundary Cooperation

Biodiversity traverses national boundaries and has to be addressed in its totality regardless of national borders. Despite the presence of forest ecosystems of a transboundary nature⁴ the forest legislation do not address cross border issues . Measures to protect these resources have been based on political expediency and goodwill.

In addition, Tanzania is a party to a number of international conventions on utilization and conservation of natural resources which will eventually need to be incorporated in national legislation to have a legal effect. A framework section may be incorporated into the new law to enable the Minister

responsible for forestry to prepare schemes to facilitate the implementation of international conventions and agreements relating to the conservation of biodiversity, the protection and enhancement of forests and the preservation of wild plants which have been agreed on by the Government.

1.4 COMMUNITY PARTICIPATION IN FOREST MANAGEMENT

The Forest Ordinance does not have discrete provisions on community forest management. At the moment, forest management is only decentralized to the district level by the Ordinance. Therefore, Part III of the Ordinance is specific to management of local authority forest reserves. No further devolution is made by the Forest Ordinance to allow for the creation of village forest reserves. Section 10 (1) gives powers to the local authority to manage and control a local authority forest reserve pursuant to the establishing order. The local authority shall be responsible for the costs of management and revenue collected from fees for forest produce, and licences form part of the said local authority revenue. The local authority may appoint a manager to manage the said local authority forest reserve (section 10 (2))

Despite the creation of a local authority forest reserve, the Director of Forestry, still wields powers over this category of forest reserves. A local authority forest reserve must be managed in accordance with the advice of the Director (section 12 (1) and may make written representation in respect of the said management. If the Minister upon receipt of a report from the Director in respect to mismanagement of a local authority forest reserve, he may order in the *Gazette* that the same be managed by the Director.

1.5 LICENCING PROCEDURES FOR FOREST CONCESSIONS

1.5.1 Environmental Impact Assessment

As seen above, there is no EIA requirement before granting a licence to the utilization of a forest produce. The discretion of the Director or his delegates in granting forest concession has, in practice, been guided by both the need to generate revenue and quantity of timber products in a particular forest reserve. Exploitation of forest products has not been subjected to management plans nor resource assessment as good forest practices would require.

⁴ Such forest ecosystems include; the Rakai-Minziro-Sango Bay swamp forests along the Tanzania-Uganda boarder, the Kajiado- Monduli dry mountain forests along the Tanzania-Kenya border and the Same-Taita -Taveta Eastern arc forests along the Tanzania-Kenya boarder.

1.5.2 Harvesting Restrictions

Harvesting of forest produce as seen above is regulated through a licencing system administered by the Director of Forestry. The Forest Ordinance provides that “every such licence shall be subject to such conditions as may be specified therein...”. This provision implies that utilization of forest produce has to be within the ambits of the conditions in the licence. Breach of the conditions may lead the Director of Forestry or the forest officer to invoke section 19(3) by cancelling or suspending the licence.

1.5.3 Royalties

The Forest (Amendment) Rules, 1996⁵ are the ones currently applicable on royalty rates chargeable on forest products. The Third Schedule to the Rules provides for, *inter alia*, fees and tariffs chargeable on forest products.

1.5.4 Penalties for Breach of Conditions of Licence

Powers of various officers responsible for enforcement of the Ordinance are enumerated under Part VII of the Forest Ordinance. Section 20 of the Ordinance gives powers to any administrative officer, policy or officer or forest officer to: demand for a licence or authority for an act committed which require the a licence or authority under the Ordinance; to stop and search without warrant but with 2 independent witnesses (in areas outside municipalities and townships) any article or building in which a forest produce is suspected of being stored or contained; to seize and detain any forest produce and articles used in the commission of the offence but thereafter report such seizure to the nearest magistrate; arrest without warrant a person suspected of committing an offence under the Ordinance and take him/her without delay to the nearest magistrate. Section 21 gives powers to a senior forest officer to compound offences where the offender admits to be guilty

Part VIII consists of series of miscellaneous offences section 22 makes it an offence if any person unlawfully receives or possess a forest produce without lawful authority. Other offences include; counterfeiting, interference with or obstructing officers of the Forest Division and breach of

certain conditions of licences. Section 26 is on penalties and extra orders to penalties such as compensation and removal of buildings.

Section 29 empowers courts to award informers an amount not exceeding one half of the fine imposed for the offence to a person who supplied information which led to the conviction of the offender.

1.5.5 Commercialization, Certification and Product standards

Export of Timber

The Export of Timber Ordinance, Cap. 288, was enacted to provide for the control of export of timber and its inspection, grading, marketing and handling in transit. Section 3 of the Ordinance provides for the scope of application for the Ordinance by making it apply to all timber unless exempted by notice published in the *Gazette*.

Section 4 gives powers to the President to exercise control on movement of timber of any quality or quantity from the territory. The export or entry for export of timber from the territory is subject to a valid export certificate issued by the Director of Forestry or any other person authorised by him and the export has to be done through the ports of exit specified by the Director.⁶ The said certificate has to be in the prescribed form and will expire after six months from the date of issue⁷. Section 8 gives power to the Director or any authorised officer to cancel a certificate in case of bad handling or storage of timber which is in transit. Furthermore, the timber to be exported is graded and marked by authorised graders who are appointed and disciplined by the Director under Section 10 of the Ordinance.

The Export of Timber Ordinance is supplemented by the provisions of the *Export Of Timber Rules*, 1969 Government Notice 145 of 1965. These Rules provide for, *inter alia*, the grading for export of soft woods and hard woods and provision of marks on wood to be exported. The rules came into operation on 1st July, 1969 and apply to all timber to be exported with the exception of East African Blackwood (*Dalbergia melanoxylon*). These Rules are “essential to ensure that timber exported from Tanzania is of such a

⁵ Government Notice No. 463 of 1996 . The information on the application of the Government Notice was obtained through personal communication with Mr. Mbonde, Assistant Director of Forestry and Beekeeping.

⁶ Sections 5 (1) and 6 of the Export of Timber Ordinance.

⁷ Ibid Section 5 (2)

⁸ Holmes, , 1995, *Natural Resources Handbook for Tanzania: Forest Ecology and Management*, Vol. II [Morogoro, Sokoine University of Agriculture] p. 160

minimum quality that the regularity of demand and scale of export price offered by buyers, is maintained and improved”⁹.

Regulation on trade on forest produce

Trade of forest produce is regulated under the Forest Ordinance. The Forest Orders, 1996⁹, prescribe that : No forest produce being trees, timber, logs, poles, charcoal, firewood, fibres, flosses, among others, etc. shall be removed from any forest or woodlot under the control of the Forest and Beekeeping Division or any local government authority or urban authority or private owner or from any other location except under the cover of a Transit Pass in the form prescribed in the third schedule to the Orders¹⁰. In addition, persons carrying trade or business in forest products are required by the said Orders to obtain a Certificate of Registration of Forest Produce Trade from the Regional Forest Officer of the region in which they carry on that business or trade.¹¹

1.5.6 Inter sectoral cooperation

Forests as Wildlife habitat

Forests are important wildlife habitats. In Tanzania, wildlife reserves, national parks and the Ngorongoro Conservation Area contain or border large tracts of forested lands. In case a forest falls within a conservation area, the relevant law governing that are applied. The Forests Ordinance requires under section 19 (4) that “No person or authority shall issue any licence in respect of a forest reserve within the Conservation Area established under the Ngorongoro Conservation Area Ordinance “without the consent of the Conservator of Ngorongoro Conservation Area.”

However, the Forest Ordinance is silent on the consultation mechanisms between the Director of Forestry and wildlife authorities like the Tanzania National Parks Authority and the Director of Wildlife in respect to management of forests in or outside national parks and game reserves/controlled areas respectively. In addition, all wildlife (outside National Parks) in Tanzania are administered by the Director of Wildlife. This means that wildlife in forest reserves are under the Director of Wildlife. The law does not provide clear legal mandates to the Director of Forestry in respect to management of wildlife in forest reserves. This omission in the law has lead into institutional overlaps and confusion. It is imperative therefore, for the Forest Ordinance and wildlife laws like the National Parks Ordinance Cap. 412, the Ngorongoro

Conservation Area Ordinance Cap. 413 and the Wildlife Conservation Act No.12 of 1974 to be synchronized and clear the overlaps.

Forests as water catchment

Although the Forest Ordinance does not explicitly make provisions for catchment forestry, in practice, however, territorial forest reserves have been managed as catchment forests. At the moment, there are no clear mandates in respect to water catchment. There are a host of institutions which have a stake in catchment areas and these include: the Forestry and Beekeeping Division, the National Environment Management Council, National Land Use Planning Commission, the local governments, the Ministry of Water and the Ministry of Agriculture. Without clear institutional coordination mandated by the law, these catchment forests will continue to be mismanaged.

1.5.7 Training, Research and Development

There are a number of institutions in Tanzania which conduct training and research which have a direct or indirect bearing to forestry. The most relevant institution for our purpose is the Tanzania Forestry Research Institute (TAFORI) which is established under section 3 of the Tanzania Forestry Research Institute Act , 1980, No. 5 of 1980. The functions of the Institute are stipulated under section 5 of the Act and they include: promotion, development, improvement and protection of the forestry industry; carrying out and promoting the carrying out of inquiries , experiments and research and to collect or facilitate the collection of information for purposes of promoting forestry and teaching of forestry, conservation of forests, use of local and foreign trees and the suitability for their adoption.

In addition, the Institute is empowered under section 4 (d) to: carry out research and investigations of plant diseases, and to coordinate research in forestry carried out in the United Republic. It is also mandated to establish a system of documentation and dissemination of information on forestry; to advise the government and other institutions on forestry issues and cooperate with the government and its agencies and other institutions in promoting and facilitating research on forestry issues. The Institute can prepare, implement and supervise programmes relating to development of forestry and to control and manage the affairs of the Centres. Under section 10, the Institute is empowered to call for information

⁹ Government Notice No. 462 of 1996

¹⁰ Ibidem section 5 (1)

¹¹ Ibidem section 7(1)

relating to forestry from any person within the United Republic and such a person is duty bound to comply with such call.

In the performance of its functions, TAFORI is required by the law (section 4 (2)) to establish and maintain a system of collaboration, consultation and cooperation with the Tanzania Commission for Science and Technology and the Tanzania Wood Industry Corporation (already liquidated). Under section 6 (1) of the Act, the Board of Directors of the Institute is established. The Board is responsible for the exercise of the functions and management of the Institute. Under section 7, the Minister may give direction of a general or specific nature to the Board.

Pursuant to section 8 of the Act, the Board, shall appoint such number of committees and sub-committees as it may deem necessary for the formulation, control and coordination of research projects and research carried out by itself or on its behalf.

The Act makes it a requirement under section 9 (1) for every person engaged, or intending to engage in any aspect of research relating to or connected with forestry within the United Republic to furnish to the Institute information relating to that research and make available to the institute copies of any relevant records or findings in such form within such periods as may be specified. Contravention of this section is an offence.

Section 11 of the Act requires the Institute to design a system of communication and cooperation with local authorities and other government departments for the purpose of facilitating and assisting in the practical implementation of matters relating to forestry and soil conservation.

Powers of the Minister to make regulations are enumerated under Section 12 of the Act which include regulations requiring persons to furnish information to the Institute; declaring any area or areas within the United Republic of Tanzania in which a particular type of tree or forest shall be planted or maintained for research purposes; regulating involvement of the Institute in the processing and marketing of products derived or manufactured from forest produce. The Minister's powers also include making regulations on procedures of submission to the Institute of proposals for carrying out research and the manner of dealing with such proposals, the powers, rights and obligations of persons doing research ; and prescribing or regulating on anything under the Act

The Forest Research centres referred to under section 5 and enumerated in the First Schedule to the Act are: Amani Forest Research centre, Kibaha Lowland Afforestation Research Centre; Lushoto Silviculture Research Centre, Moshi Timber

Utilization Research Centre, Mufindi Pulpwood research Centre, Rondo Southern Zone Afforestation Research Centre and Tabora Miombo Woodlands Research Centre.

Another piece of legislation which is relevant in respect to training and research on forestry is the *Tanzania Commission on Science and Technology Act No. 7 of 1986*. The Act provides under section 4 for the establishment of the Commission for Science and Technology . The Commission has the following powers and mandates: to formulate policies on science and technology and recommend their implementation by the Government; to coordinate and monitor activities relating to scientific research and technology development; to acquire, store and disseminate scientific and technology information and organize forums for discussion. Other advising powers and mandates of the Commission include the government on research priorities, allocation of research funds, training and recruitment of research personnel, establishment of national research standards; mobilizing funds for research; examining the research and development programmes of national research institutions, fostering cooperation in all matters relating to science and technology at regional and international levels and performing such other functions as directed by the Minister.

Section 10 bestows general powers to the Commission to work either alone or in collaboration with others in implementing the provisions of the Act and may set up committees for the purpose of conducting any scientific and technological research. Under Section 14 (2), the Commission is mandatorily required to establish standing committees to be known as Research and Development Advisory Committees and may establish such other committees as the conditions dictate. The Commission is further empowered by section 14 (3) to establish and provide for the composition of the following standing committees ; Agriculture and Livestock; Natural resources; Environmental Research ; Industrial and Energy research; Public Health and Medical research; Basic Sciences and Social Sciences. These committees are responsible for coordination of research, scientific and technological matters under their mandate (section 14 (5)) and may meet at such intervals as they consider necessary for implementation of their duties.

Section 14 (4) gives the Commission mandate to amend the third schedule of the Act and prescribe for the composition of the Committees. In exercising this mandate, the Commission has promulgated Government Notice No. 577 of 1998 and prescribed for the composition of the research and Development Committee on Environment which is now composed of: representatives from the National Environmental Management and Development Institution; a

government department responsible for environmental management and development; a research institution responsible for nature conservation and management of natural resources, an environmental department of an academic institution and an industrial or chemical and pollution control and monitoring centre; a geology or mining department of an academic institution; a government department responsible for conservation management and development of natural resources; representative of a government department responsible for land use development, planning and survey; an NGO responsible for environmental management; a government department responsible for demography; commissioner or director responsible for water in the Ministry of Water, Energy and Minerals; a Government department responsible for pollution control and one eminent scientist in environmental issues.

Other Institutions which are relevant to the training and research in forestry include: the University of Dar es Salaam -Department of Botany; the Sokoine University of Agriculture and the Olmotonyi Forest Institute.

As seen above, Research and training under the forest sector is conducted by multiple institutions without apparent coordination.

1.6 LEGISLATION PERTAINING TO LAND TENURE

Recently, Parliament adopted two pieces of legislation which introduce a new generation of legislation on land in Tanzania. Undoubtedly, review of the existing land laws is necessary because these laws have a bearing on forest tenure and eventual management of forestry resources.

1.6.1 *The Land Act, 1999*

The Land Act, No. 4 of 1999, is the most comprehensive and detailed framework land law since 1923. It repeals and replaces ten other pieces of legislation and consolidates their provisions. Like its colonial predecessor, the Act continues to vest radical title over all lands in Tanzania in the state, with the President retaining his trusteeship role with the ultimate control and authority of all lands (section 4(1) and (2)). In addition, the Act introduces a novel classification of public lands into general lands, village lands and reserved lands (s. 4(4)).

The first category of lands is defined as All public land which is not reserved land or village land and includes unoccupied or unused village land" (section 2). Under section 6, reserved lands are those lands set aside for various conservation

purposes as forest reserves under the Forests Ordinance; national parks under the National Parks Ordinance; conservation area under the Ngorongoro Conservation Area Ordinance; game reserves and game controlled areas under the Wildlife Conservation Act, 1974; marine parks or reserves under the Marine Parks and Reserves Act, 1994; and lands set aside as planning areas under the Town and Country Planning Ordinance; and catchment areas for rivers and river basins (section 6(1) (i-vii). Other categories of reserved lands include lands set aside as recreation grounds under the Public Recreation Grounds Ordinance; lands acquired for a public purpose under the Land Acquisition Act, 1967; and lands declared as hazardous lands under this Act (section 6(1)(b-d).

"Hazardous land" is defined as land the development of which is likely to pose a danger to life or to lead to the degradation of or environmental destruction on that or contiguous land and includes Y mangrove swamps; wetlands; land designated or used for the dumping of hazardous waste; land within sixty metres of a river bank or the shoreline of an inland lake; steep slopes; and land declared by a competent authority as land which should not be developed on account of its fragile nature or of its environmental significance (section 7(1)(a-f).

It is clear, therefore, that the Land Act, 1999, contains provisions of critical environmental importance. This is all the more so as the Act introduces another innovation in natural resource law-making by expressly incorporating what it refers to as the "fundamental principles of land policy" into the body of the law unlike previous legislation which have tended to put the principles in the preamble which, as a rule, is not enforceable in courts of law. One of these fundamental principles which it is the objective of the Act to promote and which all persons exercising powers under, applying or interpreting it are required to have regard to is "to ensure that land is used productively and that any such use complies with the principles of sustainable development" (section 3(1)(e).

The President continues to wield considerable powers in the administration of land matters under this Act. He has powers to transfer land from one category to another (section 4(7)). He may transfer any area of general or reserved land into village land and vice versa under the procedure set out in section 5 of the Act. If the transferred land is reserved all the President is required to do is notify the minister responsible for that land; or the local authority responsible for that land; or persons occupying that land if any (section 5(3)(a)). The President may thus degazette a national park or forest reserve by using the provisions of the Land Act.

1.6.2 The Village Lands Act, 1999

The Village Lands Act No. 5 of 1999 is the second pillar of Tanzania's new land tenure legislation. It was enacted specifically to cater for the management and administration of land in villages.... The Act repeats *verbatim* the provisions of Part II of the Land Act, 1999 in respect of the application of "fundamental principles of land policy". Thus, all persons exercising powers under the Village Lands Act, or applying or interpreting it are required "to ensure that land is used productively and that any such use complies with the principles of sustainable development" (s. 3(1)(e)). They are likewise required "to enable all citizens to participate in decision-making on matters connected with their occupation and use of land...." (s. 3(1)(h)).

Just as under the Land Act, the President wields considerable powers in the administration of land matters under this Act. For instance, where he is minded to transfer any area of village land to general or reserved land or for public interest, he may direct the Minister responsible for land to proceed with the said transfer (s. 4(1)). The President is also empowered to determine, where he is minded to exercise his power to transfer village land to general or reserved land, whether any persons occupying that land may continue to occupy and use that land, subject to any terms and conditions, which he may impose or whether the rights of those persons shall be compulsorily acquired subject to the payment of compensation (s. 4(10)).

In addition, the President has power to direct that any compensation payable under this section shall be paid by any person or organization to whom or which the village transfer land which has been transferred to general land is granted by a right of occupancy (s. 4(11)). He may also direct that an inquiry to look into the proposed transfer be appointed under section 19 of the Land Act (s. 4(12)). The President, furthermore, has powers to transfer any area of general or reserved land to village land subject to the provisions of section 6 of the Land Act, 1999 (s. 5). He is, in addition, empowered to declare any land - which, upon receiving and considering a report of the Minister to the effect that the land should be declared to be hazardous land even though it is occupied and used by any person under a granted or deemed right of occupancy - to be hazardous land; and such declaration shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land (s. 6(10)).

The Minister responsible for land is also empowered to manage and administer village lands under the Act. He may take all necessary steps to effect the transfer of village land upon receiving directions from the President (section 4(3)). He may also appoint an inquiry upon receiving directions

from the President under section 4(12). The Minister is also empowered to declare any area of a village land to be hazardous land (section 6(1), (5) and (8)). "Hazardous land" is defined as land the development of which is likely to pose a danger to life or may lead to the degradation of or degradation of the environment or contiguous land and includes ... mangrove swamps; wetlands; land designated or used for the dumping of hazardous waste; land within sixty metres of a river bank or the shoreline of an inland lake; steep slopes; and land specified by the National Land Use Planning Commission as land which should not be developed on account of its fragile nature or of its environmental significance; and any land specified by the National Environment Management Council as being land which should not be developed on account of its environmental significance [section 6(3).]

The Minister also plays an important role in the processes of adjudication of disputes related to village lands. Where there is a dispute as to the boundaries of village lands, the Minister may appoint a mediator who shall work with and persuade the village authorities and the other party to the dispute to reach a compromise over the boundaries; or, where the mediator is unable to effect a compromise between the parties, the Minister may appoint an inquiry under section 18 of the Land Act, 1998, to adjudicate and demarcate the boundaries of the village land (s. 7(2) and (3)). Although, as a general rule, the Minister is duty-bound to accept the recommendations of the inquiry he has appointed as to boundaries of the village land which was subject to the inquiry, he may depart from those recommendations if there are "overriding reasons of public interest...." These reasons are, however, not defined in the Act.

The Minister also plays an important supervisory role over Village Councils in the latter's exercise of their functions to manage village lands. Under section 8(7), the Minister is empowered to receive complaints by a village assembly or not less than one hundred villagers that the Village Council is not exercising its functions of managing village land in accordance with this Act and other laws to village land or with due regard to the principles applicable to the duties of a trustee. Upon receiving such complaint, the Minister is required to inform the Minister responsible for local government of the matter and subject to any agreement he may make with that Minister, shall either advise the complainants to settle the matter amicably within the machinery of the village, or request the District Council having jurisdiction in the area to resolve the issue and advise the Village Council as to its future conduct of management of village land.

The Minister may also direct the Commissioner for Lands to issue a directive to the Village Council on the management of

that village land which and the respective Village Council shall be required to comply with; or appoint an inquiry under section 18 of the Land Act, No. 4 of 1999. An inquiry may recommend to the Minister that the management of the village land be removed from the jurisdiction of the Village Council for either fixed period indefinitely and transferred to either the District Council having jurisdiction over the Village Council or to the Commissioner (section 8(8)). The Minister may also make regulations providing for the management of village lands jointly between two or more villages; one or more villages and the District Council or urban authority having jurisdiction over the area, and those regulations may provide for the Commissioner to be involved in that joint management (section 8(10)).

The powers enumerated above seriously infringe on the democratic rights of the villagers to control their own representatives by holding them accountable for their exercise of power in managing village lands. Instead, those powers are concentrated in the hands of organs or institutions which are not accountable to the villagers such as the Commissioner or the District Council.

Furthermore, the Act empowers the Village Council to manage all village lands in accordance with the principles of a trustee with the villagers being the beneficiaries (s. 8(1) and (2)). In the exercise of these functions, the Village Council is required to have regard to the principles of sustainable development and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land; the need to consult with and take account of or comply with the decisions or orders of any public officer or public authority with jurisdiction over any

matter in the area where the village is; and the need to consult with and take account of the views of other local authorities with jurisdiction over the village (section 8(3)).

The Village Council is, to be sure, required to report and take account of the views of the Village Assembly every two months and brief the District Council having jurisdiction over it. These duties are, however, not hemmed in with such severe and commanding wording that characterizes duties of the Village Council to have regard and the advice of the Commissioner whenever he considers it necessary or desirable to advise all or any Village Councils on the management of their village lands (section 8(6)). Furthermore, the advice of the Commissioner cannot be contradicted by any other representative of the villagers. For instance, although the District Council may give advice and guidance to the Village Council concerning the latter's administration of village land, Any advice and guidance given by a District Council shall contradict or conflict with any directive or circular issued by the Commissioner under subsection (3) of section 11 of the Land Act, 1999 (section 9(1)(2)).

The Village Council has powers to enter into joint village land use agreements with any other Village Council concerning the use by any one or more groups of persons, of land traditionally used by those groups which is partly within the jurisdiction of the Village Councils concerned (section 11(1)). These agreements must be approved by the Village Assemblies of the villages concerned for them to be valid (section 11(3)). These provisions may be used creatively for villages co-management of forests falling within their respective jurisdictions.

CHAPTER TWO

THE POLICY AND PROPOSED INSTITUTIONAL FRAMEWORK FOR FOREST MANAGEMENT

2.0 THE POLICY FRAMEWORK FOR THE FORESTRY SECTOR

2.1 THE NATIONAL FOREST POLICY, 1998

The Forest Sector is now guided under a new policy framework adopted by Government in March, 1998. In that case the legal framework will need to be enhanced to reflect the new policy concepts and directions.

The National Forest Policy (NFP) sets one fundamental goal and that is:

“...to enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of her natural resources for the benefit of present and future generations”.

Specific objectives of the NFP are:

- to reserve sufficient forested land and land capable of afforestation for the benefit of present and future habitats;
- to preserve and improve local climate and water supplies, ensure ecosystem stability and maintain soil fertility;
- to provide for sustained yield of forest produce of all kinds for internal use and also for export;
- to manage the forest estate and all forests on public Land so as to obtain the best financial returns on capital

value and the cost of management in so far as such returns are consistent with the primary aims given above; and,

- to encourage and assist the practice of forestry by local government bodies, private individuals and private enterprises.

In creating the policy framework for implementation of these objectives, the policy introduces new concepts and tools in management such as forest management planning, assessing environmental impacts of activities both internal and external to forest reserves, biodiversity protection, regulating research and establishing funding mechanisms for forest conservation, among others. The National Forest Policy also addresses management of forests from a modern perspective, that is, on the basis of various scientific, legal and other innovations in forestry management.

In spite of the advances made by the Government in promulgating the National Forest Policy, however, application of the new thinking about forest management is hampered by the inadequacies of the enabling legislation (the Forestry Ordinance Cap. 389) and by a legislative framework that creates unclear mandate on forestry management. This means that the Forest Division and other stakeholders are hindered in their efforts to confront the many issues that face the sector as Tanzania approaches the new millennium. It is important therefore, to look into issues raised by the National Forest Policy and the need to harmonize the legislation so that it tallies with concomitant forest legislation in Kenya and Uganda.

2.2 NATIONAL FOREST POLICY GUIDANCE ON LEGISLATION

The National Forest Policy picks the Forest Ordinance Cap. 389 as the main stumbling block to forest management because it is:

“ based on a strong controlling function of the sectoral authorities and centralising administrative structures for its implementation. Approaches to encourage community and private sector involvement in forestry were not adequately addressed.... There is also lack of coordination in formulating by-laws between the relevant sectors. Some by-laws established by local governments have turned out to be contradictory to the principal laws. Guidelines for active and sustainable forest management are non-existent and royalties and other licence fees collected by government are based on administrative pricing and do not reflect their economic values.”¹²

The National Forest Policy therefore concludes and gives a Direction¹³ that:

“ the revision of forest legislation will follow the approval of policy and will be harmonised with the legislation of other related sectors...” The National Forest Policy then provides four policy areas for legislative backing and these are as follows:

(a) Forest Land Management

This policy area addresses creation of the special forest regimes, powers of management of different institutions on these areas, tenurial rights and duties. The specific requirements for legislation on this policy area are:

(i) Declaration of forest reserves

Declaration of forest reserves refers to the types of reserves which may be created under the law. The types have been added to those in existence. The newly added categories include nature forest reserves and village forest reserves. The policy area also addresses tenurial rights and duties of communities within or near forest reserves and their protection through appropriate procedures.

The Forest Ordinance is considered to have adequate provisions on creation of reserves. These include advertisement, recording of objections and existing rights, appeal procedure, compensation and permitting of existing rights. There is need, however, to include in the legislation a proactive role for the administration to establish an outreach programme to solicit and record comments, objections and recommendations to a proposed Forest Reserve. In addition, the law should set out principles that must be relied upon by the administration while deciding whether to permit the continuance of existing rights within a reserve with or without limits. It is also, perhaps the right time to diversify the powers of forest administration, instead of bestowing them to an individual officer in examining the entire scheme of proposing a forest reserve and recording rights therein.

(ii) Institutions in the Management of Reserves

The National Forest Policy has made tremendous breakthrough in diversifying the mandate, ‘ownership’ and involvement of stakeholders in the management of forest reserves. The Forest Ordinance modelled in the era of command and control of the use of natural resources, centralizes power and lacks clear provisions for community and private sector involvement in forestry.

In one of its first policy statements therefore, the National Forest Policy declares that:

“...[the] participation of stakeholders in forest management and conservation , joint management agreements, with appropriate user rights and benefits, will be established. The agreements will be between the central government, specialised executive agencies, private sector or local governments, as appropriate in each case, and organised local communities or other organisations of people living adjacent to the forest”¹⁴

Admittedly, the concept of community and village involvement in management of forests is considered to be an integral part of any modern forest legislation. In spite of the legislative lacunae on this concept, some creative legal combination of different statutes enabled some villages to establish their own reserves¹⁵. Nevertheless, these innovations are somewhat fluid and provides no assurance to the communities. What is

¹² See, National Forest Policy p. 38

¹³ see National Forest Policy, paragraph 4.4.2 Legal and Regulatory Framework; DIRECTIONS.

¹⁴ See National Forest Policy Statement No. 3

¹⁵ see Liz Wily (1997) “ Villagers as Forest Managers and Government’s ‘Learning to Let Go’: The case of Duru-Haitemba and Mgori forests in Tanzania”, Forest Participation Series No. 9 Forest Land Use Programme, International Institute for Environment and Development (London)

needed to be put in place are clear cut provisions in the forest legislation to sanction a category of community/village forest reserve and rights and duties for community/village under 'ownership'. The said 'ownership' of forest and trees can be derived directly from legislation or through a concession/contract made with local or central government. The introduction of the concept of community forestry in modern forest law is aimed at devolving forest management functions to resource users and relieving the Government of the day to day policing functions which tend to be costly and ineffective. It is on this basis that the National Forest Policy directs that:

*"the Legal framework for the promotion of private and community-based ownership of forests and trees will be established. Farmers will be entitled to have owner rights of indigenous species including reserved species and not only planted exotic ones..."*¹⁶

(iii) Forest management planning

The current Forest Ordinance, Cap. 389 does not have provisions on forest management planning. The National Forest Policy introduces the concept of forest management planning to Tanzania. All forest reserves are to have Management Plans¹⁷ and are to be managed in accordance with those plans. The National Forest Policy however, does not give details of the legal status of the management plans. The National Forest Policy though provides that the plans should be multi-purpose and be prepared based on reliable inventory data and covering all different uses of forests.¹⁸

It is expected, however, for legislation to provide for detailed guidelines on how these management plans will be prepared. Minimum details should include; zoning provisions for different types of uses, contain technical detailed plans for individual actions where necessary, set limits for consumptive and non-consumptive uses among others. It is important, however, that the law should have a requirement that the plans must be prepared in a participatory manner.

(iv) Gender issues in respect of tenurial rights to land and trees

The National Forest Policy almost conclusively asserts that gender inequality in owning and controlling land based resources has affected women despite their central role in managing these resources¹⁹ The policy statement that follows calls for securing equal rights to both men and women on forest tenure.²⁰

(b) Forest Based Industries and Products

The National Forest Policy gives another policy area for legislation. This is an area which requires legal provisions to govern forest assessment and inventory, regulation of trade in forest products, regulation of eco-tourism and Licencing (concession, permits, among others.)

(i) Forest Resources Assessment

The National Forest Policy directs that the "information on the availability of raw material will be secured through periodical forest resource assessments and all relevant data will be provided to potential users."²¹ What then is needed to be specified in the law is the responsible authority for preparing the inventory and what should be contained in the inventory. General powers may be given to the Director of Forestry who may be responsible for or cause the assessment to be carried out and periodically reviewed.

It is suggested that the law should move further and require that forest resource assessment should also include an assessment of the forest biodiversity especially in protected forests. The latter assessment will give a valuable input to the development of management plans and feed into biodiversity research envisaged under the policy statement (17).²²

On this aspect legal provisions will be required to stipulate the mandate in preparing, monitoring and dissemination of

¹⁶ See National Forest Policy, page 21

¹⁷ NFP, Policy Statement (1) and (6)

¹⁸ DIRECTIONS at p.17

¹⁹ see NFP page 48

²⁰ Policy Statement (39) "Y.clearly defined forest land and tree tenure rights will be instituted for local communities, including both men and women."

²¹ See DIRECTIONS on page 24

²² Policy statement (17) stipulates that "Biodiversity research and information dissemination will be strengthened in order to improve biodiversity conservation and management"

the assessments. These provisions may be either in the principal legislation or in the subsequent regulations.

(ii) Licencing of Use of Forest Produce

The licencing provisions contained in the existing Forest Ordinance are insufficient. Section 19 of the Ordinance provides for powers to grant licences for utilization of forest produce, while section 8 permits holders of customary user rights to continue use of forest produce for "African use". Both sections give powers to the Director and local authorities to grant, cancel and suspend a licence or right of use. Undoubtedly, these are wide discretionary powers which need more detailed sections and since rights of individual users are vulnerable to these powers, appeal structures must be established by legislation and principles of natural justice ought to be sanctioned.

The details of the legislation on this aspect include the following:

- activities which a licence may be issued;
- established application and determination procedure;
- conditions to be imposed on licences, such as, requirement to plant trees, use of certain equipment, record keeping;
- duration of a licence;
- fees and royalties; and,
- procedure to be followed on appeals.

(iii) Regulation of Trade on Forest Produce

The Forest Ordinance does not provide a normative regulation of trade on forest produce. The Export of Timber Ordinance Cap. 288, however, contains provisions governing export of timber. There have not been apparent conflict between the two pieces of legislation, but there is no good record on enforcement by having them split. The National Forest Policy in addressing this problem states that:

"Internal trade and export of forest produce, excluding those regulated by international agreements of which

Tanzania is a party, will be promoted. To prevent forest destruction and degradation through commercial exploitation, trade of certain forest products may be regulated"

The emphasis of the Forest Ordinance has been on the export of timber and no regulation on the internal trade. As such, the Export of Timber Rules of 1965 (as amended) emphasizes qualitative controls "to ensure that the timber exported from Tanzania is of such a minimum quality that the regularity of demand and scale of export price offered by buyers is maintained and improved".²³ The NFP also envisages control of quantity and type of trees harvested for export, though already there is such normative control²⁴. Despite the call for more legal provisions to regulate trade in forest products, licencing will probably remain the main tool which the administration may use to impose conditions and controls on trade.

(c) Forest Biodiversity Conservation and Management

The National Forest Policy acknowledges the importance of biodiversity conservation and management being a recent development at the national level²⁵. Until recently, forest reserves were not viewed as an ecosystem but as a bunch of trees clustered together. The National Forest Policy therefore declares that:

"Biodiversity conservation and management will be included in the management plans for all protection forests. Involvement of local communities and other stakeholders in conservation and management will be encouraged through joint management agreements".²⁶

The National Forest Policy directs that new forest reserves should be established for biodiversity protection, watershed management, soil conservation and wildlife in collaboration with the respective sectors.²⁷ The new category of forest reserves with high biodiversity value has been named as 'nature reserves'.²⁸ The National Forest Policy suggests further that an inclusionary approach should be adopted in establishing these types of reserves, that is, local communities in the surrounding areas must be fully involved in establishing and managing the reserves.²⁹

²³ See Holmes, J *Natural Forest Hand-Book for Tanzania: Forest Policy, Planning and Utilization* [Morogoro: SUA: 1995] at page 160

²⁴ Forests (Restriction of the Export of Round Logs of Specified Trees Species) Rules 1989

²⁵ see National Forest Policy at page 31

²⁶ see National Forest Policy Statement 16

²⁷ see National Forest Policy DIRECTIONS at page 24

²⁸ Indeed there is already in existence a nature reserve created by Government Notice No. 151 of 1997, The Forests (Amani Nature Forest Reserve) Rules, 1997

²⁹ National Forest Policy Statements (16), (20) and (22) provide for this through joint management agreements.

Of particular interest, is the link between forest management and wildlife conservation. There have been conflicts between forest management, wildlife management and rural population caused, *inter alia*, by over grazing, encroachment, illegal logging, poaching by the rural population and damage to crops and attacks on human life by wildlife. Undoubtedly, this is an areas requiring careful legal drafting to address the stakes of the rural population, wildlife managers and forest administration. The National Forest Policy suggests joint management agreements as the way forward in which local communities will realize benefits from wildlife in and contiguous to forest reserves.

(d) Criteria and objectives of creating Forest Reserves

The current Forest Ordinance does not set the criteria nor does it require for objectives of creating a reserve to be specified in the forest reserve declaration instrument. This lack of legal clarity has already led to confusion on the part of the Forest administration. A clear example is the promulgation of the Forests (Amani Nature Reserve) Rules of 1997. While these rules are an affirmative step in biodiversity conservation, their legal genesis is faulty and vulnerable to criticisms. The rules seem to be made under the Forest Ordinance but they permit human habitation in the reserve in the manner which is incompatible with the criteria laid down under sections 6-9 of the Ordinance. Further, although the Ordinance allows for creation of forest reserves, it does not provide for establishment of an Advisory Board for a forest reserve like that established by the Rules.

The Amani Forest Rules is one of scenarios which might occur where the governing law is not clear. Therefore, in the National Forest Policy spirit of encouraging public participation in forest management, it is imperative for the law to make it mandatory for the forest declaration instrument to provide for the purposes and criteria of establishing forest reserves. Otherwise, it will be difficult for the public to object to or comment on the creation of a forest reserve. If public opinion and input in the management of forest reserves is to be enlisted, discrete provisions should be incorporated in the law to enable the public to discern the criteria and possible purposes of creating such reserves.

(e) Legal Regime on Environmental Impact Assessment [EIA]

EIA is a new concept which is also not addressed in the Forest Ordinance. The National Forest Policy provides that:

*"Environmental impact assessment will be required for the investments which convert forest land to other land use or may cause potential damage to the forest environment"*³⁰

It is worth noting that there has not been in place an EIA legislation in Tanzania, though draft regulations on EIA have been prepared by the National Environmental Management Council. Despite the lack of a framework legislation for EIA, the new Mining Act, 1998 has made important strides by incorporating EIA provisions in the Act. Further, useful models can be obtained for the principles governing EIA published by the United Nations Environment Programme (UNEP). EIA provisions under the new forest legislation should then be limited to procedures and processes for forest-related EIA and the Minister should be given powers under the law to make such rules.

2.3 INSTITUTIONAL FRAMEWORK FOR FOREST MANAGEMENT

As it has been discussed hereinabove, the National Forest Policy has introduced concepts in forestry management which will need concomitant institutions to manage and implement changes.

Currently, there is no clear demarcation of powers and responsibilities between the local government and the Central Government in relation to forestry administration. Below are the areas suggested by the NFP which will need legal provisions :

(a) The National Advisory Board

The National Forest Policy recognizes the problem of lack of timely policy revision, cross-sectoral coordination, unsustainable forestry programmes and weak financing initiatives. To solve this problem the policy declares that:

*"The policy analysis and planning capacity within the forest sector will be strengthened with the emphasis on strategic planning and coordination. A broad based consultative group with advisory functions will be established to guide on policy-related cross-sectoral issues."*³¹

The National Forest Policy is, however, silent on how membership to the "Consultative Group" should be selected. It is suggested that interest of key players in the sector like non-governmental organisations, NEMC, Central Water Board, National Land Use Planning Commission, Local Government authorities, local communities, among others should be

³⁰ See Policy Statement (23)

³¹ see NFP Policy Statement (24)

represented. At the same time, however, the Minister should be left with some flexibility on appointing members of the Consultative Group. It is important also that the membership of the Group should be proportional in gender. The Group is conceptualized to be the think-tank on forestry management. One of the functions of the Group is policy revision and coordinating cross-sectoral issues but the Group can also be assigned the function of periodically reviewing the forest legislation, adjudicate on matters referred to it by the Minister and assess any administrative gaps to the Forest Division. Its deliberations should be published and be accessible to the public.

(b) National Forest Programme

The **DIRECTIONS** following Policy Statement (24) stipulates that “ A strategically focused National Forest Programme (NFP) to guide policy implementation will be prepared and periodically updated”. One of the purposes of the Programme should be to streamline the institutional linkages and particularly smoothen the relationship between central and local governments in respect to forestry administration. The Programme should also detail the parameters in which local authorities, NGOs and executive agencies will implement their duties and responsibilities and be able to assess their performance.

The Programme is supposed to be a compass for forest management albeit its importance is not specifically addressed in the NFP which also calls for the establishment of the “National criteria and indicators”³² to inform management guidelines for different types of forests. Given its importance it is suggested then, that a consultative process both with the National Advisory Group and the public be established under the new forest law and carried out during the preparation and review of the plan. A useful example may be drawn from the Forest Resources Management and Conservation Act of Zanzibar, 1998 which requires for the preparation of a National Forest Resources Management Plan and its consultation process and its full review and revision at least once in every ten years.

(c) Institutional Coordination Mechanisms

The National Forest Policy requires under Policy Statement (30) members that coordination mechanisms be established between the key players in forest management. These may be provided under the National Forest Programme by stipulating how information may be collated and specifics on how the

Forest Division will coordinate with other bodies that have cross-sectoral mandate. The law should require that these bodies exercise their functions and mandate in accordance with the stipulated national criteria and indicators.

The critical issue to be addressed by legislation is the extent of supervisory powers to be conferred on the central government, that is, the Forest Division. If such powers are to be conferred by law, care must be taken to make sure that devolution of mandates and responsibilities is not diluted. One of the ways suggested by the National Forest Policy is to have joint management agreements. The question is, should the Director of Forests be given powers to revoke such agreement if the other party does not fulfil the obligations under the joint management agreement? Or, what issues should be resolved by the Director and which ones should be dealt with in courts of law?

Even if the National Forest Programme is to be adopted with a scheme on coordination, a lot will depend on the outcomes of the Civil Service Reform and the Local Government Reforms programmes now underway. The two programmes will lead to institutional re-alignment one cannot be sure of the mandate and roles to be given to specific institutions. Given these reforms it seems that an effective coordination will only be achieved after graduated steps have been taken and a culture of coordination amongst government sectors is built and nurtured.

One of the initial steps to be taken is to establish the National Forest Programme which provide management guidelines and avail the same to all forest management authorities. The second step should be to require forest management authorities to abide by the national programme and if not a notice from the Division will be issued and a subsequent notice to be issued for the management authority to show cause why the management functions should not be removed from such authority. If the authority does not comply, then the Division may take over the management functions in the interim while working on the re-organisation of the authority whose functions have been suspended. The law should further provide for the right of appeal to the minister if an authority has been aggrieved by the decision of the Director.

In order to cover situations where an urgent action may be required to salvage a forest reserve which is being mis-managed, the law should make provisions for reserve powers where the Minister may intervene and impose control on local forest management in some special cases. In case of conflicts

³² The policy statement on National criteria and indicators is contained in sub-paragraph 4.4.2 Legal and regulatory framework in Policy Statement (26)

between a village and community groups or villages, *inter se*, the District Forest Officer (DFO) should be vested with powers to solve such disputes. Where a party feels aggrieved by the decision of the DFO, such party should be able to prefer an appeal to the Director and further should be the Minister.

(d) Financing Mechanisms.

The NFP contains two policy statements covering financial matters. Policy Statement (27) stipulates that "Royalties and other fees for forest products and services will be determined to reflect their economic values. Revenue collection will be made more effective". In addition, Policy Statement (28) states that: "Pricing of forest products and services sold from central and local government reserves will be determined based on free market values"

It would seem from the DIRECTIONS following Policy statement (40) that it is the intention of the Government that the Forest Division be self financing and collection of revenue will be improved. In order to facilitate this policy endeavour, the legislation should provide for the criteria for setting the fee tariffs. In doing so, general powers may be conferred on the Minister after being advised by the National Advisory Group to set fees and royalties on the basis of: market price, financial resources and local circumstances of the payer, the need to encourage a particular activity and the collection costs.

Policy Statement (40) also addresses this question of financing and it stipulates that

"New and innovative sectoral financing mechanisms will be developed and directed to the key functions and stakeholders of the forest sector". Since the goal of the National Forest Policy is to promote self financing of the sector, the National Forest Policy gives DIRECTIONS for establishment of: long-term financing arrangements for forestry research; cost - sharing of training expenses and extension services and development of long-term external financing for projects with global dimension. The National Forest Policy, however, does not direct on how the financing mechanisms will be detailed in the legislation, though some useful examples may be borrowed from the Forest Resources Management and Conservation Act of Zanzibar and the Wildlife Conservation Act, No. 42 of 1974.

The Zanzibar Forest Act establishes what is known as a Forest Development Fund which is to be used for: reforestation; extension and research; loan to groups and persons wishing to plant trees and manage forests and any other activities directly related to the fulfillment of the purposes of the Act.

The said Act also stipulates the sources of finances for the Fund which are: portions of fees and royalties; sums appropriated by the Government and donations from sources within and outside the country.

On the other hand, the Wildlife Conservation Act make provisions for the creation of the Tanzania Wildlife Protection Fund. A similar Fund is envisaged under the National Environment Policy, 1997. It is suggested therefore that, a similar Fund should be established in the new forest legislation for the forest sector, and perhaps make linkages between these conservation Funds.

(e) Miscellaneous Issues to be Addressed

(i) International conventions and mechanisms

The National Forest Policy does not address the issue of international conventions which Tanzania has signed or ratified. Undoubtedly, the sector may benefit if the new law will provided for a scheme in which the ratified conventions may be applied without the necessary rigours of drafting new legislation. In that way, the sector may benefit from opportunities available at the international scene. Some of the well known funding opportunities are the debt for nature swaps and the funds provided by the Global Environmental Facility (GEF). So far, GEF funds have been used to fund afforestation programmes, support sustainable forest management programmes and finance the creation of buffer zones for protected sites.

The other advantage of having such a scheme is to enable the sector to comply with international adopted standards on managing forests. A good example is Chapter 11 of Agenda 21, the Statement of Forest Principles adopted at the Rio Summit on the Environment and Sustainable Development and the FAO model Code of Forestry Harvesting Practice.

(ii) Incorporating provisions of other laws

• Grass Fires (Control) Ordinance Cap. 135

The Ordinance was enacted for purposes of controlling wild fires and protection of vegetation. As such, this legislation is of direct relevance to forest protection. It is suggested, therefore, that the Ordinance be amalgamated to the forest law or be repealed, since this law applies to all vegetation, the definitions of which includes "any trees or any parts thereof". Its provisions may well be fitted in the forest legislation to ensure smooth implementation.

- **Mining Act No. 5 of 1998**

Of particular importance for the purposes of this report are the provisions in the Act which attach environmental conditions for the grant of mining licenses. This legislation makes extensive provisions for environmental matters in relation to mining activities, introducing, for the first time in Tanzania, mandatory EIA requirements as a condition for granting various categories of mining licenses. Under section 38(4)(c) of the Act, every application for a special mining license must include or be accompanied by the applicant's environmental management plan (EMP), including his proposals for the prevention of pollution, waste treatment, protection and reclamation of land and water resources and for eliminating or minimising adverse effects on the environment of mining operations. This requirement is also applicable in cases of application for renewal of a special mining license (section 42(2)(d)).

In addition, the Act requires every applicant for the special mining license to commission and produce to the Minister responsible for mining an environmental impact assessment on proposed mining operations from independent consultants of international standing short-listed by the applicant and approved by the Government [section 38(5)]. Applications under this section are required to be submitted to the Mining Advisory Committee [section 38(6)]. This applies to applications for renewals as well [section 42(3)]. A special mining license has a maximum life span of twenty five years or may be granted for the estimated life span of the mineral ores to be mined whichever is shorter [section 40(a).]

The amount of timber used for mining activities is enormous, though the National Forest Policy does not specifically address this matter. The problem of deforestation resulting from mining activities may be augmented in the wake of the Governments' call for more investments in the mining sector. EIAs may not solve this problem. Perhaps a viable solution may be to grant a specific license for extracting timber for mining purposes. The said license may have conditions to be complied with the holder and limit such holder to cut, injure or destroy only those trees covered by the license.

- **Economic and Organized Crimes Act No 13 of 1984**

The Economic and Organized Crime Act introduces a convoluted system of prosecution offences which would have otherwise fallen under sectoral laws. It lists a series of offences under its First

Schedule which are defined as "economic offences " and are subject to prosecution pursuant to its provisions.

The Economic and Organized Crime Act constitutes an "Economic Court" which consists of a judge of the High Court and two lay members³³. The investigations of economic crimes are conducted by police officers designated by the Director of Public Prosecutions (DPP). Permission of the DPP is required before an economic offense may be prosecuted pursuant to the statute.³⁴

Prosecutions may be conducted by all law officers, state attorneys or other police officers or any other person appointed as a public prosecutor by the DPP by notice in the Gazette.³⁵

The implication of the Economic and Organized Crime Act is that offences related to unlawful extraction of forest products in forest reserves are tried under its provisions³⁶, while other non-economic crimes are tried under the provisions of the Forest Ordinance. The Economic and Organized Crime Act therefore creates separate prosecution channels in which case cognate offences on the Forest Ordinance are tried differently under separate laws and courts. This complicates the enforcement system and causes delay of cases.

The Act may therefore be amended to require that offences falling under the Forest legislation be tried under that legislation and not the Economic and Organized Crime Act.

- **Plant Protection Act, No. 13 of 1997**

The newly enacted Plant Protection Act provides under different sections for safeguards against pollution of groundwater and the natural environment by plant protection substances. Natural environment is defined to include its components soil, water, air, species or wild flora and wild fauna, as well as interaction between them. Furthermore, the Act was enacted to make provisions, *inter alia*, for control of importation and use of plant protection substances, regulating export and imports of plants and plant products and ensure fulfillment of international commitments, to ensure sustainable plant and environmental protection and entrust all plant regulatory functions to government.

Section 18(1) (c) of the Act stipulates that the Minister, for the time being in force for agriculture, shall register the plant protection substance or product if the application procedures under section 17 of this Act have been complied with and

³³ Economic and Organized Crime Act section 4

³⁴ *id.* At section 26

³⁵ *id.* Section 27

³⁶ The Economic and Organized Crime Act will apply if the offender committed the offence while possessing a fire arm .

after analysis of the plant protection substance or product shows that when used for its intended purposes and in the correct manner, or as a result of such use, does not have any harmful effects on human and animal health, ground water and the natural environment which are not justifiable in the light of the present state of scientific knowledge.

Furthermore, the Minister is required under section 27(2) of the Act to develop a Code of Conduct for the proper use of plant protection substances, plant protection improvers and equipment, which shall include, but not limited to; discouraging

or prohibiting the use of plant protection substances, plant protection improvers and equipment in cases where it is expected that their use will have harmful effects on health of man, animals, ground water or the natural environment.

This Act, can be used effectively to control importation and/or introduction of exotic forest products and species which may be harmful to the forest ecosystem in Tanzania. The Forest legislation may therefore make cross reference to the provisions of the Plant Protection Act with regard to regulation of exotic species.

CHAPTER THREE

PROPOSED LEGAL FRAMEWORK FOR FOREST MANAGEMENT

3.0 THE DRAFT BILL FOR A FOREST LAW

3.1 Introduction

Pursuant to the adoption of the National Forest Policy, the Forestry and Beekeeping Division of the Ministry of Natural Resources and Tourism determined to revise the existing forest legislation and address the deficiencies unveiled by the National Forest Policy. So far, a draft report in form of a Bill was presented to a National Workshop in April, 1999. The precursor to this report was an issues and options paper prepared by a consultant which considered the law needed to provide for the implementation of the new policies, and the extent to which the existing Forest Ordinance [Cap. 389] should be amended to accommodate and implement the policy developments. Attention was also paid to the developments in policy and practice at the international level, especially the legislative instruments adopted at the United Nations Conference on Environment and Development in Rio in 1992 and legal approaches adopted in forest legislation of other African countries and others from outside Africa.

3.2 The Draft Forest Bill

The Draft Forest Bill has 105 sections and is divided into 12 chapters. Initial comments received on the Draft Forest Bill suggested that it does not sufficiently take into consideration the on going policy reforms on decentralization and empowerment of local government with the role of central government being limited to supporting initiatives of local authorities and non-governmental sectors. In addition, the 105 sections make the Bill (if eventually adopted in its original form) to be far bulky for enforcers to cope with and hence a call that it should be considered for minimization. Below is a descriptive analysis of the Draft Forest Bill.

Part I: Preliminary Provisions: Sections 1 and 2

This part deals with interpretations. The Bill contains no substantial changes from the previous Act on meanings of words.

Part II: The Policy Framework: Section 3 and 4

Section 3 describes the fundamental principles of the National Forest Policy and serves as a guidance to those exercising functions under the Act and a yardstick to measure compliance of forest management with the National Forest Policy.

Section 4 enumerates the categories of forest regimes. Some of them are already in existence or are proposed to come into existence when the new law is enacted.

Part III: Administration: Clause 5 to 12

This part maintains the old system of administration but also introduces new arrangements. In this Part, the Director of Forestry is the overall in-charge of forest management and supervises officers below him. The powers given to the Director in this part confers on him sweeping powers which seem to undermine the whole spirit of decentralization.

This Part also retains the protection on bona fide actions of officials working in the sector. Section 12 and the First Schedule introduces the National Forest Advisory Committee.

Part IV: Planning and Management: Sections 13 and 22

Sections 13 to 16 attempt to provide for a participatory framework for the making of the National Forest Programme.

It is admitted that the National Forest Policy provides no guidance to legislation on how the National Forest Policy should be prepared nor does it spell out its contents.

Sections 17 and 18 contain provisions on forest management planning. This is an important concept introduced by the National Forest Policy. The sections stipulate how management plans should be made and what they should contain. The costs of preparing the plans, however, are not addressed in the Bill. Inventories to be prepared will be costly and may hinder preparation of the plans. It is suggested, therefore, that for the plans especially those prepared for Village Forest Reserves to be approved even where they miss inventories of available forest resources. The emphasis should be on management plans which focus on action-oriented activities or series of graduated activities that will ensure sustainability of a forest and its ecosystem.

Since the spirit of the National Forest Policy is to encourage community participation in forest management, then the use of forest resources by local communities should not be restricted to "buffer zones" only but to different parts of a Reserve as directed by a Management Plan. Communities should also be allowed to derive different types of benefits. The benefits to be derived by communities in forest management should not be limited to financial benefits but also to social benefits from use of forests.

Joint Management Agreements (JMA) is an important tool introduced by the National Forest Policy new package for forest management. Section 19 covers this concept and models it in a way that it reflects the spirit of the National Forest Policy that JMAs as the basis for local and community forest management. The requirement provided by the Bill, however, that the Director should countersign seems to be too centralist. This power should be delegated to DFOs or some other official at the district level.

Section 22 introduces the EIA concept in the forest sector. The substance of EIA, however, should not be based only on the guidelines issued by UNEP as suggested by the Bill but also on laws and regulations promulgated by the Government.

Part V: Forest Reserves: Sections 23 to 49

- **National Forest Reserves**

This part is the core of the Bill. It introduces new categories proposed by the National Forest Policy but also retains the provisions of the Forest Ordinance. Section 23 enumerates the procedures for the declaration of a forest reserve and enact avenues for enlisting comments of the likely to be affected persons and creates a proactive role to the Director

and other officials to approach the public and solicit opinions.

Section 26 makes provisions for recognition of existing rights in forest reserves rather than abolishing them and replace the same with licenses. The section provides that if existing rights are to be extinguished, then adequate compensation must be paid. This is in tandem with Article 24 of the Constitution.

- **Local Authority Forest Reserve (LAFR): Sections 31 to 34**

The sections repeats to a larger extent the provisions of the Forest Ordinance. The sections stipulate the procedures to be followed in declaring local authority forest reserves, recognition of existing rights and powers of local authorities to manage their own forest reserves. It is suggested that the powers of the Director be minimized in the management of local authority forest reserves. Future management of the LAFRs will depend very much on the on-going local government reforms

- **Village Forest Reserve (VFR): Sections 35 to 42**

This is a new category of reserves introduced by the Bill as part of the decentralized management of forest resources. The provisions of the Bill on this part, however, seem to be insufficient and ought to have given more role to village assemblies in making decisions on village forest management. Section 37 should be re-drafted to allow flexibility in which case any appropriate committee of the village council may be charged with the responsibility of managing the VFR.

Further amendments on the Bill should be on the powers of the Director to the effect that it should not be mandatory for the Director to approve establishment of a Village Forest Reserve. In addition, the establishment and/or management of a Village Forest Reserve should not be conditional upon a JMA with the Director (S. 35 (1) (b) and S. 36 (5) and the by-laws for VFR should be vetted by the DFO (rather than the Director as suggested by the Bill) and approved by the District Council before being gazetted.

- **Community Forest Reserves (CFR): Sections 43 to 49**

Like the provisions on the VFR, these are also new provisions introduced by the Bill to address policy development and attempts to legalize the good on going practice of community management of forest reserves. This is done in two ways: first, by recognizing existing community and traditional groups and secondly, by the establishment of community forest management groups. Again, the spirit of decentralized

management ought to have been observed by the Bill in that aspects of registration of community groups and the locus of the Register should have been at the district level. In addition, JMAs with the Director should not be compulsory.

Part VI: Leases and Licences: Sections 50 to 59

The process of issuing and subsequent management of licenses is provided for by section 50. The Bill has somewhat tried to make the whole process transparent and confer powers on the Director to ensure that the leases are managed properly. The sections also enumerate conditions to be imposed on licences, matters that are eligible for licencing, appellate procedures in the event the licence is revoked and compensation given.

Part VII: Trade in Timber and other Forest Produce: Sections 60 to 66

This part deals with control of extraction of timber for export based on provisions borrowed from the Export of Timber Ordinance, Cap 288. This Ordinance later repealed by the Bill because its provisions are solely incorporated in the Bill. Although the Bill addresses illegal and unauthorized timber exports, it is suggested that this Part should also address domestic trade on timber and forest produce.

Part VIII: Conservation of Trees, Wild Plants and Wild Animals: Sections 67 to 71

This part addressed the concept of biodiversity protection in forest reserves as articulated by the National Forest Policy. Sections 67 and 68 does re-state the provisions contained in sections 17 and 18 of the existing Forest Ordinance. It is suggested, however, that the cross-sectoral coordination aspects on conservation of wild plants and animals should be streamlined further to avoid conflicts.

This Part also makes regulations on research and provides for a simple mechanism to give effect to international instruments on biodiversity rather than preparing domestic law for enactment by Parliament, an exercise which is cumbersome and costly.

Part IX: Fires: Sections 72 to 77

This Part expands the provisions of the Grass Fires (Control) Ordinance, Cap 135 and regulated forest fires by restricting burning of vegetation, makes a duty to assist in putting out fires and save provisions on counter firing.

Part X: Financial Provisions: Sections 78 to 82

This Part establishes the Tanzania Forest Fund which is modelled on the Tanzania Wildlife Protection Fund established through an amendment to the Wildlife Conservation Act, No. 42 of 1974. It is suggested that the specific reference to the GEF should be deleted since there are many other initiatives that the Fund might benefit from. In addition the Chairman of the Board of Trustees of the Fund should not necessarily be a Judge of the High Court of Tanzania but any Tanzanian of a national and international reputation.

Part XI: Offences and Legal Proceedings: Sections 83 to 96

This part lists offences that are punishable under the Bill. The list seems to be comprehensive. However, offences listed under section 85 need to be cross-referenced to the Wildlife Conservation Act which contains similar provisions. This will avoid conflict of laws and jurisdiction. The fines chargeable should be based on minimum and maximum amounts say, three hundred thousand Tanzanian shillings up to one million Tanzanian shillings. There is also need to *give additional powers to forest officers to establish check points for monitoring compliance with the law.*

Part XII: Miscellaneous: Sections 97 to 105

Two aspects are important in this Part. Research and Powers of the Minister to make regulations. On research, the Bill seeks to ensure that the Ministry knows the research findings. There is, however, need to have more discrete provisions on intellectual property rights on research findings and make it mandatory that research findings be reported to the Director. On power of the Minister to make regulations it is suggested that, in respect to section 102 (1) n-m, these powers should be exercised in consultation with the relevant sectors/bodies.

CHAPTER FOUR

4.0 IMPROVING PUBLIC PARTICIPATION, ENFORCEMENT AND COMPLIANCE

Both the National Forest Policy and the Draft Bill addresses issues of public participation and enforcement procedures. More specific provisions, however, are required to cover these important issues.

4.1 Public Participation

Tanzania is moving towards transparency in decision making and better conservation strategies. This suggests that public participation provisions ought to be included in any new natural resources legislation. These provisions need not impose a heavy burden on the administration, financially or otherwise. In normal circumstances, public participation provisions require issuance of a notice of an administrative decision/action to the public, with an opportunity for the public to comment, either in writing or in a public hearing meeting. The Administration would then be required to consider such comments, although not necessarily required to abide by the majority public opinion. Provisions for public participation specify the types of actions upon which the public may comment, deadlines and requirements for sufficient government notice, deadline and requirements for receipt of the public comment, type of comment which is permitted (oral versus written), and whether the public may participate in a more formal manner, such as members of advisory committees, or service as ex-official members on committees.

The Marine Parks and Reserves Act, No. 29 of 1994, sets out the parameters for public participation in those protected areas, and this might serve as a good example.

Furthermore, it is worthy to consider the recommendations on Community (Public) Participation given at the Sub-Workshop on Development and Harmonization of Laws relating to Forestry in Kisumu on the 5-6, February, 1998 which as follows;

- National laws should establish the right of all people to participate meaningfully in decisions regarding the management of forest resources in their communities.
- Public consultation should be required by law for all major actions affecting forest resources. Such Consultation must be more than a formality. This will require that notice is effectively transmitted to all interested parties, in vernacular languages, through local papers and radio, public displays and the like. Open public hearings near the affected area should be held well in advance of any major decision being finalized.
- Community involvement in the development of local forest management plans is a specific type of public consultation that requires attention. This will ensure that planning is guided by the aspirations, needs and traditional knowledge of local people. The conservation of such forests require their co-operation.
- Forest laws should provide more effective mechanisms for direct involvement of local people in the management of forest resources. Provision should be made for:
- the use of joint management agreements in government forests, with an equitable sharing of rights , benefits and responsibilities;
- incentives for the establishment of forests on community or private land.
- Countries should review laws concerning land tenure and land use to identify and address potential constraints to the promotion of private and community forestry.

4.2 Recommendations for the Draft Bill

It is recommended therefore that there should be a separate chapter in the legislation to cover public participation with provisions as hereunder:

Right of an affected person to Participate in Major Decisions

- (1) Any affected person shall have the right to participate in the process pertaining to major decisions affecting

management and conservation of forest reserves, forests and forest reserve ecosystems.

- (2) For purposes of this section, major decisions regarding management and conservation of forest reserves, forests and forest reserve ecosystems include:
 - (a) creation of forest reserves;
 - (b) development of a management plan
 - (c) development of regulations, by laws or rules prior to their gazettment;
 - (d) performance of an environmental impact assessment and;
 - (e) preparation of the protected areas system plan.
- (3) The provisions of this Part shall be the minimum requirements for public participation, and if any other provisions of this Act require additional or more involved public participation, that provision shall govern.

Definition of Right to Participate

- (1) The right to participate in the process of making decisions includes, at a minimum:
 - (a) the right to receive effective notice of a proposed major decision sufficiently in advance of its finalization to allow a meaningful period for review and comment;
 - (b) the right to review and comment on a proposed major decision prior to its finalization, through access to relevant documents, participation in public meetings, submission of written comments, or otherwise;
 - (c) the right to have any comments submitted taken into consideration by the relevant decision-maker prior to finalization of the major decision.
 - (d) In places where newspapers, radio and post services are not available or accessible then public hearings shall be used to enlist public opinion.
- (2) “*Effective Notice*”, for purposes of subsection 1, shall include, at a minimum:
 - (a) Constructive notice, meaning that the Forest Division or any body specified in this Act shall, at a minimum, publish notification of the proposed decision in at least one English language and two Kiswahili language daily newspapers for a period no less than four weeks, make a series of radio announcements regarding the event for a period no less than four weeks prior to the decision making event, and post notices at District and village

headquarters for any area likely to be impacted by the decision, and:

- (b) Actual notice to directly affected persons where the Director deems such necessary and practical or where required by this Act or any rules or regulations adopted hereunder. Actual notification means that the affected individual or individuals shall be notified in writing of the major decision making event by certified mail at least four weeks in advance of events occurring with respect to major decision process.
- (3) Nothing in this section shall prevent the Director from providing additional opportunities for the public to participate in the process of reaching major decision, whether or not such opportunities are required by this Act or any other written law.

4.3 Law Enforcement and Compliance

The National Forest Policy is silent on legal enforcement issues. These include types of penalties which should be imposed for offenses against the legislation or the role of citizens in ensuring law enforcement. The current Forest Ordinance follow a traditional “command and control” pattern, specifying a series of the restricted actions and imposing criminal fines or imprisonment upon conviction for violations. Neither the Ordinance nor the draft Forest Bill have is provisions governing citizen enforcement of the law through “private prosecution”. This method is utilized in a number of countries to ensure that the law is enforced by giving citizens a standing to bring law enforcement actions where the government fails to do so.

Budgetary and procedural constraints may often make it difficult for prosecutions to be carried out by authorized officers or public prosecutors where necessary. In some cases NGOs and other groups may be in a better position to invoke the legal provisions against the violators.

One of the recommendations on Enforcement and Compliance given at the Sub-Workshop on Development and Harmonization of Laws relating to Forestry in Kisumu on the 5-6, February, 1998 were:

- Public interest suits to enforce forest related laws should be encouraged through broadened rules of standing, to facilitate more effective implementation. The countries should consider reducing or eliminating filing fees for such suits.
- Governments cannot rely on its own resources alone to enforce forest laws, due to manpower and financial constraints and the magnitude of forest areas. It will

need to employ new techniques to enhance compliance, such as honorary forest guards, the provision of incentives and partnerships with local people.

4.3.1 Recommendations on Enforcement Provisions.

From these recommendations the following legislative language is proposed to be included in the draft Bill:

Public Enforcement Authority

- (1) Any person or group of persons shall have the right to:
- (a) petition the Forest Division or any court of law, subject to the jurisdiction of that court, to enforce any mandatory provision of this Act;
 - (b) seek mandamus or a prerogative order against the Director where there is failure of the Director to perform any act or duty under this Act which is not discretionary.
 - (c) Seek an injunction against any other person or government body who is alleged to be in violation

of any provisions of this Act or any regulations made under this Act.

- (2) The Provisions of subsection (1) shall serve as explicit authorization for any person to serve as public prosecutor for purposes of that subsection.

Apart from these provisions on private and public enforcement, it is now a practice for natural resources legislation to require violators to pay the cost of reparation of the environmental damage. The draft Bill has tried somewhat to capture this theme in section 94 (1) (c) and (d) but it is recommended a more clearer provision to be in place to reflect this important conservation principle. The section may contain the following language:

Commission of Offence May Require Reparation of Injury

In addition to fine and terms of imprisonment, any person who contravenes this Act may be required to repair damage caused, including cleaning all substances discharged, removal of structures built or pollution caused, and repair of the damage caused to the natural environment.

CHAPTER FIVE

CONCLUSIONS

The analysis hereinabove has tried to supplement the draft Bill and an earlier report on this theme. Overall, the draft Bill covers in most respect the policy directions on the National Forest Policy and therefore recommendations given herein and those to be given at the national consensus building workshop should aim at improving the draft Bill before it is being submitted to Parliament. In addition, potential areas for harmonization on the East African Forest Management Legal Regimes need to be pointed out.

5.1 Important points to be noted while reviewing the draft Bill

- The powers of Director should be toned down so that the whole goal of decentralizing and enhancing local initiatives in forest management is not thwarted. At the local level the role of the Director should be that of a facilitator rather than a manager.
- Enforcement of offences should not be limited to public prosecutors alone but also individual or groups of individuals through clear standing provisions and a provision of reparation of the natural environment by the offender.
- More discrete provisions on public participation are required in the forest statute. The provisions are to set the minimum standards required in public participation and access to information. Processes in-built in the statute will also have public participation requirements.
- Once the Bill has been finalized, the Government has to come up with an implementation programme for implementation of the Bill as soon as it is passed by Parliament and assented to by the President. The implementation programme should focus but not limited to: printing and dissemination of the new law, conducting training and educational campaigns.

5.2 Recommendations for a framework for Harmonization

Forest legislation should address cross border forest ecosystems and provide for procedures which will facilitate sustainable utilization of the shared resources and create the environment to address trans-boundary problems as well as the procedure for information sharing and dispute settlement. Currently, there is in place a UNDP/GEF East African Cross Border Biodiversity Project [URT-97-G-31] which looks into cross boarder ecosystems and devise the means to protect and/or conserve them.

The timing for harmonization is ideal since almost all the three East African countries are reviewing their legal regimes on forestry management. The closer regional cooperation under the East African Commission is also an added advantage to facilitate harmonization processes. In this regard therefore:

- There is need to adopt common nomenclature of forest resources and have in place a harmonized system of categorization of criteria for establishment of forest reserves and their management to ensure consistency among the three countries.
- Of considerable importance is the sharing of information at all levels among the countries in case of projects and interventions which have trans-boundary implications.
- Regional forest resources assessment and their methodology should be adopted to address regional impacts.
- Minimum requirements for public participation in forest management should be adopted in all three countries. These should the widening of *locus standi* provisions nationally and regionally under the principle of reciprocity.

- Finally, a sub-regional protocol on Forest Management and Conservation may be adopted under the framework of the East African Treaty as a means of ensuring a harmonized forestry legal regime. Initially the three countries may agree on a Memorandum of Understanding which may be upgraded into a protocol at a later stage.

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A BILL For a FOREST ACT

Arrangement of Clauses

PART I: PRELIMINARY PROVISIONS

- Short title and commencement
- Interpretation

PART II: THE POLICY FRAMEWORK

3. Principles of forest policy
4. Classification of forests

PART III: ADMINISTRATION

- Responsibilities of Minister in connection with this Act.
- Director of Forestry.
- Appointment and functions of officers.
- Information to members of the public.
- Relations between the Ministry and local and other public authorities.
- Conflict of interest.
- Protection of officers.
- National Forestry Advisory Committee.

PART IV: PLANNING AND MANAGEMENT

- Content of National Forest Programme.
- Preparation of and consultation on National Forest Programme.
- Approval of National Forest Programme.
- Revision of National Forest Programme.
- Content of forest management plans.
- C Preparation of forest management plans.
- Joint management agreements.
- Forestry dedication covenants.
- Removal of trees in specified circumstances.
- Environmental Impact Assessment required for certain developments.

PART V: FOREST RESERVES

Sub-Part 1: National Forest Reserves

- Power of Minister to declare national forest reserve.
- Procedures for declaration of national forest reserve.
- Investigation of claims to rights in proposed national forest reserve.

- Restrictions on creation of new rights in national forest reserve.
- Activities prohibited within national forest reserve without permission.
- Allocation of management responsibilities in national forest reserve.
- Boundaries of national forest reserves.
- Power to alter and de-gazette national forest reserve.

Sub-Part 2: Local Authority Forest Reserves

- Power to declare local authority for forest reserve.
- Application of sections 24 to 27, 29 and 30 to local authority forest reserve.
- Management functions of local authority in local authority forest reserve.
- Bylaws in respect of local authority forest reserves.

Sub-Part 3 -Part 3-Part 3: Village Forest Reserves

- Preliminary steps by village council with respect to village forest reserve.
- Application to manage village forest reserve.
- Functions of village forest management committee.
- Village council bye-laws in respect of village forest reserves.
- Cooperation between two or more villages with respect to village forests.
- Management by village council of local authority forest reserve.
- Rights and duties of villagers in respect of village forest reserves.
- Functions of local authority in respect of village forest reserves.

Sub-Part 4: Community forest reserves

- Community forest management groups.
- Recognition of traditional and existing groups.
- General management powers of Group.
- Application by Group to manage village forest reserve.
- Functions of Group as manager of forest reserve.
- Rights and duties of Group members in community forest reserve.
- Supervision and monitoring of management of community forest reserve.

PART VI: LEASES AND LICENCES

- Arrangements for the grant and management of leases.
- Types of licenses.
- Application for license.
- Grant of license.
- Conditions of a license.
- Variation and modification of a license.
- Surrender of a license.
- Revocation of a license.
- Compliance.
- Stop orders.

PART VII: TRADE IN TIMBER AND OTHER FOREST PRODUCE

- Prohibition of export of forest produce without export certificate.
- Restrictions on exports.
- Authorization of graders.
- Inspection of forest produce before export.
- Prohibition of marking by unauthorized person.
- Power to control movement of timber and forest produce.
- Restrictions on imports of timber and forest produce.

PART VIII: CONSERVATION OF TREES, WILD PLANTS AND WILD ANIMALS

- Reserved trees.
- Restrictions on cutting of trees.
- Protected wild plants.
- Protected wild animals.
- Preparation of schemes to implement international conventions on conservation of biodiversity etc.

PART IX: FIRES

- Restriction on burning of vegetation.
- Power to require persons to assist in extinguishing fire.
- Orders in relation to fireguards.
- Fires kindled on land of another to be controlled and extinguished.

- Saving of counterfeiting.
- Saving of right to recover damages.

PART X: FINANCIAL PROVISIONS

- Power to charge fees.
- Power to ~~set~~ and collect royalties.
- Establishment of Tanzania Forest Fund.
- Purposes of the Fund.
- Administration of the Fund.

PART XI: OFFENCES AND LEGAL PROCEEDINGS

- Offences in forest reserves.
- Offences relating to trees not in forest reserves.
- Offences relating to protected wild plants and wild animals.
- Offences relating to with unlawful taking, possession or receiving of forest produce.
- Offences relating to trade in forest products.
- Counterfeiting and similar offences.
- Offences in connection with fires.
- Interference with or obstruction of officers carrying out their functions.
- Powers of officers with respect to offences.
- Custody of seized produce and articles.
- Compounding of offences.
- Additional orders on conviction.
- Reward to informer.
- Saving of common law rights.

PART XII: MISCELLANEOUS

- Substituted service.
- Publication etc. of notices and other information.
- Rights of entry.
- Call for information.
- Arrangements for facilitating and regulating research.
- Power to make regulations.
- Power to grant exemptions.
- Repeals, amendments and savings.
- Act to bind Government.

**FIRST SCHEDULE
(Section 12)
THE COMMITTEE
SECOND SCHEDULE
(Section 80)
THE TRUSTEES
THIRD SCHEDULE
(Section 104)
AMENDMENTS**

An Act to make provision for the sustainable planning and management of forests, to create forest reserves for purposes of protection and production, to involve the citizens in the management of forests, to establish a system of licensing for the orderly exploitation of forest resources, to control fires, to facilitate the implementation of international conventions and agreements with respect to the conservation of biodiversity within forests and elsewhere, to establish sources of funding for forest development and conservation and for matters incidental thereto and connected therewith.

Part I: PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Forest Act 19.. and shall come into operation on such date as the Minister may, by notice published in the Gazette appoint and the Minister may appoint different dates for different parts of the Act to come into operation.

Interpretation

2. In this Act, unless the context requires otherwise:-

PART II: THE POLICY FRAMEWORK

Principles and objectives of forest policy

3. (1) The fundamental principle of forest policy which it is the purpose of this Act to promote and to which all persons exercising powers under, applying or interpreting this Act are to have regard to, is to enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of her natural resources for the benefit of present and future generations.

- (2) Consistent with and in order to further the principle set out in subsection (1), the provisions of this Act shall be applied and interpreted so as to promote the following objectives:

- (a) to encourage and facilitate the active involvement of the citizen in the sustainable planning, management, use and conservation of forest resources through the development of individual and community rights to use and manage forest resources;
- (b) to ensure ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility;
- (c) to ensure the sustainable supply of forest products and services by maintaining sufficient forest area under efficient, effective and economical management;
- (d) to enhance the quality and improve the marketability of forest products and regulate their export;
- (f) to promote coordination and cooperation between the forest sector and other agencies and bodies in the public and private sectors in respect of the management of the natural resources of Tanzania;
- (g) to facilitate greater public awareness of the cultural, economic and social benefits of conserving and increasing sustainable forest cover;
- (h) to enable Tanzania to play a full part in contributing towards and benefiting from international efforts and measures to protect and enhance global biodiversity.

Classification of forests

4. Forests in Tanzania are hereby classified as follows:
 - (a) National forests which consists of:
 - (i) forest reserves; or

- (ii) nature forest reserves; which are designated in accordance with the provisions of Sub-Part I of Part V; and
 - (iii) forests on public land which are not reserved and of which the right of occupancy or a lease have not been granted to any person or body;
- (b) Local authority forests which consist of:
- (i) local authority forest reserves which are designated in accordance with the provisions of Sub-Part 2 of Part V; and
 - (ii) forests on public land which are not reserved and of which the right of occupancy or a lease has been granted to the local authority;
- (c) Village forests which consist of:
- (i) village forest reserves which are designated in accordance with the provisions of Sub-Part 3 of Part V; and
 - (ii) community forest reserves which are designated in accordance with the provisions of Sub-Part V; and
 - (iii) forests which are not reserved which are on village land and of which the management has been delegated to the village council;
- (d) Private forests which are forests or plantations on land of which the right of occupancy or a lease has been granted to a person or persons or a partnership or a corporate body or a Non-Governmental Organization or any other body or organization not being a body corporate or organization in the public sector or an executive agency for the purpose of managing the forest or developing and managing the plantation, which is required to be carried out in accordance with this Act, the terms and conditions of the right of occupancy, or lease and any license granted in respect of any activities to be undertaken in the private forest.
- (a) give such advice, guidance and directives to the officials in the Ministry as will in his opinion be conducive to the efficient, effective, and economical management of forests under this Act;
 - (b) seek advice from any official in the Ministry concerning the implementation of the National Forest Policy and of the management of forests under this Act;
 - (c) seek advice from any other persons concerning the management of forests and the implementation of this Act;
 - (d) take all such other necessary actions and decisions as will enable him to discharge all such functions as are allocated or delegated to him by the President in connection with the implementation of the National Forest Policy and of the management of forests under this Act.

Director of Forestry

- 6-(1) There shall continue to be a Director of Forestry who shall be an officer in the public service.
- (2) The Director shall be the principal administrative and professional officer of, and adviser to, the Government on all matters connected with the management of forests and shall be responsible, through the Permanent Secretary, to the Minister for the proper and effective implementation of this Act and the matters contained therein.
- (3) The Director may from time to time, as he sees fit, issue and publish circulars and directives on the implementation of this Act but no such circulars or directives shall purport to alter, amend or depart from the provisions of this Act or any regulations made under this Act or contradict any advice, guidance or directives issued by the Minister under section 5.
- (4) Where the Director is required or empowered by this Act to make a determination affecting or likely to affect the rights of any person or the opportunity for any person to undertake any activities which he is permitted to undertake by or under this Act, the Director shall, where he makes a determination as aforesaid which is adverse to that person give that person reasons for that determination.

Appointment of officers

- 7-(1) After obtaining the advice of the Director, there shall be appointed such other officers as the appointing authority shall consider necessary to ensure the efficient,

PART III: ADMINISTRATION

Responsibilities of the Minister in connection with this Act

5. The Minister shall be responsible for policy formulation and for ensuring the execution by officials in the Ministry of such functions connected with the implementation of the National Forest Policy and of this Act as are allocated or designated to him by the President and in pursuance of this responsibility the Minister may, through the Principal Secretary of the Ministry:-

effective and economical management of forests in accordance with the provisions of this Act.

- (2) Officers appointed under this section shall be allocated such functions and shall be located in such offices in such districts as the Director considers will contribute to the proper management of forests and without prejudice to the generality of the foregoing, the Director may appoint officers to act as:
 - (a) licensing officers, exercising powers under Part VI;
 - (b) enforcement officers exercising such functions relating to the enforcement of the provisions of this Act as are provided in this Act or as may be specified by the Director;
 - (c) inspectors exercising such functions of inspection as may be provided by or under this Act or as are specified by the Director.
- (3) Officers appointed under this section shall be subject to the directions of an answerable to the Director.
- (4) The Director may, by notice published in the Gazette, designate any person to be an authorized officer for the purpose of all or any provisions of this Act.
- (5) The Director may, by notice published in the Gazette, subject to such qualifications or exemptions as may be prescribed therein, delegate to any public officer the exercise or performance of any of the functions conferred or imposed on him by this Act.
- (6) The Director may exercise or perform a function notwithstanding that he has delegated the exercise or performance thereof to some other person.

Information to members of the public

- 8 (1) The Director and all officers appointed under this Act shall, where it is practical to do so, provide information and guidance, either orally or in writing, to members of the public in connection with the implementation of this Act.
- (2) Subject to the provisions of section 11, unless otherwise specifically stated in writing and signed by the Director or an authorized officer, information, guidance, advice and assistance provided under this section shall not create any legal liability in the Government, the Director, or the officer giving the advice and assistance.

Relations between the Ministry and local and other public authorities

- 9 (1) The Director shall use his best endeavors to ensure that all local government authorities and associations of local authorities and other public authorities are consulted and kept informed about the management of forests under this Act and all other laws connected with the management of forest and to this end, shall cause regular meetings to be held between officers from the Division and officers from local and other public authorities with responsibilities for the management of forest to review the exercise of functions under this Act.
- (2) Any local authority officer or officer appointed to and working in any other public organization allocated any functions relating to the management of forests arising out of or under or in connection with this Act by that local authority or other public organization shall have regard to any directives and circulars issued by the Director.
- (3) In any case where the Director is required or proposes to recommend that any sums of money be allocated to any district council for purposes of the management of forests, he shall take into account the extent to which that district council has had which were applicable to that district council.
- (4) In any case where the Director is of the opinion, either on the basis of information given to him by any officer exercising functions under this Act or otherwise that a local authority with the responsibility to exercise functions connected with the management of forests under this Act is failing to exercise those functions in accordance with any approved and published national criteria and indicators for sustainable forest management, or in accordance with an approved forest management plan made for a local authority forest reserve, or in accordance with the terms and conditions of any joint management or other agreement under which that local authority is managing that forest, or, where such national criteria and indicators or any such agreement is not in existence, in accordance with accepted principles of good forest management or good administration, then the Director may:-
 - (a) serve a notice on that local authority requiring that local authority to take the steps specified in that notice within the time specified in the notice to rectify and improve its management of the forest under its jurisdiction; or

- (b) serve a notice on that local authority requiring that local authority to show cause, within the time specified in that notice, as to why the Director should not take over and exercise such functions of management of the forest for such period of time as may be specified in the notice; and
 - (c) in either case referred to in paragraph (a) or (b), upon making a written request to that local authority, appear before such local authority personally or by his representative for the purpose of making representations orally; and thereafter,
 - (d) where, in his opinion, the local authority has failed to show cause as required under paragraph (b) above, prepare and submit a report with recommendations to the Minister on the mismanagement of forest management functions by such local authority and what action should be taken thereon.
- (5) Where the Minister after considering the report from the Director referred to in paragraph (d) of subsection (4) is satisfied that, owing to the mismanagement, as described in subsection (4), by any local authority of any of its functions in relation to a forest where it is exercising any management functions therein, it is in the public interest that such local authority shall cease to exercise all or any management functions within the said forest, the Minister may, in writing, direct the Director to take over such of the management functions as may be specified in the direction and thereupon the Director shall exercise all and any such functions and the local authority shall cease to exercise such functions.
 - (6) A local authority may appeal in writing to the Minister against any direction that the Director shall take over and exercise the functions of management of a forest under subsection (5) above, and the Minister may, in order to assist him to determine the appeal, appoint a person, not being an officer within the Ministry, to hear any representations that such local authority may wish to make in connection with its appeal and thereafter to report to the Minister on those representations but the Minister shall not be bound to determine any appeal in accordance with any report made by any such person or to give any local authority appealing under this subsection an oral hearing.
 - (7) The Director shall manage any local authority reserve which he is directed to manage under the provisions of subsection (5) on behalf of and for the benefit of the people within the jurisdiction of the local authority whose functions have been taken over by the Director

and the net profits of management (if any) shall, after deduction of the costs of management and development, be deemed to be part of the revenue of the said local authority, which shall likewise bear any loss incurred.

- (8) For purposes of this section, a local authority shall be taken to include a village council and a village forest management committee.

Conflict of interest

10-(1) Where my matter concerning the management of a forest in which any officer exercising functions under this Act or any member of his immediate family has an interest is allocated to, referred to or otherwise comes to that officer for his advice, assistance or decision, that officer shall not exercise any functions under this Act in respect of that land.

- (2) Where the officer referred to in subsection (1) is the Director, he shall declare his interest to the Permanent Secretary, and where the officer referred to in subsection (1) is an officer appointed under section 7, shall declare his interest to the Director and the Permanent Secretary or, as the case may be, the Director shall appoint some other officer to exercise functions under the Act in respect of the matter.
- (3) Where any forest is advertised or offered for a right of occupancy or a lease or the functions of management and exploitation of a forest are advertised and tenders are invited in pursuance of any provision of this Act or of any Act or directive concerned with privatization, any officer exercising functions under this Act who wishes to apply for or bid for that right of occupancy or lease or submit a tender or who has notice that any member of his immediate family wishes to apply for or bid for that right of occupancy or lease or submit a tender shall forthwith, if the Director inform the Permanent Secretary, and if any officer appointed under section 7, inform the Director and shall not thereafter exercise any functions in respect of that forest.
- (4) A person to whom subsection (1), (2) or (3) applies shall not influence or seek or attempt to influence any officer exercising functions under this Act or any other legislation to show any undue favour or preference to him or any member of his immediate family in respect of the forest the subject of the declaration of interest under subsection (1) or advertised or offered for a right of occupancy or lease or an invitation to tender under subsection (3).

Protection of officers

11 (1) No officer appointed under this Act shall be liable to be sued in any civil court for any act or matter done or ordered to be done or omitted to be done by him in good faith and without negligence and in the intended or purported exercise of any power, or the performance of any duty, conferred or imposed on or allocated or delegated to him by or under this Act.

- (1) Where in any proceedings a question arises respecting the good faith of any act done in the purported exercise of any power or performance of any duty under this Act, where a prima facie case has been shown that an officer was so acting in the purported exercise of any power or the performance of any duty, the burden of proving that the act in question was not done in good faith shall thereupon pass to the person alleging that matter.

National Forestry Advisory Committee

12 (1) There is hereby established a National Forestry Advisory Committee, whose members shall be appointed by the Minister.

(2) In appointing members to the Committee, the Minister shall have regard to the importance of ensuring a fair balance of men and women on the Committee.

(3) The composition and procedures of the Committee shall be as provided for in the First Schedule.

(4) The functions of the Committee shall be to advise the Minister:-

- (a) on the matters which under the provisions of this Act are required to be referred to the Committee;
- (b) On such other matters connected with the implementation of this Act or generally on forestry either as may be referred to the Committee by the Minister or on its own motion;

(1) Any report by the Committee shall be made available to the public and the defence of qualified privilege shall attach to any such report.

(2) The Minister shall include in a report, to be published annually on the work of the Ministry:-

- (a) a statement on the number of matters which have been referred to the Committee;
- (b) the number of case in which on matters he is

required to submit to the Committee, he has disposed of any matter otherwise than in accordance with the advice of the Committee, and the reasons for such action.

PART IV: PLANNING AND MANAGEMENT

Content of National Forest Programme

13. The National Forest Programme shall include:-

- (a) A description of the forest resources of Tanzania;
- (b) a summary of the National Forest Policy;
- (c) a review and assessment of the principal issues affecting the conservation and sustainable use of the forest resources;
- (d) a formulation and explanation of the strategies proposed to address the issues identified in paragraph (c);
- (e) a statement of the principal management measures, including national criteria for sustainable forest management to be utilized to implement the strategies outlined in paragraph (d);
- (f) a set of guidelines for public participation in the management of forest resources at both national and local levels;
- (g) an estimate of the financial and human resources needed to execute the Programme;
- (h) such other matters as may be prescribed or as the Director shall consider necessary and desirable to include.

Preparation of National Forest Programme

14 (1) As soon as possible after the coming into operation of this Act, the Director shall cause to be prepared a National Forest Programme in accordance with the provisions of this section.

(2) In the preparation of a draft Programme, the Director shall:-

- (a) consult with and take account of the views of all persons and organizations in the public and private sector who and which are involved in the management of, or are knowledgeable about, or are dependent for their livelihood on, or whose work or responsibilities bring them into regular contact with, forests and forest resources and in particular shall have regard to the views of any organizations representing those persons who are dependent for their livelihood on forests;
- (b) distribute the draft widely in such manner and form as is best calculated to bring it to the attention of

- the public and give such publicity to the draft through all forms of media and hold and facilitate the holding of such public meetings to explain the draft as will enable and encourage members of the public to comment on the draft;
 - (c) take into account such comments and representations as may be on the draft Programme and revise the draft in the light of such comments and representations;
 - (d) submit the revised draft to the Committee for its consideration.
- (2) The Committee shall consider the draft Programme from the Committee and submit to the Minister on whether the Minister should approve the draft with or without additions or amendments or refer the draft back to the preparer for further work or further consultation and public discussion or both such further work and such further consultation and public discussion.

Approval of National Forest Programme

15. (1) On receipt of the draft Programme from the Committee, the Minister shall, without undue delay, consider the draft and the report of the Committee and approve, with or without amendments or additions, or refer back to the Director in accordance with the report of the Committee, the draft Programme and where the Minister refers the draft back to the preparer, he shall give a direction as to what the preparer is to do and the time within which he is to do it and resubmit the draft to the Minister and the preparer shall comply with any such direction.
- (2) On approval of the draft Programme, the Director shall cause a notice of the approval to be published in the Gazette and shall make copies of the Programme available at the offices of the Division for inspection and ensure that copies of the Programme are available.

Revision of the National Forest Programme

16. (1) The Director shall keep the Programme under continuous review and, in the light of such review shall update the Programme or any part thereof as necessary.
- (2) Where, as a result of a review of the Programme, the Director is of the opinion that a significant change in the Programme or any part thereof is necessary, he shall submit any proposed update providing for the significant change to the Committee for its consideration and shall take account of any report which the Committee sends to the Director on any such proposed update.

- (3) Not less than once every ten years, the Director shall cause the Programme to be the subject of a full-scale review which shall be conducted in accordance with the provisions of section 14 and be the subject of approval in accordance with the provisions of section 15.

Content of forest management plans

17. A forest management plan shall define the management objectives by which the manager of the forest for which the plan has been prepared shall use its best endeavours to achieve the sustainable management of the forest resources over the period for which the plan has been prepared and without prejudice to this general objective, a forest management plan for a forest reserve shall advance the purposes for which the reserve has been declared and any forest management plan shall contain such of the following matters as the Director shall direct the manager to include, having regard to the nature and status of the forest and the resources available to the manager, that is to say, it shall:
- (a) include the inventory of the biological, environmental, economic, geological and cultural resources of the forest, the uses made of those resources, by whom and for what purpose;
 - (b) set out the economic, environmental and social objectives to be achieved in the management of the forest;
 - (c) describe the surrounding areas and villages therein and their interaction with the forest;
 - (d) describe the areas of land surrounding the forest in which it is proposed to establish buffer zones to protect the forest and to facilitate local communities obtaining benefits from the forest reserve and set out the manner and form in which it is proposed to establish any such buffer zones;
 - (e) describe the local communities residing in the vicinity of the forest and their relationship to the forest, including their practices and customs regulating and governing their use of the resources of the forest;
 - (f) in respect of forests other than village reserves, set out the manner, form and content of a scheme for the involvement of the communities described in (d) in the use and management of the resources of the forest and of any buffer zone, including any financial benefits that may be made available to such communities where direct involvement in use and management not be appropriate;
 - (g) contain provisions regulating the commercial exploitation of the resources of the forest and of

- any buffer zone, including any provisions regarding afforestation and reforestation;
- (h) contain provisions directed to the conservation and for preservation of the resources of the forest, including wild animals and wild plants;
- (i) make proposals for the zoning of the forest to facilitate the use of specific parts of the forest for specific purposes and describe those purposes and how it is proposed that the zones will be managed;
- (j) set out estimates of the financial and human resources needed to implement the management plan;
- (k) contain such other matters as may be prescribed.

Preparation of forest management plan

18. (1) A forest management plan shall be prepared in respect of each forest reserve.

(2) In the case of a new forest reserve, until such time as a forest management plan has been prepared and approved, the Director shall, after consulting with the manager of the forest reserve, issue a guidance note on the management of the forest and the manager shall have regard to such guidance note in the management of the forest and in the preparation of the forest management plan.

(3) In the preparation of a forest management plan, the manager of the forest shall consult with:-

- (a) relevant central government officers or such central government officers as the Director shall direct the manager to consult with;
- (b) the local authorities in the vicinity of the forest;
- (c) users and organizations of users of the forest from the private sector; and
- (d) the local communities referred to in paragraph (d) of section 17;
- (e) such other persons and organizations as may be prescribed.

(2) A draft of a forest management plan shall be made available for not less than thirty days for public inspection and comment at the offices of the Division and at the offices of the local authority nearest to the forest for which the plan is being prepared and in the case where a village council or an Association is the manager of the forest, at the office of that village council.

(3) The manager shall, within the period referred to in subsection (4), and after giving reasonable notice and appropriate publicity to the matter, hold one or more

public meetings within the vicinity of the forest for which the forest management plan is being prepared to explain the plan to the people of the vicinity and to hear and take account of any comments such people may make on the plan.

(6) After revising the plan in the light of comments received under subsections (4) and (5) the manager shall:-

- (a) where the Director is the manager, adopt the plan and thereafter manage the forest in accordance with the adopted plan.
- (b) where a local authority is the manager approve the plan for submission to the Director;
- (c) where the Director does not within two months request the local authority to delay adopting the plan pending its further consideration by the Director, adopt the plan by resolution of the council and thereafter manage the forest in accordance with the adopted plan;
- (d) where a village council or a forest community group is the manager, approve the plan for submission to the district council with jurisdiction in the area of such village council or community forest group; and
- (e) where the district council does not within two months request the village council to delay adopting the plan pending its further consideration by the district council, adopt the plan by resolution of the council and thereafter manage the forest in accordance with the adopted plan;
- (f) where an executive agency, a private person or organization or a non-governmental organization is the manager, submit the plan to the Director; and
- (g) where the Director does not within two months request the manager referred to in paragraph (f) to delay adopting the plan pending its further consideration he Director, adopt the plan and thereafter manage the forest in accordance with the adopted plan.

(1) In any case where in accordance with paragraphs (c); (e) and (g) a delay has been requested in the adoption of the plan, the Director or in the case of paragraph (e), the district council shall, within the period of two months referred to in those paragraphs, consult with the manager of the forest concerning the matters in the plan on which, in the opinion of the Director, or, in the case of paragraph (e), the district council, it is necessary to amend or alter the plan and, in the light of the consultation, the manager shall amend or alter the plan and after adopting the amended or altered plan, manage

the forest in accordance with that amended or altered plan.

- (2) A forest management plan shall be kept under continuous review by the Director and the manager of the forest and shall be adjusted and updated as and when necessary or where the Director so directs, in accordance with any such direction.

Joint management agreements

19. (1) A joint management agreement for the management of a forest may be made between:

- (a) the Director and any person or organization in the public or private sector providing for the management by the person or organization of the whole or a part of, or some specific matter of activity within, a national forest reserve; or
- (b) a district council and a village council, a community group or any person or organization in the public or private sector providing for the management by that village council, or community group or organization in the public or private sector of the whole or part of, or some specific matter within, a district forest reserve;
- (c) a village council and a community group providing for the management of the whole or a part of or a specific matter within a village forest reserve.

- (2) A joint management agreement shall include the following:

- (a) a description of the forest reserve or the area of the forest reserve covered by the agreement;
- (b) a description of the matters which are the subject of the agreement;
- (c) a statement of the objectives of the agreement;
- (d) the names of and the officers of the organizations that are making the agreement and a brief statement of the powers and authority of the organizations to make any such agreement;
- (e) a description of the management activities agreed to be undertaken by the manager;
- (f) the rules governing and regulating the use of and access to the forest and the resources of the forest reserve, including, where relevant, rules concerning the powers and duties of persons from a local community appointed to act as guardians of the reserve, penalties to be imposed for violating the rules and, in the case of agreements referred to in paragraph (c) of subsection (1), rules concerning expulsion from occupation of, or

limiting or preventing use of, or access to, the forest reserve or any produce therein which may be applied to any member of a village or an Association;

- (g) a description of the existing rights of right-holders within the forest reserve who are not parties to the agreement (third parties) and procedures for resolving any disputes between them and the parties to the agreement;
 - (h) rules regulating access to, use of, and management and audit of any funds which may be made available for, or are generated by, the implementation of the agreement;
 - (i) procedures for resolving disputes which may arise between the parties to the agreement;
 - (j) the duration of the agreement;
 - (k) revision of the agreement;
 - (l) such other matters as may be prescribed or as the parties to the agreement consider necessary and desirable to include in the agreement.
- (2) In the case of a joint management agreement referred to in paragraph (c) of subsection (1), there shall be deemed to be included in any such agreement the basic rights and duties of the parties to the agreement set out in section.
 - (4) When an agreement has been negotiated between the parties thereto, it shall be signed by one or more persons from each such party to the agreement, authorized by each such party so to do, and in the case of an agreement referred to in paragraphs (b) and (c) of subsection (1), no such agreement shall come into effect until it has been countersigned by the Director.
 - (3) The Director may:-
 - (a) participate in the negotiations of any agreement referred to in paragraphs (b) and (c) of subsection (1);
 - (b) issue guidance notes on joint management agreements both generally and to the parties negotiating an agreement referred to in paragraphs (b) and (c) of subsection (1) to which all such parties shall have regard;
 - (c) prepare model joint management agreements.
 - (2) Nothing in this section shall be taken to prevent the Director from making any arrangement which may give rise to rights and duties and which may be recorded in writing between the Division and any person or organization in the public or private sector relating to the management of a forest or any part thereof but no

such arrangement shall adversely affect the existing rights and third parties to or in any such forest.

Forest dedication covenants

20. (1) The holder of a right of occupancy may enter into a covenant, to be known as a forester dedication covenant, with the Director to the effect that the land or any part thereof which is subject to the right of occupancy shall not, without the previous consent in writing of the Director be used otherwise than for the growing of trees in accordance with the rules and practices of good forestry and having regard to the principles set out in section 3, of trees for the commercial production of forest produce or for water or soil conservation or for the preservation of wild plants.
- (2) Any such covenant as is referred to in subsection (1) shall, subject to the provisions of subsection (4), be enforceable against covenantor and, subject to any contrary intention expressed in any such covenant, against his successors in title and all persons deriving title under him or them in respect of the whole and each and every part of the land to which the covenant relates.
- (3) As respects the enforcement of any such covenant against persons other than the original covenantor, the Director shall have the like rights as if he had been the occupier under a right of occupancy in possession of land adjacent or contiguous to the land in respect of which the covenant is sought to be enforced and capable of being benefited by the covenant and the covenant had been expressed to be for the benefit of the adjacent or contiguous land.
- (4) Nothing in this section shall refer enforceable any covenant entered into under subsection (1) where the use of such land or any part thereof in accordance with the covenant contravenes the provisions of any law for the time being in force or is inconsistent with any other prior covenant relating to the use of such land or any part thereof and binding on the holder of the right of occupancy and his successors in title and persons deriving title under him or them.

Removal of trees in specified circumstances

21. (1) Notwithstanding any other provision to the contrary, it shall be lawful for an authorized officer, either of his own motion or at the request of an occupier of land and on being satisfied of the facts, to enter on land and cause to be cut down and destroyed or removed any

tree, whether a reserved tree or not and whether within a reserve or not which is diseased, dying or dead or which, as a result of natural causes, or human activity on or near the tree or on land contiguous to the tree, is in a condition which is a danger to persons living, working or passing near to the tree or to property adjacent to the tree.

- (2) Where an authorized officer takes action under subsection (1) in respect of a tree on land which is occupied as a place of residence or for commercial or industrial purposes, whether the occupation is by a person or organization in the public or private sector, it shall be lawful for the employer of that authorized officer to charge a reasonable fee to the occupier of that land for the performance of that action.
- (2) Nothing in this section shall absolve any person who by his actions has contributed to or caused the condition of the tree which necessitates action under subsection (1) from any civil or criminal liability arising out of those actions.

Environmental Impact Assessment required for certain developments

22. (1) In any proposed development in a forest reserve or in a buffer zone contiguous to a forest reserve to which this section applies, whether that development is proposed by, or is to be implemented by, a person or organization in the public or private sector, the Director shall require the proposer of the development to commission and produce for the Minister an environmental impact assessment of the proposed development from independent consultants of international standing shortlisted by the applicant and approved by the Government of the United Republic and, notwithstanding any other law to the contrary, no development to which this section applies shall be commenced in a forest reserve or in a buffer zone contiguous to a forest reserve unless and until an environmental impact assessment has been completed to the satisfaction of the Minister.
- (2) The development to which this section apply are:
 - (a) commercial logging and forest industry and developments within a forest reserve necessarily connected with commercial logging and forest industry where the development exceeds such area as may be prescribed;
 - (b) mining developments;

- (c) road construction or the laying of pipelines;
 - (d) the construction of dams or power stations;
 - (e) the construction of a building or group of buildings for purposes other than the management of a forest reserve on an area of land exceeding such area as may be prescribed;
 - (f) agricultural or horticultural development on an area of land exceeding such area as may be prescribed;
 - (g) such other like developments as may be prescribed.
- (2) The modalities and substance of an environmental impact assessment to which this section applies shall have regard to and take account of the highest and best international practice contained in relevant guidelines published by the United Nations Environment Programme or guidelines issued by the government.
- (3) In exercising his functions under this section, the Director shall have regard to and coordinate with the functions of any other Ministry in respect of the production of an environmental impact assessment which is required under any other law, the implementation of which is the responsibility of that Ministry.
- (4) An environmental impact assessment produced under this section shall set out an environmental management plan for eliminating or minimizing the impact on the forest environment of the development to which the environmental impact assessment relates, and where, after consideration and approval of the environmental impact assessment, that development is permitted, the developer shall be under a duty to comply with that environmental management plan in carrying out the development.

PART V: FOREST RESERVES

SUB-Part 1: National Forest Reserves

Power of Minister to declare national forest reserve

23. (1) Subject to the provisions of this Sub-Part, the Minister may declare, by order published in the Gazette, any area of land to be a national forest reserve.
- (2) A national forest reserve shall be either:
- (a) an area of land covered by forest reserved principally for purposes of the sustainable production of timber and other forest produce, to be known as a production forest reserve; or
 - (b) an area of land covered by forest reserved principally for the purposes of the protection of wastesheds, soil conservation and the protection of wild plants, to be known as a protection forest reserve; or
 - (c) an area of land covered by forest reserved principally to protect nature and scenic areas of national or international significance and to maintain and enhance biodiversity and genetic resources in an undisturbed, dynamic and evolutionary state, to be known as a nature forest reserve.
- (2) A national forest reserve may consist partly of a production forest reserve and partly of a protection forest reserve and the Director may, after consulting with, and taking into account the views of, right-holders within, and those having an interest in, a production forest reserve or, as the case may be, a protection forest reserve, recommend to the Minister that he reclassify forest from a production to a protection forest reserve or from a protection to a production forest reserve but such reclassification shall affect in any way the existing rights of right-holders within the national forest reserve which is reclassified.

Procedures for declaration of national forest reserve

24. (1) Where the Minister is minded, as a result of advice tendered to him by the Director or as a result of representations made to him, to declare an area of land to be a national forest reserve, he shall cause a notice, to be referred to as a notice of intention, to be:
- (a) published of the proposed declaration of the said area, which notice shall describe the proposed boundaries of the forest reserve and the purpose of the land is to be declared a national forest reserve and the purpose for the land is to be declared a national forest reserve in one or more newspapers having a circulation in the area of the proposed reserved;
 - (b) exhibited in a conspicuous place in the offices of all local authorities within whose area of jurisdiction any part of the proposed reserve is or is contiguous thereto;
 - (c) given publicity to in such manner as is customary in the area or as is otherwise calculated to bring it to the attention of all persons living in or in the vicinity of or deriving their livelihood from or using on a regular basis any part of the proposed reserve.
- (2) The notice of intention shall include:-
- (a) a description of the boundaries of the proposed reserve

- (b) a statement of the purposes for which the land is proposed to be declared to be a reserve;
 - (c) the period of time, being not less than ninety days within which any person or group of persons or a representative thereof may, either orally or in writing;
 - (i) object to; or
 - (i) make representations about; or
 - (ii) claim any rights based on and arising out of customary law in relation to land or trees or forest produce or any rights based on any other law within the area the subject of the proposed declaration of a reserve;
 - (d) the person or persons to whom any such statements as are referred to in paragraph (c) may be made and the places and times at which any such persons will be available to receive any such statements;
 - (e) the times, being not less than twenty one days from the date of the notice, and places at which any public meetings will be held to explain and receive comments on the proposed declaration of a reserve;
 - (f) such other matters as may be prescribed.
- (2) The Director shall be responsible for:-
- (a) collating and classifying any objections and representations received under subparagraphs (i) and (ii) of paragraph (c) of subsection (2);
 - (b) organizing and ensuring the accurate recordation of comments and representations made at one or more public meetings which shall be held within or near the area proposed to be declared as a reserve during the period referred to in paragraph (c) of subsection (2);
 - (c) undertaking such consultations with organizations and persons in the public and private sector as will enable him the better to advise the Minister on the proposed declaration of a reserve;
 - (d) submitting a report, together with his observations and recommendations thereon, on the objections, representations and comments referred to in paragraphs (a) and (b) and the consultations referred to in paragraph (c) to the Minister.
- (4) At the public meetings referred to in paragraph (c) of subsection (3), the Director or Deputy Director shall explain with such diagrams, maps and pictures as may be considered necessary and desirable, the purpose and scope of the proposed forest reserve and the proposed management arrangements and shall encourage the participants at the meetings to express their views about the proposals.
- (5) On receipt of the report referred to in paragraph (d) of subsection (3), the Minister shall refer that report and the proposal to declare a forest reserve to the Committee for its considerations.
- (6) The Committee shall within sixty days of the receipt of the report from the Minister under subsection (5), submit a report with recommendations on the matter of the proposed reserve to the Minister.
- (2) The Minister shall after taking account of the report of the Committee submitted under subsection (6) and the report submitted by the Director under subsection (3), and the report of the investigator submitted in accordance with subsection (7) of section 25, determine whether to:-
- (a) make an order, with or without amendments to the proposed boundaries of the proposed reserve; or
 - (b) with or without such amendments as may be made under section 25 to any recommendations made by the investigator; or
 - (c) defer the making of an order for further consideration, consultation or investigation; or
 - (d) refuse to make an order, declaring an area of land to be a national forest reserve, and any such determination shall be in writing and shall be accompanied by reasons.
- (2) Where the Minister does not make a determination as provided for in subsection (7) within one hundred and twenty days of the receipt of the reports referred to in subsection (7), it shall be presumed that he has refused to make the order.
- (3) Where the Minister determines to defer the making of an order to declare a national forest reserve, he shall specify in writing what further considerations, consultations or investigations are to take place in respect of that proposed national forest reserve.
- Investigation of claims to rights in proposed forest reserve*
25. (1) Where any claim based on or arising out of customary law to rights to land or trees or forest produce or any claim to rights based on or arising out of any other law have been made under subparagraph (iii) of paragraph (c) of subsection (3) of section 24 or at any public meeting referred to in subsection (4) of section

24 or otherwise, the Minister shall appoint an officer or other suitable person the investigator to investigate and record the extent, the nature, the incidents and the validity of any and all such rights as have been claimed.

(2) The investigator shall:

- (a) use his best endeavours to facilitate and assist persons living in or deriving a livelihood from the forest which it is proposed to declare to be a reserve to formulate and present such claims to rights within the forest as they may claim to have;
- (b) give any person or group of persons or a representative thereof who has made a claim referred to in subsection (1) and any other person or group of persons who for good cause had not made a claim in any of the for a referred to in subsection (1) an opportunity of being heard in support of their claim or as the case may be in challenging the claim of any such person or group of person;
- (c) make such investigations within the area and elsewhere and consult such persons as he considers likely to be able to assist his investigations and in doing so, he shall not be bound by the rules of evidence or procedure applicable in a court of law but must observe the rules of natural justice in relation to any such information which he obtains that appears to be prejudicial to any claims which he is investigating;
- (d) prepare a report on the claims that have been made together with recommendations as to the manner in which and the extent to which any such rights which he is satisfied exist shall be treated in the proposed forest reserve.

(4) In preparing his report and recommendations, the investigator shall have regard to the following principles:

- (a) where any such right as he is satisfied exists can continue to be used in the proposed forest reserve without any significant adverse effect on the purposes for which it is proposed to declare the area a forest reserve or could continue to exist as aforesaid if minor changes were to be made either to the proposed boundaries of the forest reserve or to the purposes for which it is proposed to establish the reserve, it shall be allowed to continue within the proposed forest reserve;
- (b) where the continued exercise of any such right as he is satisfied exists would seriously jeopardize the purpose of the proposed forest reserve or the

proposed management arrangements for that reserve, he shall recommend either:-

- (i) modifications to the right to enable such right, as modified to continue to exist within the proposed reserve; or
 - (ii) modifications to the purposes, boundaries or management arrangements of the proposed reserve, including the creation of a zone within the proposed reserve where any such rights may be exercised, to enable the right, either as claimed or as modified, to continue to exist in the proposed reserve; or
 - (iii) the cessation of any proceedings to declare the area to be a forest reserve on the grounds that the continuation of the rights of the persons within the area of the proposed reserve are so important to their livelihood and way of life that they supersede the case for the declaration of any national forest reserve in that area; or
 - (iv) the declaration of a national forest reserve of the type proposed in the area is of such high national and international significance that rights which are incompatible with or would adversely affect the pursuit of the purposes for which the reserve is to be declared should be either:-
 - (v) extinguished and replaced by licenses issued by the Director to use the forest for such purposes and subject to such conditions as will enable the purpose for which the reserve is to be declared to be fulfilled; or
 - (vi) extinguished subject to the prompt payment of fair compensation for all losses and disturbance or the granting of similar rights of equivalent value on land outside, but contiguous to, the proposed reserve.
- (5) Where the investigator is minded to recommend that such rights as he is satisfied exist shall continue to be exercisable within a forest reserve, whether with or without modification, he may recommend that any such right shall be exercisable subject to any such condition as he shall propose in his report and any such condition may relate to the incidents of the right or to the manner of the exercise of the right or to the manner of the regulation of the right.
- (6) A copy of the report in draft form shall be made available at the offices of local authorities within or contiguous to the area in which the proposed reserve is for not less than thirty days for inspection and comment by all those

persons and groups of persons who made claims that were investigated by the investigator and the investigator shall hold one or more public meetings within the same period of twenty-eight days and within the same area as aforesaid at which he shall explain the proposed report and receive and take note of comments thereon.

- (7) After revising the report in the light of any comments received during the period referred to in subsection (6), the investigator shall submit the revised report to the Minister, for his consideration under subsection (7) of section 245.
- (8) After considering the report of the investigator, the Minister shall determine whether to accept the report with or without amendments or modifications to the recommendations but if he is minded to amend or modify any recommendation in any way which has the effect of prejudicing or limiting or reducing the rights, including the right to compensation on extinguishment of a right, which the investigator has recommended be confirmed or continued in existence, with or without modifications and conditions, or be extinguished subject to the payment of full compensation, he shall refer his proposals with reasons to those persons whose rights he proposes to diminish in ways referred to in this subsection for them to comment on his proposal and shall not make any final decision on the matter until not earlier than thirty days from the day on which he has referred his proposals to those persons as aforesaid.
- (8) Notwithstanding any other provision of this section, no claim in respect of any rights to which this section refers arising subsequent to the publication of the notice of intention to declare an area to be a national forest reserve, other than rights arising out of or as a consequence of succession shall be investigated under this section and the investigator shall have jurisdiction to determine whether any right that is claimed is a right which comes within the provisions of this subsection.
- (9) At the end of the process of investigating and determining the future status of rights to land or trees or forest produce within a proposed national forest reserve to which this section refers, any right to which this section refers which has not been the subject of a claim shall, subject to the provisions of this subsection, be extinguished except that if, within one year of the date of any determination made under subsection (7) of section 24, a person shall claim any right based on or arising out of customary law and satisfy the Minister that for good and sufficient reason, he failed to make a claim to such right within the time allowed, the Minister

may refer the claim to the investigator and the procedures set out in this section shall thereafter be followed in respect of such claim.

- (10) Nothing in this section shall operate or be construed to prevent any person or group of persons whose claim to rights have been determined under this section to be valid and effectual from voluntarily surrendering all or any such rights, subject to the prompt payment of full and fair compensation, and on the surrender of any such rights, the same shall be extinguished.
- (11) Any person who claimed a right to which this section refers who is aggrieved by the determination of the Minister may appeal to the High Court and the High Court may confirm, rescind or vary the determination of the Minister and may make such further or other order as he may consider the circumstances of the case and justice warrants.

Restrictions on creation of new rights in proposed forest reserve

26. (1) The rights to land, trees or forest produce which may be exercised within a national forest reserve are those rights and only those rights which have been determined to be exercisable in that national forest reserve by the Minister under subsection (7) of section 24 and such rights shall be known and referred to as 'existing rights.'
- (2) No new granted right of occupancy shall be granted over any area of land declared to be a national forest reserve and any such purported grant of a granted right of occupancy or any contract to grant a granted right of occupancy shall be void.
- (3) Where a person or group of persons, to be known as right-holder, exercising visiting rights which to exercise an additional right or extend or alter the scope or incidents of an existing right or exercise an existing right in an area of the national forest reserve in which such right has not hitherto been exercisable or assign or otherwise transfer an existing right to a person, a group of persons or an organization which do not already have any existing rights in the said reserve, such right-holders may apply to the Minister for approval for the exercise of any such right or the assignment or transfer of such existing right, which shall be known and referred to as a 'new right'.
- (4) Where the Director is of the opinion that any existing right-holder exercising existing rights within a national

- forest reserve has begun to exercise a new right or has created a new right by the assignment or transfer of an existing right without the approval of the Minister, he shall report that matter to the Minister.
- (5) Where an application is made to the Minister under subsection (2) or a report is made to the Minister under subsection (3), the Minister shall appoint an investigator to inquire into and report with recommendations upon the application or as the case may be, the matters contained in the report.
 - (6) The provisions of subsections (2) to (8), of section 25 other than the provisions of subsection (4)(b)(iv)(bb), shall apply, with such modifications in respect of subsection (3) to (7) of section 25 as the nature of the case shall, in the opinion of the investigator, requires, to the inquiry referred to in subsection (4) as they apply to the matters provided for by the said subsections of section 25.
 - (7) In addition to the functions of the investigator referred to in subsection (5), the investigator may recommend that:
 - (a) the proposed new right be rejected; or
 - (b) in any case where he finds that a new right has been exercised without the approval of the Minister that:
 - (c) such new right shall cease to be exercised by the persons who are exercising it; and
 - (d) compensation shall be paid by the person or group of persons exercising the new right without approval in respect of any damage done to the forest reserve by the exercise of such new right; and
 - (e) where he considers that it is likely that the person or group of persons will continue to exercise the new right notwithstanding the recommendation that it shall cease to be exercisable, that the Minister apply to the court for an injunction to prevent the continued exercise of such new right.
 - (2) The Minister shall have, in relation to the recommendations which may be made by the investigator under subsection (6), all the powers which he may exercise under the provisions of subsection (5).
 - (3) A contract to assign or otherwise transfer an existing right which was made without the approval of the Minister shall be void.
 - (4) Notwithstanding any other provision in this section, where the unapproved exercise of a new right consists of or includes cutting down, felling, damaging, digging up or removing any tree or protected wild plant of purposes of sale, barter or profit or for use in any trade, industry, commercial or research undertaking, the Director shall issue an order, to be known as a stop order, and serve a copy of such notice on the person or group of persons carrying on any of the activities to which this section refers directing those persons to stop that activity forthwith.
 - (5) A stop order shall contain such information and be made known in such manner as will enable the person or group of persons on whom it is served to understand and compel with the order which is contained therein and subject to this overriding principle, it shall contain such information and be in such form and be made known to the persons on whom it is served in such manner as may be prescribed.
 - (6) Any person aggrieved by a determination of the Minister under subsections (5) or (7) or who has been served with a copy of a stop notice may appeal to the High Court against such determination or such order but any stop order which is appealed against shall remain in full force and effect notwithstanding the appeal, and the High Court may confirm, vary or rescind the decision of the Minister or confirm, discharge in whole or in part or modify the stop order and make such further or other orders as the circumstances of the case and justice warrants.
- Activities prohibited within the forest reserve without permission*
- (27) On and after the coming into force of a declaration of a national forest reserve, no person, other than an existing right-holder exercising an existing right within a national forest reserve in respect of which the existing right has been determined to exist and be exercisable, shall do any of the following acts in any national forest reserve unless and until such a person has been granted a lease or a license or a permit under and in accordance with this Act to do that act or the doing of that act is an necessary consequence of the grant of a lease or a license or a permit under and in accordance with this Act to do some other and related act:-
 - (a) cut down, fell, dig up or remove any tree;
 - (b) dig up or remove any protected wild plant;

- (c) take and remove any other forest produce;
- (d) take and remove any rock, stones, sand, shells or soil;
- (e) undertake any mining activities;
- (f) clear land;
- (g) cut, burn, uproot, damage or destroy any vegetation;
- (h) plant any crops, trees or other vegetation;
- (i) erect any buildings or other structures;
- (j) construct any roads, paths, bridges, railways, waterways or runways;
- (k) allow any livestock to enter any national forest reserve;
- (l) graze or depasture any livestock
- (m) hunt, fish, use or be in possession of any trap, snare, net, bow and arrow, gun, poison or explosive substance used or capable of being used for the purposes of hunting or fishing;
- (n) use any buildings or other structures for any purpose other than a purpose for which it was being used at the time of the declaration of the reserve;
- (o) carry out any research for which a research permit is required;
- (p) undertake an other activity within a national forest reserve that is prohibited by regulations applicable to all national forest reserves or any rules applicable to a specific national forest reserve.

Allocation of management responsibilities in forest reserve

28. (1) The functions of managing a national forest reserve may be undertaken by either:-

- (a) the Division;
- (b) an executive agency;
- (c) a local authority;
- (d) a village;
- (e) a community group;
- (f) a leaseholder;
- (g) a non-governmental organization, and different parts of or activities within a national forest may be managed by the different persons or bodies listed in paragraphs (a) to (h).

(2) The Director shall determine which of the persons or bodies listed in paragraphs (a) to (h) of subsection (1) shall manage a national forest reserve or any part thereof or any part thereof or any activity therein.

(3) The Director may invite any person or body listed in paragraphs (a) to (h) of subsection (1) submit

a proposal to manage a national forest reserve or any part thereof or activity therein and any such proposal that is submitted shall include:

- (a) how the proposed system of management will ensure that due regard is paid to section 3;
- (b) the timing of the preparation of a forest management plan;
- (c) to envisaged structure and modalities of cooperation and consultation with:
 - (i) right-holders within the national forest reserve;
 - (ii) any other person or body having management functions within that national forest reserve;
 - (iii) any other person or body with interests in that national forest reserve;
- (a) the type of activities which it is envisaged will be permitted in the national forest reserve;
- (b) the resources likely to be available to enable any management plan to be executed;
- (c) such other matters as may be prescribed.

(4) Prior to making any determination under subsection (2), the Director shall submit a report on the matter to the Committee and shall thereafter take into account any comments the Committee shall make on the matter.

(2) Where the Director has determined that a person or body other than the Division shall manage a national forest reserve or part thereof or any activity therein, he shall make a joint management agreement with that person or body and in any case where the Director determines that a leaseholder of land within a national forest reserve shall be the manager of that part of the national forest reserve which is comprised within the lease, the joint management agreement shall be deemed to be one of the conditions on which the lease is held.

Boundaries of forest reserves

29 (1) As soon as practicable after the publication of an order made under subsection (1) or subsection (4) of section 23 and in any event not later than one year after such publication, the Director shall cause the boundaries of the national forest reserve to be visibly demarcated on the ground.

(2) The Director shall cause a map or plan of each national forest reserve to be prepared, copies of which shall be maintained and made available for inspection by members of the public during office hours at:

- (a) the main office of the division;
 - (b) the offices of the local authorities within the area where each national forest reserve is ;
 - (c) such other places as may be prescribed.
- (2) The Director may from time to time and subject to the approval of the Minister make minor changes to the boundaries of any national forest reserve to accommodate changes in the environmental circumstances of any such national forest reserve.
- (3) During a period of not less than ninety days prior to proposing any minor change as is referred to in subsection (3), the Director shall:
- (a) give publicity to the proposal within the area where the national forest reserve is by:
 - (i) causing a notice of the change to be posted in a prominent place in the offices of all local authorities within the area where the national forest reserve is ; and
 - (i) giving such other publicity to the change as is traditional in the area or as is otherwise calculated to bring the proposed change to the attention of right-holders of existing rights and other persons having interests in the said national forest reserve; and
 - (a) invite comments from all such persons as are referred to in sub-paragraph (ii) of paragraph (a) on the proposed change;
 - (b) take into account all such comments as are made;
 - (c) prepare a report on the proposed change for the Minister.
- (2) For purposes of this section, a minor change is a change that does not affect in any significant way the existing rights of any right-holders within the national forest reserve or the rights of any persons on land which will be incorporated into the national forest reserve through the proposed changes to the boundaries thereof and does not increase the size of the national forest reserve by more than one per centum.

Power to alter and de-reserve national forest reserve

30. (1) Subject to the provisions of this section, the Minister may by order published in the *Gazette*, revoke the declaration of all or a part of any national forest reserve or alter the status of a production or protection of national forest reserve or any part thereof to a nature forest reserve or a national forest reserve or any part thereof to a production or protection forest reserve.
- (2) The procedures set out in section 24 shall apply with such modifications and adaptations as the Minister may consider necessary to the exercise of the power to alter the status of or de-reserve a national forest reserve or any part thereof but no such modification or adaptation shall reduce the time available for comments to be made on the proposed alteration or de-reservation or the responsibilities of the Director set out in subsection (3) or the duties of the Minister set out in subsections (7) and (9).
- (3) No alteration or de-reservation of a national forest reserve shall alter so as to affect in a deleterious way the existing rights of any right-holders within such national forest reserve unless and until those right-holders have been consulted on the matter during the period provided for the submission of comments on the proposed alteration or de-reservation and they have either:
- (a) agreed to the alteration to their existing rights together with an amount of compensation in respect of any losses caused by such alteration;
 - (b) or when it has not been possible to reach agreement but the Minister is satisfied that an alteration in existing rights is necessary in all the circumstances of the case, they have been paid full and fair compensation for the involuntary loss of any such existing rights.
- (2) In the case referred to in paragraph (b) of subsection (3), any right-holder who is aggrieved by the determination of the Minister may appeal to the High Court and the High Court may confirm, rescind or vary the determination of the Minister and may make such further or other order as he may consider the circumstances of the case and justice warrants and his decision shall be final.

Sub-Part 2: Local Authority Forest Reserves

Power to declare local authority reserve

31. (1) Subject to the provisions of this Sub-Part, the Minister may declare, by order published in the *Gazette*, any area of land to be a local authority forest reserve.
- (2) A local authority forest reserve shall be either:-
- (a) an area of land covered by forest reserved principally for purposes of the sustainable production of timber and other forest produce, to be known as a local authority production forest reserve; or

- (b) an area of land covered by forest reserved principally for the purposes of the protection of watersheds, soil conservation and the protection of wild plants, to be known as a local authority protection forest reserve; or
- (c) an area of land covered by forest reserved for such purposes as the local authority may, with the approval of the Minister, determine to be necessary and desirable in all the circumstances of that local authority.

- (2) A local authority forest reserve may consist partly of a reserve referred to in paragraph (a) of subsection (1) and partly of a reserve referred to paragraph (b) of subsection (1) and partly of a reserve referred to in paragraph (c) of subsection (1) and the local authority may, after consulting with, and taking into account the view of, right-holders within, and those having an interest in, a local authority forest reserve, determine to reclassify forest from any one of the said reserves to any other of the said reserves but no such reclassification shall affect in any way the existing rights of right-holders within the local authority forest reserve which is reclassified.

Application of sections 24 to 27 and 29 to 30 to local authority forest reserve

32. (1) Where the Minister is minded, as a result of a request made to him by a local authority, to declare an area of land to be a local authority forest reserve, the procedures set out in section 24 shall be complied with subject to the following changes:
- (a) there shall be substituted for the words "the Director" and "the Deputy Director" wherever they appear, the words "the chief executive officer of the local authority"; and
 - (b) there shall be substituted for the words "the Committee", wherever they appear the words "the local authority";
- (2) The provisions of section 25 shall apply to the investigation of claims to rights in respect of a proposed local authority forest reserve subject to the substitution, wherever it appears, for the words "the Director" the words "the chief executive officer of the local authority."
- (3) The provisions of section 26 shall apply to the creation of new rights in a local authority forest reserve subject to the following changes:

- (a) there shall be substituted for the words "the Minister" wherever they appear, the words "the local authority"; and
- (b) there shall be substituted for the words "the Director" wherever they appear, the words "the chief executive officer of the local authority."

- (2) The provisions of section 27 shall apply to a local authority forest reserve as they apply to a national forest reserve.

- (3) The provisions of section 29 shall apply to a local authority forest reserve as they apply to a national forest reserve with the substitution in subsections (4) and (5) for the words "the Director" wherever they appear, the words "the chief executive officer of the local authority".

- (4) The provisions of section 30 apply to a local authority forest reserve as they apply to a national forest reserve.

Management functions of local authority in local authority forest reserve

33. (1) Upon the coming into force of an order declaring any area to be a local authority forest reserve, the local authority designated in the said order as the local authority which shall be responsible for the management of such local authority forest reserve shall thereupon have the duty of managing such local authority forest reserve, and without prejudice to the generality of the foregoing, such local authority shall:

- (a) not later than sixty days after the coming into force of the order referred to in this subsection, commence the preparation of a forest management plan in respect of the local authority forest reserve for which it is responsible;
- (b) once the forest management plan has been prepared and approved, manage the forest in accordance with the said forest management plan;
- (c) appoint an officer or designate an existing officer to be the forest manager;
- (d) appoint such other persons or designate such other officers as it considers necessary or desirable to perform such other functions connected with the management of the local authority forest reserve and the maintenance of the security of the said reserve and the resources therein;
- (e) meet all the costs of management of such local authority forest reserve;
- (f) collect all revenue from fees, royalties and licenses

charged or issued in respect of such local authority forest reserve and pay them into the accounts of the local authority;

- (g) undertake such other specific management functions as may be prescribed or as it considers necessary or desirable.
- (2) A local authority exercising management functions in respect of a local authority forest reserve may determine that some or all of those management functions shall be undertaken by any one or more of the persons or bodies referred to in paragraphs (b) and (d) to (h) of subsection (1) of section 28 and in any such case the provisions of subsections (3) and (5) of section 28 shall apply to that matter as if they were substituted for the words "the Director" wherever they appear in those two subsections, the words "the local authority".
- (3) A person appointed or designated as the manager of a local authority forest reserve under paragraph (b) of subsection (1) shall manage each local authority forest reserve of which he is appointed as agent for and under the direction of the local authority.
- (4) The Director may by notice published in the *Gazette*, and after consulting with the chief executive officer of the local authority, grant any forest manager appointed or designated under paragraph 9c) of subsection (1) and any such other officers or employees of the local authority appointed or designated under paragraph (d) of subsection (1) as he considers necessary for the proper and effective management of the local authority forest reserve, either by name or by office, such of the powers of a forest officer in respect of such local authority forest reserve as may be specified in the said notice and may, after consulting with the said chief executive and on giving reasonable notice to the officer concerned, revoke such grant.
- (5) In the exercise of its functions of managing a local authority forest reserve, a local authority shall have regard to all and any advice which the Director is empowered to give to any and all local authorities respecting their management of local authority forest reserves.

Bye-laws in respect of local authority forest reserves

- 34. (1) Notwithstanding any provisions concerning the making of bye-laws contained in the Local Government (Urban Authorities) Act (No. 8 of 1992) and the Local Government (District Councils) Act (No. 7 of 1992), a local authority exercising the functions of managing a local authority forest reserve shall, prior to making any

bye-laws applicable to such local authority forest reserve:

- (a) submit a draft of any such proposed bye-laws to the Director;
- (b) take into account any comments or recommendations the Director may make on any such draft; and
- (c) not proceed to the making of any such bye-laws until it has received and considered any such comments and recommendations.
- (2) Where the Director has been sent or given a draft of any bylaws referred to in subsection (1), he shall send his comments and recommendations to the local authority from which the draft bye-laws came within sixty days of the receipt of the said draft bye-laws.
- (3) The Director may prepare and publish model bylaws for local authority forest reserve.
- (4) Where a local authority to which this section applies determine to adopt and approve some or all of the model bylaws prepared by the Director under subsection (3), the provisions of subsection (1) shall not apply to those bylaws.

Sub-Part 3: Village Forest Reserves

Preliminary steps by village council to create and manage village forest reserve

- 35. (1) A village council may by resolution, determine to:
 - (a) create a village forest reserve on village land;
 - (b) submit an application to the Director to manage a village forest reserve on the basis of a joint management agreement between the Director and the village council; and
 - (c) establish a village forest management committee.
- (2) A village forest management committee shall:
 - (a) be formed with due regard to gender balance;
 - (b) be the principal village body concerned with the management of a village forest reserve under a joint management agreement;
 - (c) report on a regular basis to and take account of the views of the village assembly on its management of the village forest reserve.
- 36. (1) An application by a village council to the Director to manage a village forest reserve shall include:
 - (a) a copy of the resolution referred to in subsection (1) of section 35;

- (b) a list of the names of the members of the village forest management committee established under the resolution referred to in subsection (1) of section 35;
 - (c) an official map of, or other documentary evidence sufficiently clear to identify:
 - i the village land;
 - ii the area to be established as a village forest reserve within the village and land;
 - iii the location of any villages bordering the proposed village forest reserve;
 - (a) where the village is already managing a forest or part of thereof, a copy of any joint management agreement and any village bye-laws or other rules made in pursuance of such joint management agreement under which the forest or part thereof is managed;
 - (b) a brief statement of the reasons for the application and the proposed objectives to be pursued by the village council in the management of the proposed village forest reserve;
 - (c) a brief statement of the staff employed by and the last annual budget of the village council;
 - (d) such other matters as may be prescribed.
- (2) The application referred to in subsection (1) shall be sent to the local authority having jurisdiction within the area where the village submitting the application is .
 - (3) The local authority referred to in subsection (2) shall, within thirty days, forward the application referred to in subsection (1) to the Director together with its comments on the said application and the suitability, from the perspective of likely human and financial resources available to the village council and the record of administration of that village council, to manage the village forest reserve.
 - (4) The Director shall, after considering the application referred to in subsection (1) and the comments of the local authority referred to in subsection (3), together with any information on the application and the nature and resources of the forest which is the subject of the application from any officers from the Division which he has requested shall determine whether to agree to the application or reject it and where he determines to reject it he shall give his reasons for the rejection in writing to the village council.
 - (5) Where the Director agrees to the application, he shall inform the applicant village council and thereupon, that village council and the Director shall negotiate and agree

a joint management agreement for the management of that proposed village forest reserve and no village forest reserve shall be deemed to be established and no village council or village forest management committee shall exercise any functions of management within any such proposed village forest reserve unless and until the joint management agreement referred to in this subsection has been agreed to by the Director.

- (6) A copy of a joint management agreement to which subsection (5) applies shall be kept at the office of the village council and made available for inspection by any member of the village, free of any charge or condition, at all reasonable hours during the working day.
- (7) Where an application has been rejected by the Director under subsection (4), a village council may not resubmit any such application, whether it has been revised or is substantially the same application, until a period of not less than one hundred and eighty days have elapsed from the date of the rejection of the prior application.

Functions of village forest management committee

- 37. (1) Where the Director has agreed to a joint management agreement with a village council with respect to the management of a village forest reserve, the village forest management committee of the said village council shall be responsible for the management of such village forest reserve in accordance with the terms of the said joint management agreement and without prejudice to the generality of the foregoing, and to the extent that the said joint management agreement does not specifically provide for the same, the village forest management committee shall:
 - (a) not later than ninety days after the making of the agreement referred to in this subsection, commence the preparation of a forest management plan in respect of the village forest reserve for which it is responsible;
 - (b) once the forest management plan has been prepared and approved, manage the forest in accordance with the said forest management plan;
 - (c) review the existing customs, practices and rights of the members of the village to enter or live in the forest and use the forest products with a view to amending, altering, adjusting or abolishing any of those customs, practices and rights which in the opinion of the committee would be likely to impede the management of the village forest reserve in accordance with the forest management plan;
 - (d) make sure rules and propose to the village council

- such village bye-laws as it considers necessary or desirable to facilitate the management of the village forest reserve in accordance with the forest management plan;
- (c) appoint such persons as it considers necessary or desirable to perform such functions connected with the management of the village forest reserve and the maintenance of the security of the said reserve and the resources therein as it shall from time to time determine to be necessary to facilitate the implementation of the forest management plan;
 - (f) meet such of the costs of management of such village forest reserve as may be agreed in the joint management agreement;
 - (g) collect such of the revenue from fees, royalties and licenses charged or issued in respect of such village forest reserve as may be agreed in the joint management agreement and pay them into the accounts of the village council;
 - (h) undertake such other specific management functions as may be prescribed.
- (2) Where requested to be the village forest management committee or where he considers that it is necessary so to do, the Director may provide technical assistance to the village forest management committee in connection with the preparation and implementation of a forest management plan.
- (3) The Director may by notice published in the *Gazette*, and after consulting with the chief executive officer of the local authority having jurisdiction in the area where the village forest reserve is, grant any person professionally or technically qualified in forest or environmental management or conservation employed or hired by or seconded to or working alongside the village council to assist in the management of the village forest reserve, either by name or by office, such of the powers of a forest officer in respect of such village forest reserve as may be specified in the said notice and may, after consulting with the said chief executive and on giving reasonable notice to the person concerned, revoke such grant.
- (4) In the exercise of its functions of managing a village forest reserve, a village forest management committee shall have regard to all and any advice which the Director is empowered to give to any and all local authorities or villages respecting their management of local authority and village reserves.
- Bye-laws in respect of village forest reserves*
38. (1) Notwithstanding any provisions concerning the making of village bye-laws contained in the Local Government (District Councils) Act (No. 7 of 1992), where a village forest management committee is managing a village forest reserve, the village council which resolved to establish that village forest management committee, shall, prior to making any bye-laws applicable to such village forest reserve:
- (a) submit a draft of any such proposed bye-laws to the Director through the district council having jurisdiction in the area where the said village is situate;
 - (b) take into account any comments or recommendations the Director or the district council may make on any such draft; and
 - (c) not proceed to the making of any such bylaws until it has received and considered any such comments and recommendations.
- (2) Where the Director and the district council has been sent or given a draft of any bye-laws referred to in subsection (1), they shall send comments and recommendations to the village council from which the draft bye-laws came within sixty days of the receipt of the said draft bye-laws.
- (3) Director may prepare and publish model bylaws for village forest reserves.
- (4) Where a village council to which this section applies determines to adopt and approve some or all of the model bye-laws prepared by the Director under subsection (3), the provisions of subsection (1) shall not apply to those bye-laws.
- Joint management of village forest reserve by two or more villages*
39. (1) Two or more villages may, in accordance with the procedures of this section agree to manage a village forest reserve jointly.
- (2) Where two or more villages are minded to make an application to the Director for his consent to their managing village forest reserve jointly, the village councils of each such village shall determine by a resolution approved in the village council in the same terms to:

- (a) create a joint village forest reserve on the village land of the said villages;
 - (b) submit a joint application to the Director to manage the said joint village forest reserve on the basis of a joint management agreement between the Director and all the village councils submitting the application; and
 - (c) establish a joint village forest management committee composed of three persons elected from each village council.
- (2) A joint village forest management committee shall:
- (a) be formed with due regard to gender balance;
 - (b) be the principal body concerned with the management of a joint village forest reserve under a joint management agreement;
 - (c) through the members elected from each village council report on a regular basis to and take account of the views of the village assembly of each village participating in the joint village forest reserve.
- (2) The provisions of sections 36 and 38 shall apply to the management of a joint village forest reserve as they apply to the management of a village forest reserve.
- (3) Nothing in this section shall operate to prevent two or more villages agreeing to cooperate together in the management of their respective village forest reserves which are adjacent to one another through joint arrangements not amounting to a management agreement or the Director from providing such assistance as he considers necessary and desirable to facilitate the operation of any such joint arrangements.
- Arrangement by village council of local authority forest reserve*

- 4. (1) A village council of a village may submit an application to a local authority having jurisdiction in the area wherein such village is situate for consent to manage the whole or a part of or an activity within a local authority forest reserve managed by such local authority on the basis of a joint management agreement between the said village council and the said local authority.
- (2) Prior to submitting an application to the local authority under subsection (1), a village council shall by resolution:
 - (a) approve the application which is to be submitted; and
 - (b) where such a committee has not been established, establish a village forest management committee.
- (2) Village forest management committee established by resolution under subsection (2) shall comply with the provisions of subsection (2) of section 35.
- (3) An application submitted under subsection (1) shall include:
 - (a) a copy of the resolution referred to in subsection (1) of section 40;
 - (b) a list of the names of the members of the village forest management committee established under the resolution referred to in subsection (1) of section 40;
 - (c) an official map of, or other documentary evidence sufficiently clear to identify;
 - (d) the area of the local authority forest reserve in respect of which the applicant village council is submitting the application;
 - (e) the location of any villages bordering the proposed village forest reserve;
 - (f) where the village is already managing a forest or part thereof, a copy of any joint management agreement and any village bye-laws or other rules made in pursuance of such joint management agreement under which the forest or a part thereof is managed;
 - (g) a brief statement of the reasons for the application and the proposed objectives to be pursued by the village council in the management of the proposed local authority forest reserve;
 - (h) a brief statement of the staff employed by and the last annual budget of the village council;
 - (i) such other matters as may be prescribed.
- (2) The local authority to which the application has been submitted under subsection (1) shall, within thirty days, send a copy of the said application to the Director together with its proposed determination on the said application.
- (3) The local authority shall, not earlier than sixty days after receipt of the application and after considering the application referred to in subsection (1) and the comments (if any) of the Director determine whether to agree to the application or reject it and where the local authority determines to reject the application, it shall give his reasons for the rejection in writing to that village council.

- (4) Where the Director is of the opinion that the application should not be approved or that further discussion is needed on the application in which the Division should be involved, he shall within thirty days of the receipt of the copy of the application inform the local authority shall comply with that opinion.
- (5) Where the local authority agrees to the application, it shall inform the applicant village council and thereupon, that village council and that local authority shall negotiate and agree a joint management agreement for the management by the village council of that local authority forest reserve or part thereof or activity therein and no village council or village forest management committee shall exercise any functions of management within any such local authority forest reserve unless and until the joint management agreement referred to in this subsection has been agreed to by the local authority.
- (6) A copy of a joint management agreement to which subsection (7) applies shall be kept at the offices of the local authority and of the village council and made available for inspection at all reasonable hours during the working day.
- (7) Where an application has been rejected by the local authority under subsection (6), a village council may not resubmit any such application, whether it has been revised or is substantially the same application until a period of not less than one hundred and eighty days have elapsed from the date of the rejection of the period application.
- (8) Where requested to by the village forest management committee or where the local authority whose forest reserve is the subject of a joint management agreement under this section considers that it is necessary so to do, the said local authority may provide technical assistance to the village forest management committee in connection with the management under that joint management agreement of the said forest reserve or part thereof or activity therein, including assistance in the preparation or revision of any forest management plan applicable to that local authority forest reserve.
- (9) A village forest management committee exercising management functions within a local authority forest reserve shall exercise those functions in accordance with the joint management agreement made between the village council and the local authority under this section and where such agreement is silent on any aspect of forest management, such management functions shall be exercised in accordance with the forest management plan for that local authority forest reserve.

Rights and duties of villagers in respect of village forest reserves

41. Unless a joint management agreement specifically provides otherwise, the basic rights and responsibilities of all villagers in respect of a village forest reserve which the village of which they are members is managing under a joint management agreement are as follows:
 - (a) the right to exercise existing rights to enter, occupy, use and harvest the produce of the forest jointly with all other members of the village, in a sustainable manner in accordance with the terms of the agreement;
 - (b) the duty to comply with the terms and conditions of any license subject to which any specific activity within the village forest reserve may be carried out by any member of the village;
 - (c) the duty to assist in facilitating the implementation of the forest management plan, including undertaking any communal work connected to the management of the village forest reserve;
 - (d) the duty to comply with and assist in the enforcement of any rules set out in the joint management agreement or any forest management bye-laws made by the village council;
 - (e) the right to exclude non-members of the village from the village forest reserve other than those non-members who have obtained a license to enter and use or harvest the forest or its produce and are exercising their privileges in accordance with the terms of the said license;
 - (f) the duty to pay any tax or cess or other levy imposed by the village council to assist in defraying the annual costs of managing and developing the village forest reserve;
 - (g) the right and power to establish and manage a fund for the purposes of developing and carrying out improvements to the village forest reserve or repairing any damage caused by any natural disaster affecting the said reserve and to pay into the fund any fees and penalties collected under the agreement;
 - (h) the duty not to assign, alienate, or otherwise transfer for value or donate any existing rights exercisable within the village forest reserve held or acquired by virtue of being a member of the village to a person who is not a member of the village except in accordance with the terms of the joint management agreement and any rules made thereunder;
 - (i) the duty to comply with any decision of a village forest management committee and any directions

given by a person working under the direction of the village forest management committee to facilitate the implementation of any such decision.

Functions of local authority in respect of village forest reserves

- 42 (1) A local authority exercising jurisdiction within the area where a village council is through a village forest management committee managing a village forest reserve shall exercise a general supervision over the exercise by that village forest management committee of the functions of management of that village forest reserve.
- (2) In any case where the local authority referred to in subsection (1) is of the opinion, either on the basis of information given to it by any officer exercising functions under this Act or otherwise that a village forest management committee or a village council with the responsibility to exercise functions connected with the management of forests under this Act is failing to exercise those functions in accordance with an approved forest management plan made for the village forest reserve or a local authority forest reserve which the said village forest management committee or village council is managing, or in accordance with the terms and conditions of any joint management or other agreement made between the village council and such local authority under which that forest reserve is being managed, then the said local authority may:
- (a) serve a notice on that village forest management committee requiring the said committee to take the steps specified in that notice within the time specified in the notice to rectify and improve its management of the forest under its jurisdiction; or
 - (b) serve a notice on that village forest management committee requiring the said committee to show cause, within the time specified in that notice, as to why the said local authority should not take over and exercise the such functions of management of the forest for such period of time as may be specified in the notice; and
 - (c) in either case referred to in paragraph (a) or (b), upon making a written request to that village forest management committee send an officer of the said local authority to appear before such village forest management committee personally for the purpose of making representations orally; and thereafter,
 - (d) where, in the opinion of the local authority, the village council has failed to show cause as required under paragraph (b) above, may by resolution,

determine to take over the functions of management in respect of that village forest reserve or local authority forest reserve as specified in the notice referred to in paragraph (b).

- (2) A village council may appeal in writing to the Minister against any determination by a local authority to take over and exercise the functions of management of a forest under subsection (2) above, and the Minister may, in order to assist him to determine the appeal, appoint a person, not being an officer within the Ministry, to hear any representations that such village council may wish to make in connection with its appeal and thereafter to report to the Minister on those representations but the Minister shall not be bound to determine any appeal in accordance with any report made by any such person or to give any village council appealing under this subsection an oral hearing.

Sub-Part 4: Community forest reserves

Community forest management groups

43. (1) A community forest management group (a Group) may be formed by any group of persons who are members of a village or who are living in or near a forest or any other group of persons desirous of managing a forest reserve or part thereof in accordance with provisions of this Sub-Part for any purpose connected with the communal ownership, use and management of a community forest reserve.
- (2) Where a Group is to be formed for purposes of managing a community forest reserve, the following principles shall be observed by those persons involved in the formation of such Group:
- (a) all persons within the neighbourhood or living in close proximity to or deriving their livelihood from or otherwise having strong traditional ties to the forest in respect of which it is proposed to apply to manage as a community forest reserve shall be given an opportunity to join the Group;
 - (b) the purposes for which the Group is to be formed and the likely responsibilities of members of the Group to ensure that those purposes are implemented are explained to all those wishing to join the Group;
 - (c) the arrangements for the management of the Group, including the methods of selecting the officers of the Group and the management of any funds of the Group shall be based on principles of openness, fairness,

impartiality and non-discrimination and encourage all members of the Group to participate in the management of the Group;

- (d) any procedures for excluding any members of the Group from the Group or otherwise regulating the conduct of members of the Group which may involve any sanction shall be based on and conducted in accordance with the principles of natural justice.
- (2) Where the Director considers it is in the public interest or where he is requested by a group of persons living in the vicinity of or deriving their livelihood from or otherwise having strong traditional ties to a forest so to do, he may arrange for assistance to be given to such a group of persons to form themselves into a Group of purposes of applying to manage a forest as a community forest reserve.
- (3) The Director shall keep a public register of Groups in the prescribed form and shall exercise a broad and general supervision over all registered Groups in order to ensure that their creation and management comply with the principles set out in subsection (2) and that all such Groups manage the community forest reserves under their control with due regard to the interests of the members of the Group and in accordance with such joint management agreement under which such Group is managing a community forest reserve, and, without limiting the generality of this function, he may, at any time that he considers it necessary for the proper performance of his function or that it is in the public interest so to do to give directions to and Group manager as to the proper performance of his duties and such officer shall be under a duty to comply with any such direction.

Recognition of traditional or existing Groups

- 44. (1) The Director may recognize as a Group for purposes of managing a community forest reserve any association of person:
 - (a) formed in accordance with customary law for the purpose of occupying, using and managing a forest and forest resources on a communal basis; or
 - (b) which have come together and are recognized within the community of which they are a part as an association of persons formed to occupy, use and manage a forest and forest resources on a communal basis.
- (2) In determining whether to accord recognition to an association of person referred to in subsection (1), the

Director shall have regard to the principles set out in subsection (2) of section 42 and may as a condition of according recognition to such association of persons, require such association to comply with the said principles.

General management powers of Group

- 45. (1) Where a Group has been formed in accordance with section 44 or has been recognized in accordance with section 44, the persons within the Group who have been chosen to manage the affairs of the Group (the Group managers) are hereby empowered to enter into any agreement connected to the management of a community forest reserve which shall bind all the members of the Group so that all members of the Group are equally liable in respect thereof and may, subject to any prior agreement made within the Group between the members thereof, take equal benefits therefrom and without limiting the generality of the foregoing, any such agreement may include:
 - (a) a joint management agreement to manage a community forest reserve;
 - (b) an agreement to purchase and pay for any goods or services necessarily connected to the implementation of any such joint management agreement as is referred to in paragraph (a);
 - (a) an agreement to sell and deliver any produce lawfully produced from a community forest reserve which is managed under a joint management agreement;
 - (b) an agreement to employ or hire the services of any person or organization to assist the Group in the management of a community forest reserve under a joint management agreement;
 - (c) an agreement to lease or rent or otherwise occupy any land or buildings to be used in connection with the management of a community forest reserve under a joint management agreement;
 - (d) an agreement made with any individual member of a Group relating to the performance by such member of any functions connected with or arising out of the implementation by such member of any of the foregoing agreements.

- (2) Nothing in this section shall empower the Group managers or any individual member of a Group to make any agreement which prevents or limits the Group from complying with a joint management agreement under which a community forest reserve is managed or requires the Group or any individual member thereof to obtain a license or other benefit from the Director or other organization empowered to grant licenses or

confer benefits or may only be complied with by departing from the principles set out in subsection (2) of section 43.

- (3) In the exercise of their functions of managing the affairs of the Group, the Group managers shall be under a duty:
 - (a) to hold any land and other property and to exercise their powers for and on behalf of all members of the Group;
 - (b) to consult fully with and take account of the views of all members of the Group on any exercise of their functions.
- (2) In any dispute between the members of a Group and the Group managers concerning the exercise of their functions by the Group managers, the person or organization charged with the responsibility of settling the dispute shall have regard to the general principles of the law relating to the duties of trustees in considering and assessing the performance by the Group managers of their functions.

Application by Group to manage forest reserve

46. (1) A Group may by resolution adopted at a meeting of the Group of which all members of the Group have been formed and to which all members of the Group have been invited determine to submit an application to the village council having jurisdiction in the area where the members of the Group reside and which is through village forest management committee managing a village forest reserve.
 - (a) establish a community forest reserve within the village forest reserve;
 - (b) manage the community forest reserve referred to in paragraph (a) on the basis of a joint management agreement between the village council and the Group.
- (2) An application by a Group to a village council to establish and manage a community forest reserve shall include:
 - (a) a copy of other verifiable evidence of the resolution referred to in subsection (1);
 - (b) a list of the name of the Group managers;
 - (c) a description of the area to be established as a community forest reserve within the village forest reserve;
 - (d) a brief statement of the reasons for the application and the proposed objectives to be pursued by the Group in the management of the proposed community forest reserve;

(e) such other matters as may be prescribed.

- (2) A copy of the application referred to in subsection (2) shall, within thirty days of its receipt, be sent by the village council to the local authority having jurisdiction within the area where the village council to which the application has been submitted is situated together with an comments the village council may have on the said application.
- (3) The local authority referred to in subsection (3) shall, within thirty days, forward the application referred to in subsection (2) to the Director together with its comments on the said application and the suitability, from the perspective of the characteristics of the area and of the forest resources within the area and the likely capacity to the Group to manage the community forest reserve and shall send a copy of the said comments to the village council to which the application was submitted.
- (4) The Director shall, after considering the application referred to in subsection (2) and the comments of the village council referred to in subsection (3) and of the local authority referred to in subsection (4), together with any information on the application and the nature and resources of the forest which is the subject of the application from any officers from the division which he has requested shall, within sixty days of the receipt of the said application determine whether to:-
 - (a) make no comment on the application; or
 - (b) recommend that the application be
 - (i) approved, with or without conditions;
 - (ii) referred back for further consideration and negotiations between the village council to which the application was submitted and the Group which submitted the application; or
 - (iii) rejected.

and he shall in respect of any determination referred to in paragraph (a), communicate that determination in writing to the village council to which the application was submitted and in respect of any determination referred to in paragraph (b) give his reasons in writing to the said village council.

- (2) In determining whether to grant, with or without conditions, refer back for further consideration and negotiations or reject the application, the village council to which the application referred to in subsection (2) was submitted shall take fully and carefully into account recommendation of the Director communicated to it

under subsection (4) and the comments of the local authority communicated to it under subsection (3) but shall not be obliged to follow any such recommendation or comments.

(3) Where a village council in determining an application submitted to it under subsection (2) does not follow a recommendation of the Director, it shall record its reasons for not so following any such recommendation in writing and send a copy of such reasons to the Director.

(4) Where the village council agrees to the application, it shall inform the Group managers and thereupon, that village council and the Group managers shall negotiate and agree a joint management agreement for the management of that proposes community forest reserve and to community forest reserve shall be deemed to be established and no Group shall exercise any functions of management within any such proposed community forest reserve unless and until the joint management agreement referred to in this subsection has been agreed to by:

- (a) the Group b resolution adopted at a meeting of the Group of which all members of the Group have been informed and to which all members of the Group have been invited;
- (b) the village council by resolution.

(2) A copy of a joint management agreement to which subsection (7) applies shall be kept at the office of the village council and made available for inspection by any member of the Group and any member of the village, free of any charge or condition, at all reasonable hours during the working day.

Functions of Group as manager of community forest reserve

47. (1) Where a joint management agreement has been agreed between a Group and a village council with respect to the management of the whole or a part of village forest reserve as a community forest reserve, the Group shall be responsible for the management of such community forest reserve in accordance with the terms of the said joint management agreement and without prejudice to the generality of the foregoing, and to the extent that the said joint management agreement does not specifically provide for the same, the Group shall, through the Group managers:

- (a) manage the forest in accordance with the forest management plan prepared and adopted by the village council forest reserve;
- (b) review the existing customs, practices and rights of the members of the Group to enter or live in the forest and use the forest products with a view to proposing the amendment, alteration, adjustment or abolition of any of those customs, practices and rights which in the opinion of the Group managers would be likely to impede the management of the community forest reserve in accordance with the forest management plan;
- (c) make sure rules applicable to the members of the Group and propose to the village council such village bye-laws as it considers necessary or desirable to facilitate the management of the community forest reserve in accordance with the forest management plan;
- (d) appoint such persons as it considers necessary or desirable to perform such functions connected with the management of the community forest reserve and the maintenance of the security of the said reserve and the resources therein as it shall from time to time determine to be necessary to facilitate the implementation of the forest management plan;
- (e) meet such of the costs of management of such community forest reserve as may be agreed in the joint management agreement;
- (f) collect such of the revenue from fees, royalties and licenses charged or issued in respect of such community forest reserve as may be agreed in the joint management agreement and pay them into such accounts as may be provided for in the joint management agreement;
- (g) undertake such other specific management functions as may be prescribed.

(2) Where requested by the Group managers or as the case may be, the village council or where he considers that it is necessary so to do, the Director may provide technical assistance to the Group in connection with the management of a community forest reserve.

(3) In the exercise of their functions of managing a community forest reserve, the Group managers shall have regard to all and any advice which the Director is empowered to give to any and all local authorities or villages respecting their management of local authority and village forest reserves.

Rights and duties of Group members in respect of community forest reserves

48. Unless a joint management agreement specifically provides otherwise, the basic rights and responsibilities of all Group members in respect of a community forest reserve which they are managing under a joint management agreement are as follows:

- (a) the right to exercise existing rights to enter, occupy, use and harvest the produce of the forest jointly with all other members of the Group, in a sustainable manner in accordance with the terms of the agreement;
- (b) the duty to comply with the terms and conditions of any license subject to which any specific activity within the community forest reserve may be carried out by any member of the Group;
- (c) the duty to assist in facilitating the implementation of the forest management plan, including undertaking any communal work connected to the management of the community forest reserve;
- (d) the duty to comply with and assist in the enforcement of any rules set out in the joint management agreement or made by the Group or any forest management bye-laws made by the village council;
- (e) the right to exclude non-members of the Group from the community forest reserve, other than those non-members who have obtained a license to enter and use or harvest the forest or its produce and are exercising their privileges in accordance with the terms of the said license;
- (f) the duty to pay any tax or cess or other levy imposed by the village council to assist in defraying the annual costs of managing and development the community forest reserve;
- (g) the duty not to assign, alienate, or otherwise transfer for value or donate any existing rights exercisable within the community forest reserve held or acquired by virtue of being a member of the Group to a person who is not a member of the Group except in accordance with the terms of the joint management agreement and any rules made thereunder;
- (h) the duty to comply with any decision of Group managers and any directions given by a person working under the direction of the Group managers to facilitate the implementation of any such decision.

Supervision and monitoring of management of community forest reserve

49. (1) Subject to the provisions of this section, the provision of section 9 apply to the management of a community forest reserve.

(2) Subject to the provisions of this section, the provisions of section 42 apply to the management of a community forest reserve.

(3) Where the Director proposes to exercise any power under section 9 with respect to a community forest reserve, he shall inform the local authority having jurisdiction within the area where such community forest reserve is situate in writing of that fact and the said local authority shall not thereafter exercise any powers under section 43 with respect to the same community forest reserve.

(4) Where the local authority having jurisdiction within an area where a community forest reserve is situate proposes to exercise any power under section 42, it shall, prior to any such exercise, inform the Director in writing of that fact with the reasons for the proposed action and shall take no further action unless and until the Director shall, within twenty-one days of the receipt of the said information from that local authority either:

- (a) authorize the said local authority to take such action under section 42 as may be specified in the authorization; or
- (b) inform the said local authority that he proposes to take action under section 9; or
- (c) direct that no action be taken pending further investigation of the matter.

(2) Where a dispute occurs between the Group managers and the other members of the Group or between members of the Group over the management of a community forest reserve which cannot be resolved satisfactorily by and within the Group or by the village council having jurisdiction within the area where that community forest reserve is situate, and such dispute is in the opinion of the local authority having jurisdiction within the area where that community forest reserve is situate, affecting the proper management of that community forest reserve, the Director may at the request of the said local authority appoint an officer or other person of good standing to mediate between the

parties to the dispute and attempt to bring about a solution to the dispute and shall not take any action under section 9 unless and until the mediator has reported to the Director that he has been unable to bring about an acceptable solution to the dispute.

PART VI: LEASES AND LICENCES

Arrangements for the grant and management of leases

50. (1) The Minister may, in accordance with the provisions of this section, arrange for the grant of a lease of forest land to be made by the Commissioner of Lands to any person.
- (2) A lease of forest land may be made available to an person by means of:
 - (a) an auction; or
 - (b) a process of tendering for the land; or
 - (c) an application by any such person for a lease of forest land
- (2) Where a lease of forest land is to be made available by either of the means referred to in paragraphs (a) or (b) of subsection (1), the Director shall publish in one or more newspapers with a national circulation and in such other forms of media as are likely to draw the matter to the attention of persons likely to be interested in the matter:
 - (a) in the case of an auction:
 - (i) the date, time and place of the auction;
 - (ii) whether there is a reserve price on the forest land;
 - (iii) the location of the forest land;
 - (iv) the boundaries and area of the forest land;
 - (v) the uses for which the forest land is being offered for auction and conditions subject to which those uses may take place;
 - (vi) when the forest land may be viewed.
 - (b) in the case of a process of tendering:
 - (i) the location of the forest land;
 - (ii) the boundaries and area of the forest land;
 - (iii) the uses to be permitted on the land and the conditions to which those uses may take place;
 - (iv) the place where full document relating to the process of tendering for the lease of the forest land may be obtained;
 - (v) the fees payable;
- (vi) the date and time when and place where a tender for the lease of the forest land must be submitted;
- (c) inviting all persons and bodies interested, in the case of an auction, in bidding for the forest land and in the case of a tender, in tendering for the forest land to notify the Director of that fact in the prescribed form, giving such details as may be prescribed.
- (2) The Director shall, after consulting with the Commissioner of Lands and taking such advice as he considers necessary and desirable, inform those persons and bodies referred to in paragraph (c) of subsection (2) whether they will be permitted to bid or as the case may be to tender for the lease of the forest land.
- (3) The Minister shall not be obliged to accept:
 - (a) the highest or any bid at an auction of a lease of forest land;
 - (b) the highest or any tender for the lease of the forest land,

but where the Minister proposes to accept a bid or as the case may be a tender lower than the highest bid or as the case may be the highest tender, he shall issue a statement in writing of his reasons for his decision.
- (6) Unless the terms and conditions of the auction or, as the case may be, the tender otherwise provide, a person who has obtained a lease of forest land by means of a successful bid at an auction or a successful tender shall not be absolved from the requirement to seek such permissions and approvals relating to the use of that land as may be specified in this Act or any other law.
- (7) An application to the Minister for a lease of forest land may be made using the prescribed form and paying the prescribed fee.
- (2) An applicant for a lease of forest land shall publish in one or more newspapers with a national circulation and in such other forms of media as are likely to draw the matter to the attention of persons in the area where the said forest land is situate:
 - (a) the location of the forest land;
 - (b) the boundaries and area of the forest land;
 - (c) the uses to which the applicant proposes to put the forest land.

(2) In determining whether to approve an application for a lease of forest land, the Minister shall have regard to:

- (a) the uses to which the applicant is proposing to put the forest land and the manner in which he is proposing to undertake those uses and the compatibility of those proposed uses to the provisions of section 3 of this Act and any forest management plan applicable to the said forest land;
- (b) the resources available to the applicant and likely to be applied to the said forest land;
- (c) the record, if any, of the applicant in managing or exploiting any other forest land whether in Tanzania or elsewhere;
- (d) the attention the applicant has paid and is proposing to pay to associating the local community, if any, with his uses and management of the forest land;
- (e) the contents and conclusions of any environmental impact assessment which has been undertaken in respect of the proposals of the applicant;
- (f) the economic and social benefits and costs, both national and local, which might flow from the grant of a lease, including the implications of employment in and about the leased forest land;
- (g) such representations as he may receive on the proposal from any person;
- (h) such other matters as he may consider relevant to making an informed and responsible decision.

(2) Where a lease of forest land is to be granted out of land declared to be a forest reserve, the provisions of any forest management plan applicable to the forest reserve shall, subject to any amendments which may be made by the Minister, be deemed to be a condition of that lease.

(3) The Minister may attach such conditions to a lease of forest land as will ensure that the provisions of section 3 and where the lease is to be granted out of land declared to be a forest reserve, the objectives of the forest reserve and the forest management plan applicable to that forest reserve, are adhered to and without prejudice to the generality of the foregoing a lease of forest land may include conditions on:

- (a) arrangements for and methods of felling trees, including the rates of extraction of timber;
- (b) construction of roads, bridges, buildings and other structures on the forest land and the use to be made of all the aforesaid;
- (c) arrangements for and methods of transporting timber within and out of the leased forest land;

- (d) gathering and utilization of forest products from the leased forest land;
- (e) afforestation and reforestation;
- (f) disposal of waste;
- (g) avoidance of pollution;
- (h) conservation of flora and fauna within the leased forest land;
- (i) modes of consultation with persons living near to and deriving some of all of their livelihood from the leased forest land;
- (j) cooperation with right holders in respect of existing rights;
- (k) payment of rent, fees, royalties and other imposts;
- (l) rendering of reports to the Division on compliance with the terms and conditions of the lease;
- (m) arrangements for the settling of disputes arising out of the lease between the leaseholder and Government;
- (n) such other matters as may be prescribed or as may be required by any law applicable to leases of land.

(2) Where any lease of forest land is to exceed one thousand hectares in extent, the Minister shall before reaching any final determination on that lease refer the full circumstances to the Committee for its opinion and shall take into account the views and comments of the Committee in making his determination.

(3) Where the Minister has determined the person who is to receive a lease of forest land and terms and conditions of any such lease of forest land, he shall send the name and details of the said person and a copy of those terms and conditions to the Commissioner of Lands who shall incorporate all those terms and conditions into the lease of forest land which he forthwith grant to the said person.

Types of licenses for activities in relation to forests and forest products

51. (1) The following are the licenses which, in accordance with the provisions of this Part may be issued to permit the activities specified therein to be carried on in a forest reserve subject to such conditions as may be attached to the said license; that is to say, licenses to :

- (a) fell or extract timber:
 - (i) for domestic commercial use and sale; or
 - (ii) for export; or
 - (iii) for mining purposes;
- (b) gather and take away other forest produce;
- (c) pluck, pick, take parts or extracts of any protected

- plant for purposes of research or the production or manufacture of any medicine;
- (d) erect buildings or other structures;
- (e) operate sawmills and such other industrial processes and machinery as may be prescribed;
- (a) construct roads, bridges, paths, waterways, railways or runways;
- (b) export timber;
- (h) export such other forest produce as may be prescribed;
- (a) plant trees, crops or other vegetative matter;
- (b) hunt or fish;
- (c) allow domestic animals to enter and graze;
- (d) any other activity for which the granting of a license is specifically required by regulations.
- (2) One license may be granted for all or any of the activities set out in subsection (1) or any combination of the said activities.
- (3) For the avoidance of doubt, it is hereby provided that not every activity set out in subsection (1) may be licensed to be undertaken in every forest reserve.
- (4) No license shall be granted under this Part unless the activity in respect of which the license is applied for is:
 - (a) consistent with any forest management plan applicable to the forest reserve where it is proposed to undertake the said activity;
 - (b) in compliance with any laws pertaining to the environment or land which are applicable to that forest reserve.
- (5) The grant of a license under this Part shall not absolve the license holder from any requirement in any other law to obtain a license or permission under that other law to undertake the activity to which a license issued under this Part relates or any activity which is a necessary consequence of the said activity.

Application for a license

52. (1) An application for a license shall be:

- (a) submitted on a prescribed form;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or a duly authorized representative or agent of the applicant;
- (d) in respect of any activity set out in subsection (1) of section 51 other than the activities referred to in subparagraphs (ii) and (iii) of paragraph (a) and paragraphs (c), (g) and (h), sent or delivered to the forest reserve manager of the forest reserve

- in which it is proposed to undertake the activity for which the license is being applied for;
- (e) in respect of the activities referred to in subparagraphs (ii) and (iii) of paragraph (a) and paragraphs (c), (g) and (h) of subsection (1) of section 51 sent or delivered to the Director;
- (f) contain or be accompanied by such other information as may be prescribed or as the forest reserve manager may in writing require the applicant to supply;
- (g) if made by a non-citizen or foreign company, accompanied by such documentation as may be required to be submitted by such an applicant.

(2) The forest reserve manager may, by notice in writing, require an applicant:

- (a) to submit information relevant to that application, additional to that already submitted with the application; and
- (b) to give such publicity to and undertake such consultations in respect of that application as may be specified in the said notice,

and shall not be obliged to determine the application until the matters referred to in paragraphs (a) and (b) have been complied with to the satisfaction of the forest reserve manager.

(2) A notice of an application shall be affixed in a prominent place in the offices of the local authority and the village council having jurisdiction in the area where the forest reserve in respect of which the application to undertake an activity has been submitted is situate.

(3) An application for a license to undertake any activity referred to in subparagraph (1) of paragraph (a) and paragraphs (d), (e) and (f) of subsection (1) of section 51 which is submitted to a forest reserve manager other than the Director shall be forwarded to the Director and no action or decision shall be taken on that application unless and until the Director shall, in writing and within sixty days or such longer period as may be agreed upon between the Director and the said forest manager of the receipt thereof, either:-

- (a) send his advice on that application to the forest reserve manager to whom the application was submitted; or
- (b) require the forest reserve manager to whom the application was submitted to refer the said application to the Director for his determination; or

- (c) inform the forest reserve manager that the Director has no comment to make on the said application.
 - (5) The forest reserve manager shall maintain a register of applications which have been submitted to him in the prescribed form which shall be available to inspection by the members of the public at reasonable times during office hours.
- Grant of license*
53. (1) The Director in the cases referred to in paragraph (e) of subsection (1) of paragraph (b) of subsection (4) of section 52 and the forest reserve manager in all other cases shall in respect of any application submitted to him, either:
- (a) grant; or
 - (b) grant subject to conditions; or
 - (c) refuse
- that application and shall in every case, unless the circumstances provided for in subsection (2) apply, make one or other of the determinations set out in paragraphs (a) to (c):
- (d) within sixty days of the submission of an application under subsection (1) or the reference of an application under paragraph (b) of subsection (4) of section 52; or
 - (e) where the circumstances set out in subsection (2) of section 52 apply, within sixty days of the satisfactory completion of the matters referred to in the said subsection; or
 - (f) where the circumstances set out in paragraph (a) or (c) subsection (4) of section 52, within sixty days of the receipt by the forest reserve manager of the advice of the Director.
- (2) Where in the opinion of the Director an application that has been submitted to him under paragraph (e) of subsection (1) of section 52 or has been referred to him under paragraphs (a) or (b) of subsection (4) of section 52 raises issues of such importance and complexity that the time set out in subsection (1) is inadequate properly and fully to consider those issues, the Director shall, before the end of the period referred to in subsection (1) inform the applicant in writing of the time which he considers will be necessary satisfactorily to consider and decide on the application but in no circumstances shall the Director extend the period referred to in subsection (1) by more than ninety days.
- (3) In considering the application, the Director or as the case may be the forest reserve manager shall have regard to the following considerations:-
- (a) the nature and purpose of the forest reserve and whether the activity for which the license is being applied for will further or weaken that nature and purpose;
 - (b) the provisions of the forest management plan applicable to that reserve;
 - (c) any guidelines issued by the Director relating to the activity for which the license is being applied for or to the forest reserve in which it is proposed that the activity shall be undertaken;
 - (d) any advice given by the Director under subsection (4) of section 52;
 - (e) the matters set out in paragraphs (b) to (g) of subsection (9) of section 50;
 - (f) the extent to which the grant of a license may interfere with or impede the exercise of any existing rights of right holders within the forest reserve;
 - (g) such other considerations as may be prescribed or as the Director or as the case may be the forest reserve manager think material to the application.
- (4) Every license shall specify:
- (a) the name and address of the person or organization to whom the license has been granted;
 - (b) the activity or activities authorized by the license;
 - (c) the date of issue of the license;
 - (d) the date of expiry of the license;
 - (e) the date by which any activity authorized by the license must be commenced;
 - (f) the forest reserve or part thereof or other place where the authorized activities may be undertaken;
 - (g) the conditions subject to which the license is granted;
 - (h) the fees, royalties and other charges that must be paid in connection with the grant of a license or the undertaking of any activities authorized by the said license;
 - (i) such other matters as may be prescribed.
- (2) A license may be granted for any period up to ten years and may, provided that the conditions of the license have been fully and properly complied with during the currency of the original term and every successive term thereafter be renewed for successive periods of five years.

- (3) Unless the matter is specifically provided for by any condition in a license, a license is personal to the person or organization to whom it is issued and may not be transferred to any other person or organization but this shall not affect the validity of a license granted to a corporate or other body which is transferred to or bought by new owners.
 - (4) Where the Director or as the case may be the forest reserve manager determine to refuse the application for a license, they shall inform the applicant in writing of the reasons for their decision.
 - (5) Where a forest reserve manager makes a determination which does not conform to any advice received by that forest reserve manager from the Director under paragraph (a) of subsection (4) of section 52, he shall send a copy of that determination to the Director with a statement in writing of the reasons for his decision.
- other industrial operation permitted by license within a forest reserve may operate;
 - (g) quality, quantity and specification controls on the export of timber and other forest produce and the exit points for the export of all such produce;
 - (h) the import of equipment to be used in connection with any licensed activity;
 - (i) the volume, the specification and quality of timber licensed to be felled and used for mining purposes and the mines in which any such timber may be used;
 - (j) the terms and conditions under which a license may be transferred to any other person;
 - (k) the circumstances and procedures for varying or modifying a license or any condition thereof;
 - (l) such other matters as may be prescribed.
- (2) A condition may be imposed on a licensee requiring him to undertake some activity on land under his control notwithstanding that the said land is not part of the land on which the licensed activities of the said licensee are to be undertaken but any such activity on which a condition is to be imposed must be connected to or form a part of any licensed activity.

Conditions of a license

54. (1) A license may be granted subject to such conditions as are calculated to ensure that the licensee exercises his powers under a license with due regard to the principles set out in section 3 and to an forest management plan applicable to the forest reserve where the licensee has been authorized by the license to undertake activities and without prejudice to the generality of the foregoing, a license granted under this Act may be granted subject to conditions:-
 - (a) any of those matters set out in subsection (11) of section 50 which are relevant to the specific license which has been granted;
 - (b) the plant protection substances which may be used on or about any crops permitted by license to be grown in the forest reserve, including an requirements to apply integrated pest management practices to the said crops;
 - (c) the methods and equipment to be used in connection with any hunting or fishing permitted by license to take place in the forest reserve;
 - (d) the submission to the Director of a copy of any report or other finished piece of writing arising out of or written as a consequence of any research permitted by license to take place in a forest reserve;
 - (e) the places and periods of the year where and when any domestic animals permitted b license to enter and graze in a forest reserve may do so and the places where any such domestic animals must gain access to and egress from the said forest reserve;
 - (f) the hours of the day during which a sawmill or
- (3) The Director may, in respect of any license granted by him, direct the licensee to post a bond or other guarantee for the payment of such sum of money as may be specified in the direction, being a reasonable estimate of the costs of any activity required as a condition attached to the license connected with the provision of infrastructure or environmental conservation within the forest reserve to which the said license applies.
- (4) A condition shall be deemed to be attached to and form part of an license in respect of which it was issued and shall bind any successor in title to or transferee from the original licensee.

Variation and modification of a license

55. (1) A license may submit an application on the prescribed form to the licensor who granted a license to the said licensee applying for a variation or modification of that license or an condition attached thereto.
- (2) The provisions for section 53 shall apply to an application for a variation or modification of a license as they apply to an application for the grant of a license with such adjustments to the said provisions as the circumstances of the application may require.
- (3) Where it appears to the licensor that the circumstances

pertaining to the grant of a license either with respect to the forest reserve for which the license was granted, or with respect to the activity so licensed or with respect to the licensee having changed to such an extent that it is desirable that the license is varied or modified, he shall send a draft of a proposed variation or modification to the licensee together with a statement of the reasons for the proposed draft.

- (4) The licensee shall within thirty days of the receipt of the draft variation or modification under subsection (3) notify the licensor in writing whether he accepts or rejects the proposed variation or modification and if he rejects it, he shall state his reasons for the rejection and what alternative, if any, he would be prepared to accept.
- (5) On receipt of the notification from the licensee under subsection (3) that he accepts the proposed variation or modification, with or without such minor amendments which do not affect the substance thereof, the licensor shall notify the licensee that the variation or modification shall take effect on a specified date, which shall be not earlier than one month from the date of the notification.
- (6) On receipt of a notification from the licensee under subsection (3) that he rejects the proposed variation or modification, the licensor shall enter into negotiations with the licensee to attempt to conclude an agreement on the proposed variation or modification and where such an agreement is concluded, the provisions of subsection (5) shall thereupon apply.
- (7) Where the licensor and licensee are unable, within a period of sixty days to conclude an agreement on a variation or modification of a license, the licensor shall, either:
 - (a) determine either to withdraw the proposed variation or modification; or
 - (b) issue a notice to the licensee stating that:
 - (i) a variation or modification as provided for in the notice shall take effect in relation to the license of the licensee on a specified date which shall not be earlier than one month from the date of the notice; and
 - (ii) if and insofar as the variation or modification significantly alters the terms and conditions of the license to the disadvantage of the licensee, the licensee is entitled to apply for

a reduction in the terms of any annual payments falling due under the license or to surrender the license.

Surrender of a license

56. (1) Where a licensee wishes to surrender a license, he shall submit an application to surrender using the prescribed form to the licensor who granted him the license together with the license which is to be surrendered.
- (2) A licensor shall not accept the surrender of a license where it appears to the licensor that:
 - (a) the licensee is in breach of the terms or any conditions of the license;
 - (b) any fees, royalties or other imposts arising out of any licensed activity are owing to the Government;
 - (c) the surrender is to avoid any legal liability or the payment of any sums owing to creditors or employees.
- (2) Where a licensor is satisfied that none of the matters referred to in subsection (2) applies to the application to surrender, he shall notify the licensee in writing of his acceptance of the surrender, and any such acceptance may be made subject to such or the conditions set out in subsection (1) of section 54 as will be best calculated to ensure that the surrender of the said license does not affect in any adverse manner the forest reserve where the licensed activities were being undertaken.
- (3) A condition attached to an acceptance of a surrender of a license shall be enforceable in like manner as a condition attached to a license.
- (4) A surrender of a license shall not:-
 - (a) limit any civil or criminal liability of the licensor which may have been caused by or have arisen out of any activities of the said licensor which he undertook while holding the said license; or
 - (b) prevent the licensee from taking any action to ensure compliance with any condition subject to which the license are granted where:
 - (i) the condition was not complied by the licensor when he held the license; or
 - (ii) the condition relates to any activities required to be undertaken after and as a consequence of the carrying out of any licensed activity;

- (iii) prevent any bond or other guarantee of payment made under subsection (3) of section 54 from being forfeit.

Revocation or suspension of a license

57. (1) Where the Director is of the opinion, either of his own motion or as a result of advice or information given to him by an officer, a forest reserve manager or any other person with expertise or knowledge of the matter, that the circumstances set out in subsection (2) of this section apply, he may, in accordance with the provisions of this section, revoke or suspend any license or any activity permitted by a license granted by a forest reserve manager.

(2) The circumstances referred to in subsection (1) are:

- (a) a natural disaster or other supervening natural occurrence has taken place in or about a forest reserve which makes it desirable that the said forest reserve undergo a period of regeneration;
- (b) too many licenses to undertake a particular activity or activities in general within a forest reserve have been issued so that the sustainability of the resources of the said forest reserve are threatened;
- (c) a license has by a process of notation or other legal transaction come into the possession of a person or organization which, had that person or organization made the original application for the said license, the original application would have been refused;
- (d) a license was granted by a forest reserve manager notwithstanding that the Director had, in accordance with the provisions of paragraph (a) of subsection (4) of section 52, advised that the application for a license be refused;
- (e) the activity permitted by the license which it is proposed to revoke or suspend has not been undertaken for a continuous period of not less than one year since the grant of the license or during the currency of the license;
- (f) the circumstances provided for in section 58 apply;
- (g) the Minister has, after taking the advice of the Committee, directed the Director to revoke or suspend a license in order to enable the Government to comply with or take some benefit from an international convention or agreement relating to biodiversity conservation, the preservation of the natural heritage, the protection of flora and fauna, or forest management;

(3) Where the Director is minded to revoke or suspend a license, he shall:

- (a) serve a notice on the licensee, informing him of the intention to revoke or suspend the said license and the reasons for the proposed action, and requiring him to show cause, within forty days, as to why the said revocation or suspension should not take place;
- (b) where the license was granted by a forest reserve manager other than the Director, send a copy of the notice referred to in paragraph (a) to the forest reserve manager, inviting him to make such comments, within forty days on the proposed revocation or suspension, as he sees fit to make.

(4) After considering the responses, if any, of the licensee under paragraph (a) and the forest reserve manager under paragraph (b) of subsection (3), the Director shall, within sixty days of the receipt of the said responses, determine whether to serve a notice of revocation or suspension of the license on the licensee or to proceed no further with the matter.

(5) A notice of revocation or suspension shall be in the prescribed form and shall specify:

- (a) the name of the licensee to whom it applies;
- (b) the activity or activities permitted by the license which are revoked or suspended by the notice;
- (c) the date, being not less than fourteen days from the date of the issue of the notice, from which the notice takes effect;
- (d) where the notice is a notice of suspension, the length of time for which the activity or activities permitted by the license are suspended;
- (e) the penalties which will be incurred if the notice is not complied with;
- (f) the modalities of appeal against the notice;
- (g) the modalities of claiming compensation for losses sustained as a result of the revocation or suspension of a license;
- (h) such other matter as may be prescribed.

(6) Compensation for all and any losses arising directly or indirectly out of or as a consequence of the revocation or suspension of a license on the grounds set out in paragraphs (b), (d) and (g) of subsection (2) shall be payable:

- (a) by the Minister in respect of the revocation or

- suspension of a license on the grounds set out in paragraphs (b) and (g) of subsection (2); and
- (b) by the forest reserve manager which issued the license in respect of the revocation or suspension of a license on the ground set out in paragraph (d) of subsection (2).

- (7) A licensee whose license has been revoked or suspended or who is dissatisfied with the amount of compensation declared to be payable to him under subsection (6) may appeal to the High Court against that revocation or suspension or the amount of compensation declared to Director to revoke or suspend a license or confirm or alter the amount of compensation payable under subsection (6) and make such further or other orders and the circumstances of the case and justice warrants.

Compliance

- 58. (1) Where it appears to the Director that a licensee is in breach of the terms of a license or any conditions subject to which the said license was granted, he may serve a notice of compliance to the licensee and the licensee on whom any such notice of compliance has been served shall be under an obligation forthwith to comply with the said notice of compliance.

- (2) A notice of compliance shall be in the prescribed form and shall specify in such terms as will enable the person on whom it is served to understand it:

- (a) the name of the person to whom it is addressed;
- (b) the action or non-action or other matter which it is alleged constitute the breach of the terms of the license or of any condition attached to the license;
- (c) steps that must be taken to rectify the breach as aforesaid and the time, being not earlier than twenty one days from the date of the service of the notice of compliance, by which those steps must be taken and the reason why those steps are being required;
- (d) compensation, if any, that must be paid by the licensee to make good the losses or damage caused by the breach as aforesaid;
- (e) steps that will be taken by the Ministry to rectify the breach if the licensee does not comply with the notice of compliance, including entering on to land under the control of the licensee and taking any property under the control of the licensee as part of a process of rectifying the breach or obtaining compensation in respect of the breach;
- (f) penalties which may be imposed in the event of non-compliance with the notice of compliance,

which penalties may include the revocation of the license, the breach of which is the subject of the notice of compliance;

- (g) the modalities of appealing against the notice of compliance;
- (h) such other matters as may be prescribed.

- (2) The steps referred to in paragraph (c) of subsection (2) may include may include all such actions and activities, including the cessation of any actions and activities which may reasonably be required to rectify the breach which has occurred and may also include all and any such steps as aforesaid which are necessarily ancillary to the rectification of the breach and all or any of such steps may be required to be taken on land on which the licensed activities may take place or on any other land under the control of the licensee or in respect of any other property under the control of the licensee or in respect of any other property under the control of or being used to the orders of the licensee.

- (3) The compensation referred to in paragraph (d) of subsection (2) may include:

- (a) payment by the licensee on whom a notice of compliance has been served to the Government of any income derived by the said licensee from any actions or activities in breach of the terms of a license or any conditions subject to which the license was granted and in determining the said income to be paid for in Government, no account shall be taken of any expenses incurred in producing the said income;
- (b) compensation for any loss of or any physical damage caused to any forest produce within a forest reserve or to the forest generally;
- (c) compensation for any loss of or any damage caused to any protected wild plants or protected wild animals;
- (d) compensation for general environmental damage, including damage to the sustainability of the forest resources or any part hereof of Tanzania;
- (e) compensation to any right holders of existing rights for interference with those existing rights;
- (f) compensation to other licensees for any losses sustained by those licensees as a consequence of any breach in respect of which a notice of compliance has been served;
- (g) such other matters as may be prescribed.

- (5) A licensee on whom a notice of compliance has been served may appeal to the High Court against the service or the contents of the said notice on and only on the grounds that:

- (a) he is not the person named in the notice of compliance;
 - (b) he is not responsible for the breaches which are subject of the notice of compliance;
 - (c) the actions or activities, including the non-actions and non-activities set out in paragraph (b) of subsection (2) do not constitute a breach of the terms of the license or any conditions attached thereto that was granted to him;
 - (d) the steps that are required to be taken to rectify the breach are excessive or unreasonable or the time within which the steps must be taken is unreasonable;
 - (e) the compensation that is required to be paid is out of proportion to or does not relate to the damage that the breach has caused.
- (2) The High Court may confirm, vary or rescind the decision of the Director to serve a notice of compliance or confirm, discharge in whole or in part or modify the notice of compliance or the compensation required to be paid by the notice of compliance and make such further or other orders as the circumstances of the case and justice warrants.
- (3) Where a licensee does not comply with a notice of compliance within the time stated in the said notice or within such further time as the Director may, on request from the licensee and at his discretion, allow, the Director may, in accordance with the provisions of section 57, revoke the license granted to the said licensee.
- (4) Nothing in this section shall be taken to prevent the Director from:
- (a) delegating the power of serving a notice of compliance to a forest reserve manager, subject to such conditions and limitations as he may consider necessary and desirable; or
 - (b) sending one or more warning notices to a licensee falling within the terms of subsection (1) advising the said licensee to comply with the terms of the license granted to him and any and all conditions attached to the said license prior to serving a notice of compliance on the said licensee but this paragraph shall not be taken as imposing any duty on the Director to send any warning notice prior to serving a notice of compliance.

Stop orders

59. (1) Notwithstanding any of the provisions contained in section 58, where the breach of the terms of a license or any condition attached thereto consists of or includes

cutting down, felling, damaging, digging up or removing any tree or forest produce or protected wild plant for purposes of sale, barter or profit or for use in any trade, industry, commercial or research undertaking, the Director may issue an order, to be known as a stop order, and serve a copy of such notice on the licensee on whom a notice of compliance has been served and any persons acting on behalf of or under the instructions of or with the knowledge, express or implied of the licensee carrying on any of the activities to which this subsection refers directing the said licensee and those persons to stop that activity forthwith.

- (2) A stop order shall contain such information and be made known in such manner as will enable the person or group of persons on whom it is served to understand and comply with the order which is contained therein and subject to this overriding principle, it shall contain such information and be in such form and be made known to the persons on whom it is served in such manner as may be prescribed.
- (3) A person on whom a stop order is served shall forthwith cease and desist from any of the activities referred to in the said stop notice and where that person is a licensee on whom a notice of compliance has been served, he shall be under a duty to direct all his employees and contractors and all other persons acting under his control to cease and desist from the said activities.
- (4) Any person who has been served with a copy of a stop order may appeal to the High Court against such order but any stop order which is appealed against shall remain in force and effect notwithstanding the making of an appeal, and the High Court may confirm, discharge in whole or in part or modify the stop order and make such further or other orders as the circumstances of the case and justice warrants.

PART VII: TRADE IN FOREST PRODUCE

Prohibition of export of forest produce without export certificate

60. (1) No person shall export or enter for export any timber or other forest produce unless and until:
- (a) a valid export certificate has been issued by the Director in respect of that timber or other forest produce; or
 - (b) that timber or other forest produce has by an order made by the Minister and published in the *Gazette* been exempted from the provisions of paragraph (a).

- (2) No export certificate for the export of timber shall be granted or shall be valid except in relation to graded timber, the origin and grade of each piece of timber of which accords with the marks placed thereon.
- (3) No export certificate for the export of forest produce other than timber shall be granted or shall be valid except in relation to forest produce which has been certified by a duly authorized officer as having complied with such standards of quality as may be prescribed.
- (4) Every export certificate shall be in the prescribed form and shall expire six months after the date of issue.

Restrictions on exports

61. (1) No person shall export timber or other forest products except through such places or ports of exit as the Director may by notice published in the *Gazette* declare to be places or ports of exit for the purposes of this subsection.
- (2) No person shall export any timber or other forest produce in respect of which an export certificate has been issued except in the state in which it was when the said export certificate was issued.
- (3) Where any graded timber or other forest produce which has been certified as being of the requisite quality to be exported is in the opinion of the Director so handled or stored whilst in transit that such timber or other forest produce is not in the state it was when the export certificate was issued, the said export certificate in respect of such timber or other forest produce may be cancelled by the Director.
- (4) Where a holder of an export certificate can prove to the satisfaction of the Director that the matters referred to in subsection (3) were due to circumstances beyond his control, he shall be relieved from any liability to which he might otherwise be exposed under the provisions of subsection (3).
- (5) No person shall sign, issue or use in respect of any timber or other forest produce any document being or purporting to be an export certificate under this Part knowing or having reason to believe that the same is false either wholly or in any material particular and where such a person as aforesaid makes any contract or other agreement on the basis of such a false certificate, that contract or other agreement shall be void.

Authorization of graders and inspectors

62. (1) The Director may, either on the basis of an application made in the prescribed manner or of his own motion authorize in writing any suitable person to be a grader of timber or an inspector of forest produce for the purposes of carrying out the provisions of this Part.
- (2) Where the Director refuses to authorize an applicant to be a grader or an inspector, he shall give reasons to the said applicant for his decision.
- (3) Every authorization issued under this section shall be personal to the holder thereof and shall expire on the 31st day of December of the year in which it has been issued.
- (4) The Director may, after giving notice of not less than thirty days to the holder of an authorization issued under this section of his intention to suspend or revoke the said authorization and considering any representations that such a holder may make thereon, suspend or revoke any authorization on the ground that he is not satisfied with the qualifications or experience of the holder of the authorization or with the manner in which the holder has carried out his duties.

Inspection of forest produce before export

63. (1) Where application of grading or inspection in respect of any timber is made to a grader, such timber shall be stacked by the owner or exporter thereof in convenient parcels to admit of inspection piece by piece by the grader at the owner's sawmill or the exporter's premises or such other place as the grader may require.
- (2) Where an application for inspection in respect of any forest produce is made to an inspector, the produce shall be set out in such a manner as will admit of thorough inspection by the inspector at the owner's place of production or the exporter's premises or such other place as the inspector may require.
- (3) A grader may refuse to grade timber if for any reason, a copy of which shall be given to the owner and exporter, he considers it to be in an unfit condition for export.
- (4) An inspector may refuse to inspect any forest produce if for any reason, a copy of which shall be given to the owner and exporter, he considers it to be in an unfit condition for export.

- (5) In relation to timber, a grader, and in relation to forest produce other than timber, an inspector, may at any time inspect timber or as the case may be forest produce other than timber for any purpose connected with checking or confirming the grading or quality of the timber or as the case may be the forest produce.
- (6) All handling charges in respect of grading or inspection or an inspection to confirm the grading of timber or for any other purpose connected with timber or forest produce shall be at the expense of the owner or exporter who shall provide a necessary services, labour and other facilities as may be required by a grader or an inspector to enable any such inspection to be carried out.
- (7) Any person aggrieved by a decision of a grader or an inspector may appeal within thirty days of the decision to the Director and the Director may confirm, vary or reverse any such decision of a grader or inspector and where he varies or confirms any such decision, he shall, in writing, give the reasons for his decision to the appellant.
- (8) Any person aggrieved by a decision of the Director may appeal to the High Court and the High Court may confirm, vary or reverse in whole or in part the decision of the Director and make such further or other orders as the circumstances of the case and justice warrants.

Prohibition of marking by unauthorized person

64. (1) No person other than a grader shall mark any timber with any mark prescribed under this Act.
- (2) No person other than an inspector shall mark or place on any forest produce any mark prescribed under this Act.
- (3) No person shall mark any timber or place upon any forest produce any mark so similar to any mark prescribed under this Act that it may or can be mistaken for any mark so prescribed.
- (3) Where the owner of a piece of graded timber or any person acting under the authority of such an owner desires to re-saw it or otherwise alter its state, he shall before doing so effectively obliterate the prescribed mark so that it cannot be recognized as a mark prescribed under this Act.
- (4) Where the owner of marked forest produce or any person acting under the authority of such an owner desires to alter the state of that marked forest produce,

he shall before doing so effectively obliterate the prescribed mark so that it cannot be recognized as a mark prescribed under this Act.

Power to control movement of timber and forest produce

65. (1) The Minister may, by order published in the *Gazette*, prohibit or restrict the movement of timber of any kind, quantity or description both within Tanzania and from Tanzania for such periods as shall be specified in the order.
- (2) In determining whether to exercise powers under subsection (1), the Minister shall have regard to:
 - (a) the need to maintain the quality of exports of timber and forest produce;
 - (b) the need to contain and prevent the spread of any disease affecting trees, timber or other forest produce;
 - (c) the importance of conforming to international agreements and standards relating to the export of timber;
 - (d) the prevention of any criminal activity in relation to the export or sale of timber and other forest produce;
 - (e) such other factors affecting the sustainability of forests and the welfare of those obtaining a livelihood therefrom as appear to be relevant and appropriate.

Restrictions on imports of timber and forest produce

66. (1) The Minister may by order published in the *Gazette*, prohibit or restrict the importation into Tanzania Mainland of any timber or forest any produce other than timber and any such order shall state:
 - (a) the timber or as the case may be the forest produce the subject of the order;
 - (b) the date, being not earlier than sixty days from the date of the publication of the order when the order is to come into effect;
 - (c) the period for which the prohibition or restriction is to be in operation.
- (2) Any timber or forest produce imported into Tanzania Mainland in contravention of any order made under subsection (1) shall be liable to be confiscated by the state.
- (3) It shall be a valid defense to any action taken by the state under subsection (2) for a person concerned with the importation of any timber or forest produce the subject of an order made under subsection (1) to prove

that the process of importation had commenced at the time the said order was published and that it was not practicable or possible to stop the importation before the said order came into effect.

PART VIII: CONSERVATION OF TREES, WILD PLANTS AND WILD ANIMALS

Reserved trees

67. (1) The Minister may, order published in the *Gazette*, declare in respect of any unreserved land that any tree or class of tree shall be reserved.
- (2) Any such order as is referred to in subsection (1) may contain such exceptions and exemptions from its provisions in respect of such persons and such unreserved land as the Minister may provide in such order.
- (3) If any unreserved land referred to in any order made under subsection (1) ceases to be unreserved land, the provisions of any such order shall cease to apply in respect of such land.
- (4) Subject to any exception or exemption provided for in any order, no person may, without a license or other lawful authority:
- (a) fell, cut, lop, damage or remove any reserved tree or any part thereof on any unreserved land;
 - (b) take and offer for sale any produce from any reserved tree.

Restrictions on cutting of timber

68. (1) If the Minister, after taking advice from the Director and such other persons and organizations as appear to him to be knowledgeable on the matter considers that the cutting of indigenous timber on any land held for a right of occupancy may result in:
- (a) damage to the locality by fire, climatic factors or soil erosion; or
 - (b) interference with natural water supplies; or
 - (c) interference with or the hindrance of the natural regeneration of vegetation; or
 - (d) loss of biodiversity; or
 - (e) general deterioration of the environment of the locality;
 - (f) a general shortage of timber in the locality;
- and that it is in the general public interest that action be taken to prevent all or any of the matters referred to in paragraphs (a) and (f), he may give such

written directions to the occupier of the land or to any person authorized by the occupier to cut timber on that land to adopt all or any of such measures as are set out in subsection (2) as he may consider necessary to prevent the occurrence of any or all of the matters referred to in paragraphs (a) to (f).

- (2) The measures which may be made the subject of directions given under subsection (1) may relate to:
- (a) the method of cutting and removal of trees on the land and the route by which such trees shall be removed;
 - (b) the prohibition of or restriction of cutting trees on the land;
 - (c) the afforestation or reforestation of the land.
- (2) If the occupier of land fails or neglects to carry out the actions referred to in paragraph (c) of subsection (2) within such reasonable time as the Minister may have fixed, the Minister may cause to be carried out or completed any work which is necessary to give effect to the notice and the cost of any such work shall be a debt due by the occupier of the land to the state.
- (3) An occupier of land in receipt of a direction issued under subsection (1) may appeal to the High Court on one or both of the following grounds:
- (a) that the circumstances do not justify the making of the direction;
 - (b) that the terms of the direction are unreasonable;

and the High Court may confirm, vary or quash in whole or in part the direction and make such further or other orders as the circumstances of the case and justice warrants.

Protected wild plants

69. (1) The Minister shall, after consultation with the National Environmental Management Council and such other bodies and organizations within the public and private sectors that appear to him to have expertise in the matter and taking account of any international agreements which contain provisions on the matter prepare and publish in the *Gazette* one or more lists of wild plants which shall be totally protected within all forest reserves and on unreserved land so as to preserve and maintain biodiversity and genetic resources within Tanzania and shall thereafter from time to time, by notice published in the *Gazette* amend or add to or delete from any such published list.

- (2) The publication of a list of wild plants in the *Gazette* shall operate to confer protection on all wild plants listed in such list.
 - (3) The Minister shall cause publicity to be given to any list of wild plants together with an explanation of the reasons for any such list being made in such manner and form and using such media as is best calculated to bring such lists to the attention of all persons.
 - (4) No person shall pick, take samples or any part from or in any way interfere with or willfully and intentionally poison, damage or destroy in any way or by any means any listed wild plant.
 - (5) Where in any forest reserve there are right holders exercising existing rights to use any wild plant or any part thereof or any produce therefrom and any such wild plant is listed, the Director shall forthwith and in association with the right holders or any organization of right holders or any person representing those right holders prepare a scheme to enable such right holders to use such wild plant as aforesaid with due regard to the need to protect that wild plant and adhere to the purposes for which it has been listed and until such scheme is prepared and agreed to by the right holders, the provisions of subsection (2) apply to such right holders.
 - (6) The Director may, having regard to the purpose for which any wild plant is protected and the rarity and importance of the plant, grant a license to be known as a research license to any person with the appropriate qualifications from or with proven affiliations to a reputable research organization in the public or private sector, including any department from a university, specializing in environmental, scientific or medical studies and work who applies for such a license to conduct research on the said plant within a forest reserve and any such research license may permit the holder thereof to take samples from the said plant and remove those samples from the said forest reserve.
 - (7) The Director shall keep any list of wild plants under continuous review and may, after consulting with the Commission and all those persons and organizations referred to in subsection (1) from time to time recommend to the Minister amendments, and additions to and deletions from any such list.
- relevant bodies and organizations within the public and private sectors that appear to him to have expertise in the matter and taking account of any international agreements which contain provisions on the matter prepare and publish in the *Gazette* one or more lists of wild animals which shall be totally protected within all forest reserves and shall thereafter from time to time, by notice published in the *Gazette* amend or add to or delete from any such published list.
 - (2) The publication of a list of animals in the *Gazette* shall operate to confer protection on all wild animals listed in such list.
 - (3) The Minister shall cause publicity to be given to any list of wild animals together with an explanation of the reasons for any such list being made in such manner and form and using such media as is best calculated to bring such lists to the attention of all persons.
 - (4) No persons shall kill, injure, destroy, drug, capture, collect, or take any listed wild animals or taken injure or destroy any egg or nest or part thereof or any hair or part thereof of any wild animal or transport any wild animal from one part of a forest reserve to another part of the same forest reserve or to a different forest reserve.
 - (5) The Director may, having regard to the purpose for which any wild animal is protected and the rarity and importance of that animal, grant a license to be known as a research license to any person with the appropriate qualifications from or with proven affiliations to a reputable research organization in the public or private sector, including any department from a university, specializing in environmental, scientific or medical studies and work who applies for such a license to conduct research on the said animal within a forest reserve but no such license shall be valid and effective unless and until it has been approved by the Director of the Tanzania National Parks Authority.
 - (6) The Director shall keep any list of wild animals under continuous review and may, after consulting with the Authority and all those persons and organizations referred to in subsection (1) from time to time recommend to the Minister amendments, and additions to and deletions from any such list.

Protected wild animals

70. (1) The Minister shall, after consultation with the Tanzania National Parks Authority and such other

Preparation of schemes to implement international conventions on conservation of biodiversity etc.

71. (1) The Minister, in consultation with the Minister for the time being responsible for foreign affairs and

international relations, may prepare schemes to facilitate the implementation of international conventions and agreements relating to the conservation of biodiversity, the protection and enhancement of forests and preservation of wild plants which have been agreed to by the Government.

- (2) A scheme may set out all or any of the provisions of the international convention or agreement which is the subject-matter of the scheme together with such additional provisions as may be necessary to enable the said provisions to be complied with by the Government.
- (3) A scheme shall be laid before the National Assembly and shall not come into force unless and until it has been approved by the national Assembly.
- (4) An approved scheme shall be published in the *Gazette*.
- (5) Nothing in this section shall operate to prevent the Government from incorporating provisions from an international convention or agreement relating to the matters referred to in subsection (1) into an Act of Parliament notwithstanding that the Government has not agreed to or ratified any such international convention or agreement.

PART IX: FIRES

Restriction on burning of vegetation

- 72. (1) Unless otherwise exempt by an order made by the Minister and within any area of Tanzania Mainland:
 - (a) burn any vegetation on any land;
 - (b) willfully or negligently kindle or cause to be kindled any fire which he has reasonable cause to believe may spread so as to destroy or damage any property of any other person or the state.
- (2) Every person who intends to burn vegetation on his own land or on any other land in pursuance of any authority so to do from the person having control of the said land or from an administrative officer, shall, before proceeding so to burn any vegetation give not less than three days notice of his intention to burn the said vegetation in such form as will enable the persons to whom it is addressed to understand it, to:
 - (a) the occupiers of all land which is situated within half a kilometre of the place where the burning is to take place;

- (b) the administrative officer who has authorized the burning of vegetation on any land or where the burning is to take place on the burner's own land, an administrative officer responsible for such matters from a local authority having jurisdiction over the place where the burning is to take place.

- (2) The notice referred to in subsection (2) shall:
 - (a) be in writing and delivered by hand or given orally whichever is likely to be more effective;
 - (b) be deemed to take effect from the time it is given; and
 - (c) shall state as near as may be the time at which the burning will take place.
- (2) The administrative officer referred to in paragraph (b) of subsection (2) shall inspect the area where the burning is to take place and if he is satisfied that the area is clear of danger, shall issue a permit to light a fire.
- (3) If for any reason the burning does not take place at the time specified in the notice, a further notice in terms of subsections (2) and (3) shall be required to be given by the person intending to undertake the burning.
- (4) Where a fire lawfully kindled after notice given in terms of subsections (2) and (3) spreads to other land, the fact that such notice was given shall:

- (a) be a sufficient defense to any person who kindled or was responsible for the fire to any charge of contravening the terms of this section unless it is proved that such a person willfully or by the negligence himself, his employees or agents caused or permitted such fire to spread across the boundaries of the land on which the burning took place to such other land; but
- (b) not affect the right of any person aggrieved to sue for and receive damages in respect of any loss sustained by him as a result of such fire.

Power to require persons to assist in extinguishing fire

- 73. (1) Whenever there is good reason to believe that any fire in the open air may become dangerous to life or property, any person acting in good faith shall:
 - (c) notify the occupier of the land upon which such fire is burning of his belief; or where the occupier is not present on the land or is not present in the vicinity of the fire,
 - (d) either alone or with other persons enter upon any

land for the purpose of extinguishing that fire or for preventing the extension thereof.

- (2) Any owner notified of a fire on his land shall take all reasonable steps to extinguish that fire or prevent its extension and to this end he may require any persons present at or in the vicinity of such fire to render assistance or do any act or perform any service as he may consider necessary or expedient to control, extinguish or prevent the spread of such fire.
- (3) Any person in the vicinity of a fire has the obligation whether called upon to do so or not, to attempt or assist in extinguishing such fire which he has reasonable cause to believe is not under control or may become dangerous to life or property but no person shall be obliged to take any action with a reasonable person or firm disposition would consider likely to endanger his life or cause him injury.
- (4) Any person acting in terms of paragraph (a) of subsection (1) or any occupier of land acting in terms of subsection (2):
 - (a) shall have the control of persons whom he has required to assist him and of persons who voluntarily place their services at his disposal;
 - (b) may take all such measures as in the circumstances are reasonable and necessary or expedient for the protection of life and property or for extinguishing or preventing the spread of fire and may for this purpose, cause reasonable destruction of any trees, grass, crops or other vegetation by citing, burning, ploughing or otherwise;
 - (c) may order any person whose life may be or may become endangered or whose presence at or in the vicinity of the fire may interfere with any operation in connection with the fire, to remove himself or any vehicle or other thing under his control.
- (2) If the occupier of land fails or neglects to carry out the actions referred to in paragraphs (a) and (b) of subsection (1) within such time being not less than sixty days from the date of the notice as the Director may be fixed, the Director may carry out or complete any work which is necessary to give effect to the notice and the cost of any such work shall be a debt due by the occupier of the land to the state.

Orders in relation to fireguards

74. (1) Where the Director is satisfied that vegetation on

any land is of such a nature that a boundary fireguard is necessary to provide proper protection to adjoining forest from the risk of fire, the Director may by written notice to the occupier of such land upon which such vegetation occurs direct the said occupier:

- (a) to provide a fireguard on the boundary of his land of such a width as may be specified in the notice;
- (b) to establish and maintain internal fireguards on the land in his occupation of such width as may be specified in the notice.
- (2) If the occupier of land fails or neglects to carry out the actions referred to in paragraphs (a) and (b) of subsection (1) within such time being not less than sixty days from the date of the notice as the Director may have fixed, the Director may carry out or complete any work which is necessary to give effect to the notice and the cost of any such work shall be a debt due by the occupier of the land to the state.
- (3) An occupier of land in receipt of a direction issued under subsection (1) may appeal to the High Court on one or both of the following grounds:
 - (a) that the circumstances do not justify the making of the direction;
 - (b) that the terms of the direction are unreasonable; and the High Court may confirm, vary or quash in whole or in part the direction and make such further or other orders as the circumstances of the case and justice warrants.

Fire kindled on adjoining forest land to be controlled and extinguished

- 75 Any person who is upon an adjoining forest land, whether lawfully or not or upon any road or vacant land shall carefully and properly extinguish any fire kindled or used by him and until he has done so shall not go so far from any such fire as to be unable to control it by himself or his employees.

Savings of counterfiring

- 76 Nothing in this Act contained shall be deemed to prohibit any person when his life, person or property is in danger of loss or injury from an approaching fire, from setting alight to and burning vegetation in the manner commonly known as counterfiring in order to prevent such loss or injury.

Saving of right to recover damages

- 77 Save in respect of any reasonable and necessary action taken under the provisions of sections 73 and 76, nothing in this Part shall be deemed to affect the right of any person aggrieved to recover damages by civil action for any loss sustained by him.

PART X: FINANCIAL PROVISIONS

Power to charge fees

78. (1) The Minister may, after consulting with the Minister for the time being responsible for finance determine and thereafter prescribe, the services and licenses for which fees shall be charged by forest reserve managers and their corresponding charge rates.
79. (1) A charge rate may be set out in the form of a band of charges with the maximum and minimum rates of charges prescribed together with discretion to charge any rate within the band of charges.
- (2) The Minister shall issue guidance to forest reserve managers as to the rate of charges that should be levied in respect of such services and licenses as are determined by the Minister to be charged for.

Power to set and collect royalties

80. (1) Any license relating to the harvesting or extraction of any forest produce from any forest classified under section 4, shall, subject to the provisions of this section, be granted subject to the payment by the license holder of such royalties at such times and in such instalments as the Minister shall after consulting with the Minister for the time being responsible for finance, determine and thereafter prescribe.
- (2) In determining the level of royalties in connection with any particular produce, regard shall be paid to:
- the potential market value of the produce;
 - the accessibility of the produce;
 - principles of sustainability in connection with harvesting of the produce;
 - such other factors as may be prescribed.
- (2) No royalties shall be required for the harvesting or extraction of forest produce within a village forest reserve or a community forest reserve by the residents of the village or the members of a Group as the case may be unless such a requirement is specifically

provided for in the agreement under which the village forest reserve or as the case may be the community forest reserve is managed.

Establishment of Tanzania Forest Fund

81. (1) There is hereby established a fund to be known as the Tanzania Forest Fund.
- (2) The Fund shall consist of:
- a levy of two per cent of every prescribed fee payable under this Act;
 - a levy of three per cent of any royalty payable under this Act;
 - any sums appropriated to the Fund by Government;
 - any sums contributed by any private individuals, corporate bodies, foundations, or international organizations or funds within or without Tanzania;
 - any sums realized by the sale of any forest produce confiscated under any of the provisions of this Act;
 - any income generated by any project financed by the Fund, due allowance being made for any necessary expenses which must be met by any such project.
- (2) The Fund shall be managed by the Tanzania Forest Fund Trustees who shall be appointed by the Minister.
- (3) The composition and procedures of the Trustees shall be provided for in the Second Schedule.

Purposes of the Fund

- 82 The objects and purposes of the Fund are to:
- promote awareness of the importance of the protection, development and sustainable use of forest resources through public education and training;
 - promote and assist in the development of community forestry directed towards the conservation and protection of the forest resources of Tanzania through the making of grants and loans and providing advice and assistance to groups of persons wishing to form themselves into a Group;
 - promote and develop research into forestry;
 - assist in enabling Tanzania to benefit from the other international funds directed towards the conservation and protection of biological diversity and the promotion of sustainable development of forest resources;
 - assist groups of persons and individuals to participate in any public debates and discussions on forestry

and in particular to participate in processes connected with the making of an environmental impact assessment under section 22;

- (f) assist groups of persons and individuals to ensure compliance with this Act;
- (g) such other activities of a like nature to those set out in this subsection as will advance the purposes of this Act

Administration of the Fund

83. (1) The Trustees shall:

- (a) establish one or more separate accounts in a bank certified by the Bank of Tanzania to be a reputable bank into which all monies received by the Fund shall be paid and out of which all monies to be paid out of the Fund shall be paid;
 - (b) prepare annual estimates of income and expenditure and adhere to any such estimates;
 - (c) ensure that the operations of the Fund are exercised in an economical and efficient manner;
 - (d) manage the resources of the Fund in a prudent and business-like manner;
 - (e) prepare and publish an annual report which shall include:-
 - (i) an account of the operations of the Fund during the year covered by the report;
 - (ii) a set of audited accounts;
 - (i) such other matters as may be prescribed.
 - (a) appoint such full-time and part-time staff as seems to the Trustees to be appropriate and necessary to ensure that the matters referred to in this section are implemented;
 - (b) take all such other action as will advance the objects and purposes of the Fund.
- (2) Where the Minister is of the opinion that the Trustees are not carrying out their functions in a proper and reputable manner, he shall give them such directions in writing as are best calculated to ensure that the Trustees shall, thereafter, carry out their functions in a proper and reputable manner and the Trustees shall comply with any such directions so given to them.
- (3) The accounts of the Fund shall be audited on an annual basis by the Controller and Auditor-General or by a firm of auditors certified by the Controller and Auditor-General to be a firm capable of undertaking such work.

PART XI: OFFENCES AND LEGAL PROCEEDINGS

Offences in forest reserves

84. (1) Any person who without an existing right so to do or a license or other lawful authority under this Act within a forest reserve:

- (a) performs any act which is prohibited by section 27 or which is prohibited by a forest management agreement;
 - (b) obstructs any existing road, path or water course;
 - (c) covers any tree stump with brushwood or earth or by any other means whatsoever conceals, destroys, or removes such tree stump or any part thereof;
 - (d) damages, defaces, alters, shifts, removes, or in any way whatsoever interferes with any beacon, fence or other boundary mark or notice, or notice board, shall be guilty of an offence against this Act.
- (2) If any person, without lawful excuse, the burden of proof of which shall be on him within, or in the vicinity of any forest reserve has in his possession any implement for cutting, taking, working or rendering any forest produce, he shall be guilty of an offence against this Act.
- (3) If any livestock are found grazing or depastured in or entering any forest reserve such livestock shall be presumed, unless the contrary is shown to have been grazed, depastured or allowed to enter by the authority of the owner and the person, if any, actually in charge of such livestock.
- (4) The Director may by notice published in the *Gazette* exempt the whole or part of any forest reserve from the application of provisions of any of the paragraphs of subsection (1) or of subsection (2) subject to such terms and conditions as he may think fit and any such notice shall be:-
- (a) exhibited in a conspicuous place in the offices of all local authorities within whose area of jurisdiction any part of the forest reserve to which the notice applies is situate or is contiguous thereto; and
 - (b) given publicity to in such manner as is customary in the area or as is otherwise calculated to bring it to the attention of all persons living in or in the vicinity of or deriving their livelihood from or using on a regular basis any part of the forest reserve.

- (2) Any person committing an offence under this section shall be liable to a fine of three hundred thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Offences relating to trees not in forest reserves

- 85 Any person who without a license or other lawful authority under this Act fells, cuts, lops damages, removes or sells an reserved tree or any part thereof on unreserved land shall be guilty of an offence against this Act and liable to a fine of three hundred thousand shillings or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Offices relating to listed wild plants and listed wild animals

86. Any person who without any existing right to do so or without lawful authority or excuse, the proof of which lies upon him, under this Act:
- (a) picks, plucks, take samples or any part form or in an way interferes with or willfully and intentionally poisons, damages or destroys in any way or by any means any listed wild plant;
 - (b) kills, injures, destroys, drugs, captures, collects, or takes any listed wild animal or takes, injures or destroys any egg or nest or part thereof or any hair or part thereof of any wild animal or transports any wild animal from one part of a forest reserve to another part of the same forest reserve or to a different forest reserve;
 - (c) exposes for sale or purchase or has in his possession or control any listed wild plant or part thereof or listed wild animal, or nest or egg or skin thereof intending to offer the same for sale of purchase;
 - (d) exports or attempts to export any listed wild plant or any part or seed thereof or any listed wild animal or any nest, egg or skin or other part thereof,

shall be guilty of an offence against this Act and shall be liable to a fine of three hundred thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Offences relating to unlawful taking, possession or receiving of forest produce

86. Any person, who without lawful authority or excuse, the burden of proof which shall be upon him, takes, receives or is found in possession of forest produce with respect to which an offence against this Act has been committed,

unless he can account for such possession or can show that he came by such produce innocently shall be guilty of an offence against this act and shall be liable to a fine of three hundred thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Offences relating to trade in forest produce

- 88 Any person who, without lawful authority or excuse, the proof of which lies upon him:
- (a) harvests forest produce to which this Act applies;
 - (b) operates, or causes to be operated a vehicle to carry, haul, evacuate, or transport forest produce harvested in contravention of this Act;
 - (c) carries, hauls, or evacuates by non-mechanical means any forest produce harvested in contravention of this Act;
 - (d) offers for sale, sells or buys forest produce harvested in contravention of this Act;
 - (e) stocks forest produce harvested in contravention of this Act;
 - (f) not being an authorized grader, marks any timber with a prescribed mark;
 - (g) exports or enters for export any forest produce for which an export certificate is required without a valid export certificate.

Shall be guilty of an offence against this Act and shall be liable to a fine of five hundred thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Counterfeiting and similar offences

Any person who:

- (a) counterfeits, alters, obliterates or defaces any stamp, mark, sign, license, permit, certificate, authority, or receipt used or issued under this Act or any rules, orders or notices issued or made under this Act;
- (b) fraudulently or without due authority uses or issues any stamp, mark, sign, license, permit, certificate, authority or receipt intended to be used or issued under this Act or an rules, orders, or notices issued or made under this Act;
- (c) marks any timber, whether such timber has been marked by an authorized grader or inspector or not, with a mark so similar to any mark prescribed by this Act or any rule made under this Act that it may or can be mistaken for such prescribed mark,

shall be guilty of an offence against this Act and shall be liable to a fine of five hundred thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Offences in connection with fires

89 Any person who, without lawful authority or excuse, the proof of which shall lie upon him:

- (a) lights or assists in lighting or uses, rekindles or adds fuel to any fire or causes any of these activities to take place;
- (b) leaves unattended a fire which he, with or without authority has lighted or assisted in lighting or used or rekindled or to which he has added fuel before such fire is thoroughly extinguished;
- (c) fails to comply with any lawful order issued to him under and in connection with any of the provisions of Part IX of this Act,

shall be guilty of an offence against this Act and shall be liable to a fine of three hundred thousand shillings or to imprisonment for period not exceeding one year or both such fine and imprisonment.

Interference with or obstruction of officers carrying out their functions

Any person who:

- (a) without lawful authority or excuse, the proof of which lies upon him wears any uniform or part of any uniform or any badge or other mark issued by the Forest Department to be worn by officers or staff of the Forest Department;
- (b) has in his possession any stamp or mark used or intended to be used by the Forest Department for making forest produce, or anything having the appearance of such stamp or mark;
- (c) knowingly makes a false or incorrect statement, report or entry of an information that is required to be supplied to any officer or member of staff the Forest Department;
- (d) without lawful authority or excuse, the proof of which shall lie upon him, fails or refuses or willfully neglects to comply with any lawful demand or requirement made by, or to provide information that is required to be supplied to, any officer or member of staff of the Forest Department;
- (e) obstructs, hinders, delays, threatens, intimidates or assaults any person in the execution of his

powers or duties under the provisions of this Act or any rules, orders, or notices made under the authority of this Act.

Shall be guilty of an offence against this Act and shall be liable to a fine of three hundred thousand shillings or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Powers of officers

91. (1) Any Administrative officer, forest officer or police officer may:

- (a) demand from any person the production of any license or authority for any act committed by such person for which a license or authority is, under the provisions of this Act, required;
- (b) require any person whom he has reasonable grounds to suspect of eking in possession of any forest produce unlawfully obtained to stop and give an account of his possession of such produce and may, subject to the provisions of this section, without warrant search any such person or any baggage, package, parcel, vehicle, boat, aeroplane, tent or building in the possession of or under the control of such person in which such forest produce may reasonably be suspected of being of being contained or stored;
- (c) seize and detain any such forest produce or livestock in respect of which there is reason to believe that an offence has recently been committed against this Act together with any boats, aeroplanes, vehicles, machinery, tools, equipment or implements used or likely to have been used in the commission of such offence and report, without undue delay, any such seizure of any such property to the nearest magistrate;
- (d) arrest without warrant any person whom he has reasonable cause to suspect has committed or has been concerned in an offence against this Act where:
 - (i) such person refuses to give his name and address or gives a name address which there is reason to believe is false; or
 - (i) there is reason to believe that such a person will abscond

but any officer making any such arrest shall ensure that any such person who has been arrested shall without undue delay be taken before a magistrate.

- (2) The powers referred to in paragraph (b) of subsection (1) shall in relation to the search of domestic buildings:
- (a) not extend to any such search by forest rangers, forest guards or police officers below the rank of inspector;
 - (b) only be exercised by officers on whom such powers have been conferred by this section in the presence of two independent witness.

- (2) Any forest officer given authority so to do by the Director may prosecute any person charged with any offence against this Act.

Custody of seized produce and articles

92. (1) Any article or forest produce seized under sections 91 or 93 shall be brought to the nearest police station or if it is not feasible to deliver it to a police station it shall be delivered into the custody of the nearest forest reserve manager and a report of such seizure shall be made forthwith to the senior police officer having jurisdiction within the area.
- (2) Any article or forest produce held in custody by the police or a forest reserve manager shall be retained until the offence in connection with which it has been seized has been prosecuted, or compounded or a decision has been taken not to prosecute.
- (3) Where any seized article or forest produce is perishable, a forest reserve manager may order that the said article or forest produce be sold or destroyed and where it has been sold, the proceeds of the sale shall be retained and the provisions of subsection (2) shall apply to any such proceeds.

Compounding of offences

93. (1) The Director or any officer specifically authorized by the Director by notice published in the *Gazette* may, subject to and in accordance with the provisions of this section, if he is satisfied that a person has committed an offence against the Act, compound such offence by accepting from such person a sum of money together with the forest produce, if any, in respect of which the offence has been committed.
- (2) The sum of money payable under subsection (1) shall:
- (a) not exceed five times the amount of the fine prescribed as being payable in respect of such officer;
 - (b) include payment of all fees and royalties due or

which would have been due if the action taken had been authorized under this Act;

- (c) where any forest produce involved in the offence has been damaged, injured or removed during the commission of the offence, include a sum of money not exceeding the value of that forest produce;
 - (d) include all reasonable expenses which the Forest Department may have incurred in the seizure, storage, maintenance or removal of any articles seized in connection with the offence.
- (2) The power conferred by this section shall only be exercised where a person admits that he has committed an offence and agrees in writing in the prescribed form to the offence being dealt with under this section.
- (3) The power conferred by this section shall only be exercised where the value of the forest produce in respect of which an offence has been committed or the damage caused by the offence does not exceed one million shillings.
- (4) The Director or officer exercising powers under this section shall give to the person from whom he receives any sum of money under subsection (2) a receipt therefore in the prescribed form and as soon as practicable thereafter report the exercise of such power, if exercised by the Director to the Permanent Secretary, and if exercised by an authorized officer, to the Director and in each case also to the senior administrative officer of the Government exercising jurisdiction within the area where the offence was committed.
- (5) Any sum of money received under this section shall, after deduction of reasonable expenses, be paid into the Tanzania Forest Fund.
- (6) If any proceedings are brought against any person for an offence against this Act, it shall be a good defense if such person proves that the offence with which he is charged has been compounded under this section.

Additional orders on conviction

94. (1) Where any person is convicted of an offence against this Act, the court may in addition to any other penalty provided for by this Act order:
- (a) that any license granted under this Act to the person convicted be cancelled and that the said person be disqualified from holding any other license under this Act for such period as the court may direct;

- (b) that any forest produce in respect of which the offence has been committed and anything which has been used in the commission of the offence be forfeited to the forest reserve manager of the forest reserve where or in connection with which the offence occurred and may be disposed of by the forest reserve manager in such manner as he may see fit;
 - (c) that where any forest produce has been damaged or injured in the course of or in connection with the commission of the offence, the person convicted of the offence to pay to the forest reserve manager or the forest reserve where the offence occurred by way of compensation the value of the said forest produce;
 - (d) that where any property or thing belonging to the Government or a local authority has been damaged or injured in the course of or in connection with the commission of the offence, the person convicted of the offence to pay to the Director or as the case may be the chief executive officer of the local authority by way of compensation the value of the property or thing;
 - (e) that the person convicted of the offence to pay to the forest reserve manager or the forest reserve where or in connection with the offence occurred up to ten times the amount of any royalties or fees which had the action constituting the offence been authorized would have been payable in respect thereof;
 - (f) that where the offence of which the person has been convicted consists of occupying or cultivating or grazing land in any forest reserve not having an existing right to do so or without a license to do so, the person so convicted to remove any buildings, enclosures, huts, crops or livestock within a period to be specified in the order and if the person so convicted fails to comply with the order of the court within the period so specified, any such building, enclosure, hut, crops or livestock shall be deemed to be the property of the Government and may be disposed of by the Director in such manner as he may see fit;
 - (g) the person convicted of the offence to reimburse the forest reserve manager for any costs and expenses he has incurred in the seizure, storage, maintenance and removal of any forest produce or other goods and things confiscated or forfeited to the Government in connection with the offence.
- (2) Any sums of money paid or payable to the Director or generated by the sale of any property under the provisions of this section shall be paid by the Director into the general revenues of the Government.

Reward to informer

- 95 The Director may award any amount not exceeding one half of any fine imposed for an offence against this Act to any person who may have supplied such information as may have led to the conviction of an offender.

Saving of common law rights

- 96 Nothing in this Act shall affect the right of Government or of any person to sue for and recover at common law or otherwise compensation for or in respect of damage or injury caused by an offence under this Act.

PART XII: MISCELLANEOUS

Substituted service

97. (1) Where the Director is satisfied that a notice under this Act cannot be served personally or by post, either because the person to be served is evading service or for some other reason, he may order service to be effected:
- (a) affixing a copy of the notice in a conspicuous place:
 - (i) on or as near as may be to the place where the said person had his last known place of abode; and
 - (ii) at the offices of the local authority having jurisdiction in the area where the place referred to in paragraph (1) is located or other public place in the said area; and
 - (2) A notice displayed or published under this section may be in English or Kiswahili or both.

Publication of notices and other information

98. (1) Where, By any provision of this Act, a notice or other information is to be published or given such publicity as will bring it to the attention of all person likely to be affected by it, that duty shall be construed as requiring:
- (a) where the notice relates to a village or community forest reserve or to a matter affecting a village or the inhabitants thereof, a copy of the notice or other information to be:
 - (i) affixed in a conspicuous position on or as near as may be to the forest reserve to which it relates; and
 - (ii) affixed in a conspicuous position at the offices of the village council and in such other public places in the village as the village council shall direct; and

- (iii) summarized and communicated orally to the residents of the village at a meeting of the village assembly and at such other meetings as may be convened by the village council for the purpose;
- (a) where the notice relates to a local authority forest reserve or a national forest reserve, a copy of the notice to be:
 - (i) affixed in a conspicuous place on or as near as may be to the forest reserve to which it relates; and
 - (ii) affixed in a conspicuous place at the offices of the local authority having jurisdiction in the area where the land is located and at such other public places, including offices of the government as the local authority think fit.
- (2) Where the Director considers it desirable, a notice or other information to which this section applies may be published in one or more newspapers in English or Kiswahili or both circulating in the area where the forest reserve to which the notice or other information relates is located.

Rights of entry

- 99. (1) Any person authorized in that behalf by the Director shall have power, on the giving of not less than 48 hours notice, to enter and inspect at all reasonable times between the hours of 6.00 a.m. and 6.00 p.m. any land, other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.
- (2) The notice which is required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the time at which the authorized person will enter the land.
- (3) Every person authorized to enter or inspect land under this section e furnished with a written authorization signed by the Director and if so required by any person having an interest in or occupying the land which he enters and inspects shall produce the same to such person.
- (4) Where any person authorized under this section causes any damage to land or anything on the land during his entry and inspection, the Director, shall forthwith appoint a person to assess such damage and pay promptly compensation based on that assessment to the person whose land or things on the land have been damaged.

Call for information

- 100. (1) The Director may, for any purpose connected with the implementation of this Act, by notice in writing sent or delivered by registered post, require any person holding a license under this Act to send or deliver to the Director within one month of the date on which the notice was so sent or delivered such documents and other information about the license as is specified in the notice.
- (2) The notice sent by the Director shall specify clearly and in a language calculated to be understood by the recipient of the notice the information that is required.
- (3) Where the recipient of the notice is unclear as to the information which he is required to provide, he shall, as soon as may be, seek further clarification and elucidation from the Director.
- (4) It shall be a defense to any person charged with a failure to comply with the notice or with giving misleading information in his reply to the notice that he could not reasonably have been expected to understand the notice or any further clarification and elucidation provided by the Director in response to any communication sent or made to the Director under subsection (3).
- (5) Where the Director requires information from a person whom it is reasonable to assume from his age, circumstances, education and location will not be able to understand or reply in writing to the written notice, the Director shall authorize an officer in writing to interview that person and obtain the required information b means of that interview.
- (6) An officer authorized to conduct an interview under subsection (3) shall give not less than seven days notice of the time, being a reasonable time between the hours of 6.00 a.m. and 6.00 p.m., at which he proposes to conduct the interview and such interview shall be conducted in a reasonable manner.
- (7) The provisions of subsections (3) and (4) of section 99 shall apply to a person conducting an interview under this section.

Arrangements for facilitating and regulating research

- 101. (1) Any person intending to undertake any research in a forest reserve or in connection with any forest produce shall in addition to any permit or license, if any, required to be obtained from any other person or organization

- in order to be able to undertake such research, obtain a research permit from the Director.
- (2) An application for a research permit to which this section applies shall include:
- (a) name, qualifications and designation of the person applying for the permit;
 - (b) names, qualifications and designation of any persons whom it is proposed will assist or work with the person applying for the permit;
 - (c) name, function and address of the institution or organization, if any, which the person applying for the permit is connected, either directly or indirectly and if a different institution or organization is funding in whole or in part the research, the name, address and function of that funding institution or organization;
 - (d) purpose of the research and the use to which it will be put, including any proposals for the publication of the results of the research and any proposed commercial exploitation of the research;
 - (e) Other matters as may be prescribed.
- (3) In determining whether to grant or refuse to grant a research permit, the Director shall have regard to:
- (a) any general policies concerning research adopted by any national bodies charged with a duty to promote and regulate research;
 - (b) the extent to which the proposed research is likely to contribute to the furtherance of the principles and objectives of forest policy in Tanzania as set out in section 3;
 - (c) the proposals of lack of them that the research plan contains for disseminating the results of the research within Tanzania;
 - (d) the extent to which the research plan complies with any international agreements relating to research on forestry of the nature proposed in the application;
 - (e) such other matters as appear to be relevant or as may be prescribed.
- (4) The Director may in granting a research permit attach such conditions to the permit as are calculated to ensure that the matters referred to in the subsection (3) are observed and furthered by the research and in particular such conditions may regulate and control the manner in which any specimens of any flora or fauna are taken from a forest reserve or are exported from Tanzania in the course of or at the conclusion of the permitted research.
- (5) Where the Director is satisfied after due inquiry or as a result of information given to him by a reliable source that any research is being conducted otherwise than in accordance with the terms of a research permit, he shall forthwith withdraw the said research permit and issue a direction in writing to the person to whom the research permit was granted to cease all activities connected with or arising out of the research.
- Power to make regulations*
102. (1) The Minister may make regulations either of general application or in respect of any particular national forest reserve or in respect of any forest produce for the better carrying out of the provisions and purposes of this Act and without prejudice to the generality of this provision, any such regulations may be made:-
- (a) regulating the felling, working and removal of forest produce;
 - (b) prescribing any areas of unreserved land in which all or any forest produce may or may not be cut or removed;
 - (c) prohibiting or regulating the use and occupation of land in forest reserves for residential, cultivation, commercial or industrial purposes or grazing, including the impounding of livestock and the payment of pounding fees;
 - (d) regulating the use of forest reserves for eco-tourism, camping, hiking and any other purposes of like nature;
 - (e) prescribing the time and manner of investigating and recording existing rights in relation to land or forest produce within forest services
 - (f) prescribing the form of forestry dedication covenants;
 - (g) regulating the procedures in which licenses, permits or certificates may be applied for, granted, varied, refused or cancelled;
 - (h) regulating the procedures for the application for and the grant of a lease;
 - (i) providing for the terms and conditions subject to which leases, licenses, permits or certificates may be granted, extended, altered, or revoked;
 - (j) prescribing the fees payable for any license, permit or certificate and providing for any exemptions for any persons or class of persons from the payment of any such fees and any conditions and limitations relating to any such exemption;
 - (k) regulating the manner and procedures governing appeals against adverse decisions provided for under this Act;
 - (l) prescribing the terms and conditions and the

- amount of rent payable under any lease granted under this Act;
- (m) regulating the sale and disposal of forest produce by tender, public auction, private treaty or otherwise, and matters incidental thereto;
 - (n) regulating the taking of timber for mining purposes;
 - (o) prohibiting or controlling the entry of persons, animals, or vehicles into any forest reserve, or part thereof and regulating the period during which such persons, animal or vehicles may remain therein and providing for the conditions subject to which they may do so;
 - (p) regulating the times, seasons and practices of the hunting, capturing, collecting, taking or transporting of wild animals within forest reserves;
 - (q) regulating the times, seasons and practices of fishing within forest reserves;
 - (r) establishing and regulating sanctuaries for birds and other flying entities;
 - (s) regulating the times, seasons and practices of collecting, taking, picking, storing and removing wild plants within the forest reserves;
 - (t) regulating the modalities of research within forest reserves;
 - (u) prescribing the names to be applied to forest produce in order to promote its better utilization and marketing and providing for the manner in which any list of names made hereunder may be from time to time amended or varied;
 - (v) providing for the compulsory use of property marks by timber dealers licensed to take timber under this Act or any rules made under this Act and for the registration of such marks;
 - (w) providing for the compulsory use of property marks by local authorities, village councils and owners of private woodlands for the purpose of identifying timber sold from local authority, village and community forest reserves and private woodlands and the manner of their use;
 - (x) providing for the prohibition of the use of marks not registered under the provisions of rules made under this Act;
 - (y) prohibiting or regulating the use of roads or paths other than public highways within forest reserves and providing for the repair of roads, tracks, or bridges in a forest reserve by any person damaging the same;
 - (z) prohibiting or regulating within forest reserve the lighting of fires, smoking, or the carrying, kindling or throwing of any fire or light or inflammable material;
 - (aa) providing for the registration of stamps and marks for use by the Forest Department for making forest produce or indicating forest reserves;
 - (bb) providing for the registration and use of such Forest Department brands, tags, or other devices for marking livestock as may be necessary to identify livestock licensed to graze in forest reserves;
 - (cc) providing for the modalities of prohibiting or regulating the export from Tanzania or from any area of Tanzania of any forest produce;
 - (dd) prohibiting or regulating any act liable to cause damage to forests or forest produce;
 - (ee) providing for local authorities and village councils to make bye-laws on such of the matters set out in this section as may be provided for in any such rules;
 - (ff) providing model bylaws for adoption by local authorities and village councils on any of the matters set out in this section.
- (2) Any rules made under the provisions of this section may require acts or things to be performed or done to the satisfaction of a prescribed person and may empower a prescribed person to issue orders to another person requiring acts or things to be performed or done, imposing conditions and prescribing periods and dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.
 - (3) A local authority or a village council may with the approval of the Minister for the time being responsible for local government make rules applicable to any local authority or village or community forest reserve which it maintains or has jurisdiction over on any of the matters which may be provided for by any rules made by the Minister under paragraph (ee) of subsection (1).
 - (4) A rule made under this section may prescribe for the breach thereof a fine exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months or both such fine and such imprisonment.
- Power to grant exemptions*
103. The Minister may, if he is satisfied that it is in the interests of the better management or sustainable utilization of the forest resources of Tanzania, by notice in the *Gazette* exempt any person or class of persons or any land or class of lands from all or any of the provisions of this

Act, other than any of the provisions of Parts IX and XI or any rules, orders or notices made under this Act, subject to such conditions and limitations as may be specified in such notice.

Repeals, amendments and savings

104. (1) The Ordinances and Act set out in the first part of the Third Schedule are, subject to the provisions of this section, hereby repealed.
- (2) The Acts set out in the first column of the second part of the Third Schedule are to the extent provided for in the second column of the second part of the Third Schedule, hereby amended
- (2) Notwithstanding the repeal of the Forest Ordinance and the Export of Timber Ordinance:
- (a) all territorial forest reserves declared as such under the Forest Ordinance so repealed shall be deemed to have been declared national forest reserves under this Act;
 - (b) all local authority forest reserves declared as such under the Forest Ordinance so repealed shall be deemed to have been declared local authority forest reserves under this Act;

- (c) all local authorities empowered under the Forest Ordinance so repealed to exercise control over a local authority forest reserve shall be deemed to have been declared responsible for managing the said local authority forest reserve under and in accordance with this Act;
- (d) all licenses, permits and leases granted under the provisions of the Forest Ordinance or the Export of Timber Ordinance so repealed shall be deemed to have been made, granted or issued under and subject to the provisions of this Act;
- (e) all rules made under the provisions of the Forest Ordinance and the Export of Timber Ordinance so repealed shall be deemed to have been made, granted or issued under and subject to the provisions of this Act;
- (f) all lawful orders given or made by any officer so authorized to give or make such lawful order under the Forest Ordinance, the Export of Timber Ordinance so repealed shall be deemed to have been made under this Act and shall remain in full force and effect until amended or withdrawn under this Act.

Act to bind Government

103. This Act shall bind the Government

FIRST SCHEDULE

(Section 12)

THE COMMITTEE

1(1) The Committee shall consist of the following members:

- (a) two representatives from the Ministry for the time being responsible for forestry;
 - (b) one representative from the National Environmental Management Council;
 - (c) one representative from the National Land Use Planning Commission;
 - (d) one representative from the Attorney-General's Chambers;
 - (e) one representative from the Tanzania National Parks Authority;
 - (f) two representatives from a body representing the interests of women;
 - (g) one member of the academic staff of Sokoine University specializing in forestry;
 - (h) two representatives from one organization representative of commercial and business interests;
 - (i) two representatives from non-governmental organizations concerned with the conservation of natural resources.
- (2) The Director of Forestry or his representative shall be an ex-officio member of the Committee.
- (3) The members of the Committee shall elect from amongst their number a chairman and a vice-chairman who shall hold office for three years respectively unless their membership is otherwise terminated and shall be eligible to be re-elected for one further term in those offices.
- (4) Members of the Committee shall hold office for three years and unless their membership is otherwise terminated due to misconduct or non-attendance, without reasonable excuse, at three successive meetings of the Committee shall be eligible to be re-appointed for one further term.
- (a) There shall be not less than four ordinary meetings of the Committee in each year.
 - (b) An ordinary meeting of the Committee shall be convened by the chairman and the notice specifying the place, date, and time of, and agenda for, the meeting shall be sent to each member at his usual place of business or residence not less than fourteen days before the date of the meeting.
 - (c) The chairman, or in his absence the vice-chairman shall be bound to convene a special meeting of the Committee upon receipt of a request in writing in that behalf signed by not less than three members of the Committee and where such special meeting is convened, the agenda for such a meeting shall be sent to each member at his usual place of business or residence not less than seven days before the date of the meeting.
 - (d) A meeting of the Committee shall be presided over by the chairman or in his absence, by the vice-chairman and when both the chairman and the vice-chairman are absent, by a member elected by those members present at that meeting.
 - (e) The quorum at any meeting of the Committee shall be seven members.
 - (f) The Committee may establish such committees as it sees fit to enable it to discharge its functions under the Act.
 - (g) A member who has any interest, direct or indirect in any matter coming before the Committee or a committee thereof shall, as soon as is reasonably practicable, disclose the nature of that interest to the chairman or vice-chairman and shall not, thereafter take part in any decision on that matter nor, except with the consent of a majority of the members present at that meeting, take part in any deliberations of that meeting.
 - (h) Subject to the provisions of this Schedule, the Committee shall regulate its own proceedings.

MEETING AND PROCEDURAL MATTERS

- (5) The Permanent Secretary shall appoint an officer from the Ministry to act as the secretary to the Committee.

ANNUAL REPORT

6. The Committee shall prepare an annual report setting out its current activities and indicating its future activities and shall submit that report to the Minister.

SECOND SCHEDULE

(Section 80)

THE TRUSTEES

- 1 (1) The Trustees shall consist of members whose numbers shall be not less than seven and not more than nine including:
 - (a) a person qualified to be appointed as a judge of the High Court or a person who has retired from being a judge of the High Court who shall be chairman;
 - (b) a senior representative from the Ministry responsible for finance;
 - (c) a senior representative from the Ministry responsible for forestry;
 - (d) a member from Soloin University;
 - (e) an accountant in private practice;
 - (f) a lawyer in private practice;
 - (g) a person from a non-governmental organization concerned with the conservation of the natural resources of Tanzania.
- (2) Not less than two of the Trustees shall be women.
- (3) The Trustees shall elect from amongst their number a vice-chairman who shall hold office for two years but shall be, subject to remaining a Trustees eligible to be re-elected for one further term of two years.
2. The Trustees shall hold office for three years and except where their membership is terminated for misconduct or other sufficient reason, shall be eligible to be re-appointed for one further term.
4. The quorum at any meeting of the Trustees shall be the chairman or vice-chairman and not less than two other Trustees.
- 5 (1) An meeting of the Trustees shall be convened by the Chairman and the notice specifying the place, date, and time of, and agenda for, the meeting together with the papers for the meeting shall be sent to each Trustee at his usual place of business or residence not less than fifteen days before the date of the meeting.
- (2) The chairman, or in his absence the vice-chairman shall be bound to convene a special meeting of the Trustees upon receipt of a request in writing in that behalf signed by not less than three Trustees.
- (3) A Trustee who has any interest, direct or indirect in any matter coming before the Trustees shall, as soon as is reasonably practicable, disclose the nature of that interest to the chairman or vice-chairman and shall not, thereafter, take part in any deliberations or decision on that matter.
- (4) Subject to the provisions of this schedule, the Trustees may regulate their own proceedings.

ANNUAL REPORT

3. The Trustees shall prepare an annual report and set of audited accounts and shall submit that report to the Minister.

MEETING AND PROCEDURAL MATTERS

3. The chief financial officer of the Fund shall attend the meetings of the Trustees when matters connected with the management of the Fund are discussed.

THIRD SCHEDULE

1. The Forests Ordinance, Cap. 389
2. The Export of Timber Ordinance, Cap. 288

UGANDA COUNTRY REPORT

Abbreviations

THF	Tropical High Forests
UND	Uganda Forest Department
NORAD	Norwegian Agency for International Development
NARO	National Agricultural Research Organization
AFRENA	Agro-forestry Research Network for Africa
UNFCCC	United Nations Framework Convention on Climate Change
MAAIF	Ministry of Agriculture, Animal Industry and Fisheries
MWLE	Ministry of Water Land and Environment
NEMA	National Environment Management Authority
NEAP	National Environment Action Plan
MTTI	Ministry of Tourism Trade and Industry

List of Statutes

1. The Constitution of Uganda, 1995
2. The Forest Act, cap 246
3. The National Environment Statute, 1995
4. The Local Government Statute, 1997
5. The Land Act, No. 16 of 1998
6. The Timber (Export) Trade Act, cap 247
7. The Town and Country Planning Act, cap 30
8. The prohibition of Burning of Grass Decree, No. 5 of 1974
9. The Wildlife Statute, 1996
10. The Plant Protection Act cap 244

List of International Agreements/Conventions

1. African Convention on the Conservation of Nature and Natural Resources, Algiers, 1977
2. Lome Convention IV, 1995
3. Convention on Biological Diversity, Rio, 1992
4. United Nations Framework Convention on Climate Change, Rio, 1992
5. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Decertification Particularly in Africa
6. The World Heritage Convention
7. Convention on Wetlands Especially as Habitats for Water Fowls
8. Convention on International Trade in Endangered Species

List of Tables: Uganda's tropical High Forests from 1900 to 1987

EXECUTIVE SUMMARY

The Constitution of Uganda provides that parliament shall enact laws to protect and preserve the environment and to manage the environment for sustainable development. The Constitution further provides that the state shall protect important national resources including flora and fauna on behalf of the people of Uganda. Against that Constitutional authority, Uganda has a Forests Act, Cap 246 of the Laws of Uganda. The Act was enacted in 1948 and was last revised in 1964. This Act is out of date in many respects. In addition to the Forests Act, Uganda possesses a Forest Policy of 1988, which is not wholly reflected in legislative terms but is rather being effected administratively. There are also other areas of law and policy having a bearing on forest resources which have been recently enacted in Uganda. These include the National Environment Statute (Statute No. 4 of 1995) which provide the framework for sustainable management of Uganda's environmental resources including sustainable management of forest resources, the Wildlife Statute (Statute No. 14 of 1996), and the wildlife Policy of 1995. There is also Act No. 1 of 1997, the Local Governments Act, which refers to forestry in the decentralization structure of administration.

It is important that the existing legislation governing forest management be revised to address current trends in conservation and management, and to reflect adequately on both the domestic and international legal instruments for forest management.

This report considers, *inter alia*;

- a review of existing legislation relating to forest resources and products, shared forest land and ecosystems;
- identifies gaps in the concepts implementation and enforcement mechanisms; recommends areas requiring amendments and makes recommendation thereto; and
- reviews relevant international instruments having direct relevance to forest management.

The report is divided into seven parts, namely:

- Chapter One: the introduction which gives a brief background to the report;
- Chapter Two: provides a review of issues of forest resources management;
- Chapter Three: reviews the institutional and management issues of forest management;
- Chapter Four: reviews the forest legislation and highlights areas that should be addressed for amendment to facilitate implementation and proper management, conservation and sustainability of forests;
- Chapter Five: reviews the international legal instruments that relate forest management;
- Chapter Six: provides recommendations for some of the major issues raised; and
- Chapter Seven: makes recommendations on possible policy issues to be addressed and, provides a synopsis of proposed legislative provisions to address the major issues raised.

CHAPTER ONE

INTRODUCTION

1.1 Background

Forest legislation is one the important tools for the sustainable management of forest resources. It provides the structural framework within which national forest policies and actions are set and in turn reflects or should reflect their objectives and priorities. It is also an indispensable instrument for the implementation of those policies and actions.

The Law governing forest management is the Forests Act (Cap 246). This law was made when Uganda was still a British Protectorate and is therefore, similar to the laws of most of the former British colonies made during the colonial period. It reflects the realities at that time. Tanzania and Kenya inherited similar laws. The law to a large extent addresses most of the areas environmental concern. It should be noted that it was made at a time when global trend towards conservation had not yet reached the level it has now reached. The law was designed to ensure maximum revenue collection from forest and forest reserves. Effective national legislation on forestry should consider the particular socio-economic condition prevailing at international, national, regional and local levels. It must contain provisions which are consistent with the country's fundamental social and political concepts and options.

On the international scene, new and modern concepts and principles and means of ensuring sustainable management of forests have emerged. These new concepts, principles and means are, however, not adequately reflected in the current legislation on forests.

Some modern concepts and principles have been gradually adopted through revised policies on forest and forest management and to an extent are already being implemented. Therefore, although the Forest related laws in Uganda have several short-comings, the policies, to some extent, have mitigated these short-comings. Despite this move, however, there is still need for the law to be developed to give legal effect to the policy. Inadequacy in the Forest law could lead to inadequacy in other laws such as those relating to land management, forest management, tree-planting and production of timber.

1.2 Purpose of this Report

Uganda is in a state of socio-economic transformation and transition from an era of forest exploitation to one of sustainable forest management and production. The laws and policies need to be reviewed to adequately reflect these realities. The task of this Report is to review the overall legal aspects of forest resources management in Uganda and develop the appropriate legislative framework.

1.3 Scope of the Review

This study reviews all forest related legislation in Uganda and identifies gaps in the forestry legislative framework. The study also reviews relevant international instruments that have direct relevance to forest management. It particularly recommends those that Uganda should participate in, adopt and implement. The review makes several recommendations for the proposed new forest legislative framework.

CHAPTER TWO

REVIEW OF FORESTS RESOURCES MANAGEMENT ISSUES

2.1 The State of Forest Resources in Uganda

Uganda's forests are very important resources to the environment. They play a big role in the well being of the Ugandans society. A forest can be defined as a type of vegetation dominated by trees, many species of which are tall at maturity and have straight trunks. Usually, forests have a canopy with several layers of foliage, and the herbaceous vegetation is generally open and lacks the tussock-forming grasses which are so characteristic of many types of savanna (Hamilton, A.C, 1984). In Uganda, there are two broad categories of forests: (fully stocked or degraded/encroached) and plantations (broad-leaved, coniferous or woodlot). It is estimated that in 1890, woodlands covered about 10,8090 ha (or 45%) of Uganda's surface area. From that period, the size of the forest estate has continued to reduce.

2.2 Types of Forests

There are several types of forests in Uganda, as described below.

2.2.1 The Tropical High Forests (THFs)

At the beginning of this century, it is estimated that Uganda's tropical high forests (THFs) cover was about 3,090,000ha or 12.7% of the country. Over the past years, however, THFs have been drastically reduced. The current estimates by the Uganda Forest Department (UFD) indicate that THF estate has been reduced to about 730,000ha which is 3% of Uganda's land area.

In Uganda, forest can be classified under gazetted areas (forest reserves), and other protected areas (national parks), private and ungazetted public lands. THFs largely are found around the eastern run of the Western Rift Valley escarpment in western Uganda; around a broad belt on the north-western

shores of Lake Victoria; and scattered on mountains in the northern and eastern parts of the country. **Table 1** shows the area covered by the THFs.

2.2.2 Plantation Forests

Apart from THFs and other types of natural vegetation, there are plantation forests which make up 2.2% of gazetted forests. The area under forest plantation was, in 1978, estimated by the Forest Department to be 24,000ha. Plantation and woodlots are man-made ecosystems (agro-ecological systems) of both indigenous and introduced species. These were planted due to increased demand for industrial wood, poles and woodfuel. There were two types of plantations: conifer (pine) and hard-wood (dominated by eucalyptus) plantations. Initially, eucalyptus plantations were established in the early 1900s, around urban centres to drain swamps as an anti-malaria measure. Presently, the main protected plantations stand at 14,000 ha of conifers (of which 2000ha are found in newly gazetted national parks); eucalyptus plantations cover 18,600 ha. Apart from plantations in forest reserves, there are also plantations for tobacco and tea processing, and private woodlots estimated at 7,960 ha.

Unfortunately, at their establishment, the plantations replaced some natural forests like the high forest on Mt. Elgin and Mafuga instead of being planted in areas of less biodiversity concentration. At that time, the object was to replace slow growing high forest with fast growing exotic species. With the exception of *Maesopsis eminii*, hard-wood plantation composed of indigenous species were difficult to raise because most do not survive in mono-cultural stands.

Eucalyptus spp were to provide poles and fuelwood. Presently there seems to be a strong economic justification in many areas for the establishment of woodlots of Eucalyptus spp.

Recently, peri-urban plantations have been established by the Uganda Forest Department supported by the Norwegian Agency for International Development (NORAD). These plantations are meant to be sources of woodfuel, building poles and posts. As of now, the predominant species planted are eucalyptus; however, some of the newly introduced species may become more important than eucalyptus.

2.2.3 Agro-Forestry

Agro-forestry is the practice of integrating trees and crops or livestock on a given piece of land. This practice is now new in Uganda, for sometime it has been carried out as part of subsistence farming; however, modern agro-forestry activities started in 1987 as a result of studies that were carried out in some highland areas of Uganda. The process of formalising agro-forestry started with it being both a mandate and activity of the National Agricultural Research Organisation (NARO).

The main reasons for developing agro-forestry activities are due to the high rates of population increase with its consequent demand for farm and grazing land, coupled with fuelwood and building poles scarcity in many parts of Uganda.

Before the onset of and increase in agricultural activity, it is estimated that 45% of land area in Uganda was forested (FAO 1985) and had other types of tree-rich vegetation consisting of either thickets of woodlands or savannas. Only in Karamoja is the nature of the original vegetation uncertain.

Institutionally, the main body responsible for agro-forestry is the Agro-forestry Research Network for Africa (AFRENA) which was established in 1986. Some of the major functions of AFRENA are to develop appropriate agro-forestry technologies for land use systems and the national/regional capacity to plan, formulate and implement agro-forestry research. To-date, the following achievements have been made in Uganda:

- identification of upper-storey trees for the production of poles and small timber for low and high altitude.
- Identification of trees/shrubs which are effective in stabilising, bunds and controlling soil erosion and water run-off;
- Identification of farmers by way of their own selection of agro-forestry tree species; by establishing their own nurseries; and, implementing agro-forestry technologies on their farms;
- Establishment of experimental stations, and plans are under-way to establish more stations.

2.2.4 Savanna Woodland

Uganda's savanna woodland covers about 720,000 ha. It is a potential land for industrial timber plantations. It is, however, currently threatened with *en mass* encroachment due to increased population pressure. Much of it has been cleared and now forms part of the permanent settlement sites in the country.

Savanna woodland in Uganda represents about six different vegetation communities ranging from scattered shrubs in open grassland to predominant woodland vegetation. This has open canopy and well developed grass cover.

The woody component of the savanna vegetation is mainly influenced by the annual bush-fires which, though assisting it to revegetate, destroy some of the plant species, at times to an extinction level.

The threats posed to this natural resource can only be contained if the proposed Forestry Authority takes up serious measures to control and manage it in collaboration with the local communities.

Table 1: Uganda' Tropical High Forest (THF) Area from 1900 to 1987

YEAR	Forest Area (Ha.)	% of Total LandArea	Source of Data
1900	3,090,100	12.7	Longdale Brown 1960
1926	2,627,700	10.8	Longdale Brown 1960
1987	1,117,600	4.6	Longdale Brown 1960
1967	688,937	2.86	Uganda Atlas
1973	732,499	3.04	Lockwood Cons.1973
1985	765,000	3.17	FAO 1985
1987	729,865	3.03	FD1987
Source: Department Forestry (Ministry of Natural Resources), 1988			

CHAPTER THREE

ECONOMIC CONTRIBUTION OF WOOD PRODUCTS

Forests have some contribution to the economy. Government revenue collection from forestry is presently low, mainly due to poor collection methods and illegal off-take and trade in forest products.

3.1 Forest Products

Forest products include: roundwood (industrial logs, poles, fence posts and firewood); processed wood products (sawn-wood, chip-board, plywood, block-board, charcoal) and other non-timber products (honey, medicines, bamboo shoots, gum arabic, fodder). All these are in great demand due to high population growth rate and increased affluence. In addition, there is also a high demand for wood-fuel and

timber for construction needs. Forests also provide various ecological functions, such as water-shed protection, wind-breaks, erosion control, climate amelioration and carbon sequestration. These functions need to be recognised in the forest management system.

3.2 Eco-Tourism

Another important aspect of forests is that they are tourist attractions especially the THFs. Uganda's THFs are one of the most biological diverse ecosystems in the tropical world. They contain rare plant and animal species. Presently, there are operational tourist sites in Budongo and Mabira forests.

CHAPTER FOUR

KEY ISSUES OF FOREST MANAGEMENT AND ENVIRONMENTAL MANAGEMENT IN UGANDA

4.1 Forest Management and Environmental Protection

Forest management has implications of environment. Forests are important to Uganda for their direct and indirect values. Directly, forests contain some estimated three million species of plants and animals whose survival depends on the availability of a reasonable forest cover. Forests supply oils, gums, rubber, fibers, dyes, tannin resins and turpentine. Forests are source of varieties of fruits and ornamental plants. They are also a source of raw materials for pharmaceutical industries. To most Ugandans, they are a known source of timber, firewood and poles. Forests help to maintain soil quality, control soil erosion, stabilise hill-sides, moderate seasonal flooding and protect water-ways from siltation. They are also tourist attractions. Forests also play a vital role in regulating the climate. Not only does their destruction reduce evapotranspiration, thus, disrupting the hydrological cycle, but it also alters the atmosphere conditions and composition (adding appreciable amount of carbon dioxide and gases in the atmosphere). The benefits of forests and forest resources are numerous and cannot all be listed here.

The vast loss of forests therefore, has environmental, social and economic implications.

Uganda's forestry resources face forest management problems. There are several issues both at national and local levels which concern the management of forests in Uganda. Such issues are as outlined below.

4.1.1 Deforestation

Deforestation is one of the major problems of forest management. The causes of deforestation in Uganda are mainly due to conversion of forest land into agricultural land

as a result of both population pressure and commercial agricultural expansion, demand for fuelwood, and poor government policies.

Human pressure on forest land for other uses has been considerable particularly in the densely populated areas of Kabale, Kisor, Mbale and Kapchorwa. Pressure to degazette these areas was also brought to bear on the Forests by Idi Amin's "economic war" and "double production" campaigns of the early 1970s.

Deforestation has several impacts; it reduces hardwood timber production in the country and causes scarcity of fuelwood especially in rural areas. Furthermore, it causes serious soil erosion due to bare ground and loss of agricultural productivity. Loss of forest cover especially on hilly slopes also leads to reduction in water retention capacity of watersheds and the subsequent siltation and loss of wetlands.

Currently, there is minimal deforestation in the gazetted forest reserves and high deforestation on privately-owned or ungazetted public forests. Yet, there is no adequate legal and institutional framework to regulate deforestation on private and public lands.

4.1.2 Pests and Diseases

There are isolated attacks on plantation forests by pests such as *Ginmenta podocarpi*, *Buzura edwardsi* and *pachmetana sangcicinta*. These are aphids which attack conifers. The spreading of pests and diseases has been due to unregulated importation of exotic tree species. For instance, the Cypress aphid originated from southern Europe and was first reported in Echuya Forest Reserve in 1989 and has since then spread to other plantations in the country.

The Cypress aphid is a threat to afforestation programmes for the Cypress species. As a result, many farmers are reported to be reluctant to plant Cypress in their woodlots. There is an urgent need to control the pest to avoid loss of forests.

The application of pesticides to control the pest is a useful measure but it has limitations. The nature of the forest canopy does not allow for effective pesticide application. There is also the need to do an environmental impact assessment on the use of pesticides before their application.

For better control of the pests and diseases there is need to strengthen the institutional capacities of FORI and the Forest Department in terms of man-power, equipment and funding.

4.1.3 Pitsawing

Pitsawing is one of the dominant means of converting round wood into sawnwood. Originally pitsawing provided employment and timber to local communities; however, it is now characteristic feature on the forestry landscape. As a result, pitsawing is a management issue since almost all the timber on the domestic market is pitsawn. For example, in 1993, saw-millers processed only 22,000m³ while pitsawyers processed 400,000m³ (State of Environment Report, 1996).

Pitsawing licences are granted by the Forest Department. The Forest Regulations require tree stumps and boards to be stamped by members of staff of the Forest Department. Unfortunately, these regulations are not being adhered to by all the sawyers and some officials. Most of the forestry staff who are charged with the management of pitsawing, lack the necessary resources to mark legitimate timber and distinguish it from that which is felled illegally. This leaves the system to be easily abused. It has also been noted that many of the forestry staff have direct vested interests in illegal pitsawing activity. It is, therefore, very likely that much of the royalties payable to government are never officially receipted or declared. The disadvantages associated with regulating pitsawing include:

- difficulties in controlling the activities of a large number of people who enter the forest;
- the fact that young trees, cut down by pitsawyers for the construction of pitsawing trestles and temporary shelters in total ignorance of good conservation practices; and
- the pitsawyers are becoming more and more selective in the species they cut, which leads to creaming of the forest and eventually the genetic impoverishment of the forest.

Sustainable timber production is currently difficult to achieve because there are many illegal pitsawyers whose number are difficult to quantify and illegal trade (for example, export mainly to Kenya). Export of non-value added timber is banned in Uganda. What is being encouraged, at a sustainable level, is the export of furniture. Control of illegal trans-boundary trade in forest and forest products needs legislative instruments and might in future require strict measures and agreements between the three East African States. Provision for this should be included in the forest legislation.

There is a need to effectively regulate timber movements and pitsawing through a timber marking system by the Forest Department and Uganda Revenue Authority. This will assist in ensuring that only legally pitsawn timber is brought into the market.

4.2 Tenurial Problems

The loss of forest land due to expansion for agriculture is influenced by the types of land tenure systems. Forested public land outside the gazetted system is not distinguished from other land when considering agriculture. In addition, there is no policy on management of forests on private land. These factors have led to deforestation. A person with sizeable forest cover on his land considers it as his private property and can, indiscriminately, use it in any way he wants. In the absence of well defined policy and effective legislation to regulate the management of private forests, this indiscriminate use will continue to go unchecked.

This position poses great threat to endangered reserved species of trees which may be on such land. The National Environment Statute, 1995 in an attempt to cover gaps in sectoral laws, contains general provisions for the management of such forests. Despite this attempt, however, there is no clear legal mandate under the Statute to prevent unsustainable use of such forests.

Strategy:

The proposed Forestry Act should contain provision to regulate the management of forest resources on land not owned by the Authority which is on private land. Enabling power should be created in the proposed law for the making of regulations for the management of private forests by a central body.

The provisions under the National Environment Statute, 1995 (especially Sections 46 and 47), should be incorporated in the proposed Act.

4.3 Inappropriate and often Illegal and often Illegal Policy Choices and Directors

To some extent, misguided policy directives have also contributed to degrading of the country's forest resource. Government allocated land in Forest Reserves to individuals, and private or public institutions, often contravention of the law and other administrative norms. The recent degazettement of part of Namanve Forest Reserve and the impending degazetting of Kisangi Forest Reserve are cases in point. The recent confrontation between the Forest Department and Uganda National Parks over the regazetting of six Forest Reserves into National Parks is another example of poor coordination.

Strategy:

Government institutions should be in the forefront in upholding the laws, they should be coordinated more effectively, and decisions on forests should be based more on scientific rather than political or economic considerations.

4.4 Population Pressure Coupled and Poverty

In districts with relatively high rural population densities, Forest Reserves have been encroached upon in an attempt by individuals to expand areas under cultivation and/or grazing. As the population increases, so does the demand for land for cultivation and forest products. Poverty and low standards of living compel the rural populace to encroach on the forested areas to obtain products in form of wood (fuelwood, poles) food, among others for commercial purposes and subsistence their livelihood.

Strategy:

To improve this situation, it will be necessary in the proposed legislation to strengthen and regulate forest usage rights.

4.5 Demand for Fuel Wood

Since most Ugandans cannot afford to use paraffin and/or install electricity into their homes (let alone pay for it once installed), they resort to firewood and charcoal as cheaper sources of energy. This involves immense and "indiscriminate" cutting down of trees leading to increased deforestation. Trees are cut from both private forest land, public land, and Forest Reserves. Trees under private and on public land are the most vulnerable because there is no regulation at all to control their use.

Strategy:

Legislation and policy to deal with trees on private and "public land" tenure, tree planting and village wood lots should be made, and consumerate penalties imposed. Possible incentives for good management of private forests should be provided for in the new policy and legislation.

4.6 Corruption

Corruption also has adverse effects on the forest resources; and is often associated with lack of adherence to international, regulatory provisions for granting licences. The abuse normally arises when the person issuing the license and/or the licensee contravene some of the conditions imposed by the Forest Act. This often leads to unsustainable harvesting of forests. One of the major causes of corruption is poor remuneration of government officials concerned and political pressure.

Strategy:

Offences in relation to forest should be broadened and penalties increased. It is recommended that stiffer penalties be prescribed especially where the offender is an officer in the Forest Department. Ways of making the Department more viable should be exploited so as to adequately reward the staff for their efforts. This will be further considered when discussing institutional framework.

4.7 Forest Fires

Fires, especially in a dry season, destroy forests. Given the traditional method of hunting by some local communities (and use of fire), the Forest department should liaise with wildlife management authorities to enforce the ban on hunting, or when lifted, design and encourage safer methods of "tribal" hunting. The Prohibition of Burning of Grass Decree and the section dealing with fire in the Forests Act should be maintained and enforced.

4.8 Over Grazing

By-laws made by the Kingdoms in the 1960s in the 1960s to regulate carrying capacity exist and urgently need effective implementation. Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) in, inter alia, the implementing of the Convention on Combating Desertification (CCD), is making efforts to address this problem more so within the "cattle corridor", that is, the area stretching from the North-East of

the country in Karamoja region across to the South West of the country in the districts of Rakai, Mbarara and northern part of Masaka district.

Strategy:

The law should clearly, spell out the relationship between the various agencies working for a common purpose even through under different mandate. Forest usage standards should be set in the forest legislation or an enabling power for setting such standards by regulations should be created.

CHAPTER FIVE

RECOMMENDATIONS FOR IMPROVEMENT OF FOREST RESOURCES ALLOCATION METHODS

There is need to introduce comprehensive and transparent forest resources allocation system which will include forest management contracts, harvesting licences and logging permits. The following factors should also be considered: timber dues, forest inventories, management plans and sustainable harvesting, especially by the local community.

5.1 Institutional and Management Issues

There are several institutions that relate to the management of forests as outlines below.

5.2 Constitutional Arrangements

As required under Article 237 of the Constitution, Parliament has, by law (that is, the Forest Act), determined that forests and forests resources management be undertaken by government. The Minister, subject to any written law relating to the appointment of persons to the public service, is empowered by Parliament, under Section 3 of the Forest Act, to appoint a Commissioner for Forestry, his deputy and other senior and junior staff to manage areas falling under that Act. The Constitution, in Article 189(1) and in the Sixth Schedule, vests, subject to the Constitution, the functions and services for *inter alia*, land, the environment and the forest policy, in Government. The Constitution goes further in article 189(2) to provide that a District Council and the Councils of lower Local Government units may, on request by them, or if delegated to them by law (see also Section 329(10) and 333(1) of the Local Governments Act, Act No. 1 of 1997, which has similar provision), be allowed to exercise the functions and services specified in the Sixth Schedule. The ownership of forests, under the Constitution and the Forests Act, is initially vested in Central Government. Local Governments can only be involved if Central government delegates management functions to them or if Parliament so decides. Part 2 of the

Second Schedule to the Local Government Act, 1997, creates an enabling environment for transfer of functions and services for forests and wetlands to District Councils.

These functions and services are transferred subject to, *inter alia*, the said functions, powers and responsibilities being devolved and transferred from the Government to Local Government units in a coordinated manner. One can argue that the law advocates for gradual devolution or transfer. This is in line with the recommendation for greater community participation and promoting joint management between the Forest Department and the community. Once functions and responsibilities are, to whatever extent, devolved or transferred by Central Government to the Local Government, the responsible Ministry still has duty to monitor, coordinate, supervise and offer technical advice to ensure that all actions taken with respect to the functions and responsibilities so transferred or devolved, are being exercised by the Local Government in line with the Government policies and the required standards.

Strategy:

The Forests Act should be reviewed in order to incorporate clear linkage with the Local Government system regarding forest management. Provisions should ensure gradual transfer, delegation or devolution of functions and responsibilities particularly with regard to forest extensions. The capacity of sub-national levels need enhancing to ensure effective implementation of transferred functions and responsibilities.

It should be pointed out that the Forests Act has, to some extent, already transferred some of the management functions and responsibilities to the local community/local authority. Section 5 of the Act provides that the Minister in declaring a

local forest reserve under Section 4 shall specify the local authority which shall have only the maintenance and control of the local reserve so declared. The Act also, in Section 10(1) provides that village forests shall be managed and controlled by such body or persons as the local authority shall appoint for that purpose and revenue derived from the management and control of such forest shall belong and form part of the funds of the local authority for the welfare of the community in which the forest is situated. In administratively implementing its changed policy on forest management the Forest Department, before the Mount Elgon Forest reserve was gazetted as a national park, had already started implementing joint management in that reserve.

A notable provision in the Act, one worth retention is Section 7(2). This empowers the Minister, at his discretion and in the interest of ensuring proper protection, control or management of a Local Forest Reserve, to vest the functions of the Local Government with respect to that reserve, in the Commissioner of Forestry.

These provisions should be enhanced since they advocate for the concept of joint management and benefits to the local community. The management of forests on private land is not covered and this should also be addressed.

5.3 The Forest Department

In the setting up of Ministries and Government Departments, the Constitution provides that the President shall, with the approval of Parliament, appoint Cabinet Ministers [Article 113(1)]. Once appointed, the functions for which a Cabinet Minister is responsible are assigned by the President. In the exercise of these functions, the Minister for Natural Resources (now Ministry of Water, Land and Environment (MWLE)) has been assigned, among others, the responsibility for the management of forests. For ease of administration, several departments have been administratively established under this Ministry to handle key subject matters. One such department is the Forest Department.

The Forest Department is the main government body and lead agency responsible for management of forests and trees. It is assigned the responsibility for enforcing the Forests Act. Its functions are spelt out in the Act and the Constitution. Briefly, the Forest Department is to develop and implement forest policies and safeguard forest resources. Its duties are to select reserves and demarcate their boundaries, recommend forest policy and legislative reforms to Government, research, prepare management plans for the reserves, control and assist in law enforcement efforts on forestry resources exploitation,

effect and promote afforestation, and generally to implement the Forests Act and regulations made under it.

The above set-up has its various short comings. Some of them are as follows:

- a) as a Department under Ministry such as MWLE, its weight in the fulfillment of its functions could greatly be reduced by the normal bureaucratic chain of command which is typical of such government set-up;
- b) the relationship between the National Environmental Management Authority (NEMA), a legal entity for which the Ministry of Water, Land and Environment is responsible, and the Forest Department could be tricky. NEMA, is an autonomous body charged with co-ordination, supervision and monitoring of all aspects of the environment. The Forest Department is or should be the key lead agency to assist NEMA in fulfilling its role respect to forest management. The Department also, on the other hand, being sector specific, has to fulfil its sectoral role of coordinating, supervising and monitoring all aspects of the forest management in Uganda.

This is a delicate situation which can lead to serious repercussion should the two not develop a good working relationship from the onset. The decision of putting NEMA under the Ministry with various other sectoral managers is a gross error which only time will tell;

- c) it is questionable whether, as a line bureaucracy, the Forest Department has as much clout as, say, NEMA or any other autonomous body charged with the management of such a sector; and,
- d) the financial viability and autonomy that NEMA or any other autonomous sectoral entity engaged in the management of the environment enjoys, could also be a hindering factor in the effectiveness of the Department. The Forest Department, as a government department is managed by civil servants and is subject to government financial scale and regulations. It is common knowledge that government never has sufficient funds to manage its affairs.

Strategy:

There is need to review the institutional set-up the Act in light of having a more flexible, viable and effective body in place, that is free of bureaucratic controls. Since Government is effecting its restructuring and privatisation policy at the moment, this creates an enabling environment for such review.

5.3.3. Critical Analysis of the Status of the Forest Department

As a government department, the Forest department has the following constraints:

- Lack of funds, that is, funds allocated and actually available to the department are inadequate.
- Out-dated laws and lack of up-to-date and relevant regulations under which to operate.
- General decline in the enforcement of the Forest Act and a slack in the commitment to the objectives and policy for which the Department stands.
- Poor remuneration of the personnel of the Department leading to low morale for work.
- Limited research and training facilities.
- lack of adequate to updated information
- A bureaucratic leadership
- Inadequate staff due to retrenchment exercise and uncertainty about security of tenure of office.

There is urgent need for reform. There is need to create an organisation with greater autonomy in its operation, one which has powers to generate and solicit for funds and manage those funds without the existing government restrictions on fund management which is to be observed by all government departments, as required under Chapter 9 of the Constitution; and, the various financial manuals and regulations from time to time should be issued. The existing status of the Department needs to be reviewed. The Ministry of Public Service and that of Water, Land and Environment are already looking into this matter. Without pre-empting their decision it is recommended that an autonomous body be set up, for example, as an authority (The Forest Management Authority).

5.4 The national Environment Management Authority

This is the main institution dealing with and the one-stop information centre on environmental management in Uganda. One of its main functions is to co-ordinate and harmonise the integration of environmental concerns in overall national planning process through co-ordination with the relevant ministries, department and agencies of Government. Under the NEAP process, a review of national legislation on

environment relegated that they are sectoral in nature, therefore, *inter alia*, lack co-ordinated approach to environmental management.

NEMA is to bridge that gap and as such, should liaise with the Forest Department in the management of forests and forest resources. It is, therefore, necessary that legislation embrace this relationship so as to ensure consistency on forestry, avoid conflict, duplication and all other gaps identified in sectoral legislation under the NEAP process.

5.5 The District Councils

With the present decentralisation system, an enabling environment has been created for District Councils to be granted the responsibility of managing natural resources, including forests. Both the Constitution and the Local Governments Act of 1997 grant the management of natural resources including forests to the District Councils, subject to monitoring and supervision by the line Ministries. This is a new system that must conform with other institutional arrangements that deal with the management of forests. The forestry legislation must recognise this. Enabling provisions should be made in the proposed Forestry Act for delegation of the management responsibilities under clear guidelines to the local government system and individuals, especially, in the latter case, where the forest lies on private land. Regulation or guidelines on forestry management could, should the proposed forestry Act fail to create the enabling power, be made under the national Environment Statute so as to guide the District Councils in forest management.

5.6 Ministry of Public Service

All workers in government departments are employees of the Ministry of Public Service. The current policy of reduction of personnel employed in the civil service, will automatically affect the man-power capacity for the management of forests. The impact is already been felt by the Uganda Wildlife Authority. Provisions should be made to strengthen the existing man-power (though limited in number) and build their capacity for effective management. These include personnel for research and training for forestry industry, and also those to facilitate increased involvement by the local population in the management of forests and forest resources.

CHAPTER SIX

REVIEW OF EXISTING NATIONAL POLICY AND LEGISLATION

6.1 The Constitution of Uganda (1995)

The Constitution, in Article 237 (2) (b) requires the State to hold in trust for the people and protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. This is re-echoed in the Land Act, No.16 of 1998 which is intended to implement the constitutional provisions. (See Section 43, 44 and 45 of the Land Act, 1998). The State is also required to promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations. (Preamble para. xxvii). This is to ensure the utilisation of natural resources of Uganda is managed so as to meet the development and environmental needs of present and future generations of Ugandans. In particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air, and water resources resulting from pollution or other causes.

To achieve effective management of environment, the State, including Local Government is required:

- Create and develop parks, reserves and recreation areas to ensure the conservation of natural resources.
- Promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda.

The Constitution also empowers the Government or a Local Government as determined by Parliament, by law, to hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens.

Clearly, the Constitution of Uganda requires the State to develop comprehensive mechanisms for sustainable

management of forest resources. To that end, the Forestry Policy and law should be developed reflect the requirements of the Constitution, namely, to provide for public participation in the management of forest reserves in Uganda.

The Constitution recognises four land tenures: customary, freehold, *mailo*; and leasehold. The position of land set aside by Statute for a given purpose, for example, forest reserves and wildlife conservation areas, is not clear. This needs to be clarified in the draft Land Control and Tenure Bill. This is necessary because with the above tenure system, any land that does not fall under it is to be vested in the Uganda Land Commission or District Land Boards. The Uganda Land Commission, under Article 239 of the Constitution is to hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the Constitution. It is not clear whether the forest reserves declared under Section 4 of the Act fall under this provision.

Each of the land tenure systems under Article 237(3) of the Constitution has a different impact on the forestry resources. Once the law to give effect to Article 237(3) is passed, all citizens in Uganda will be empowered to own land under one form of tenure or any other. This ownership will have an impact on the management of forests on private land. The time has, therefore, come to clearly specify, by legislation, the nature of management of forest resources on private land. Forest land-use policies for a more systematic and rational use of forests in any of the land tenure should also made.

6.2 The Forests Act Cap 246

This is the main law that regulates and controls forest management in Uganda. The Forests Act seeks to ensure forest conservation through the creation of forest reserves. In such forest reserves human activities are strictly controlled. The Act also seeks to control commercial harvesting of forest produce.

Under the Act, the Minister responsible is empowered to declare an area to be a central forest reserve. Once an area is declared a forest reserve no person may cut, take or work or remove forest produce therein unless he has a license or unless, under Section 15, he is an African taking the forest produce in reasonable quantity for domestic use. Forest produce is defined under the Act to include trees, soil, stone, firewood, honey, grass, fruits, gravel, and any other thing as the Minister may by statutory instrument declare to be a forest produce.

The Act provides that no person may clear, use or occupy land on a forest reserve for grazing, camping, fishing, farming, planting or cultivation of crops, erection of buildings or construction of roads. Generally, it may be said that the Forests Act seeks to protect forests in Uganda. The range of prohibited activities is so wide that it may be submitted that no human activity may be allowed to take place without license. Actually, under the Forests Act, the Commissioner for Forestry is empowered to issue licences on payment of prescribed fees. A licence is to permit the cutting, taking or removal of forests produce from a central forest reserve. Provision for a licence to exercise a right to harvest the resources would be effective so long as it is rigorously enforced. Unrestricted entry by "Africans" as provided in Section 15 of the Act might be abused if not properly controlled given the increase of population and degree of enlightenment by most "Africans".

6.2.1 Deficiencies of the Forest Act

The deficiencies may be outlined as follows:

- No guiding principles on which the grant or refusal to grant a licence should be based. The omission could be one of the factors that have led to the existing corruption and perpetual exploitative tendencies without due consideration to conservation.
- There are no set guidelines on which the Commissioner for Forestry and his deputy are appointed and controlled. The Commissioner for Forestry may therefore, assume a lot of powers. Given the low salaries of the Forest Officers and all government officials, this may encourage abuse of power and or corruption at all levels.
- The Act, provides that licenses may be issued by local authority; however, there are no specific guidelines to such licensing officers. Considering that they may lack the necessary training in forest management, this power may lead to poor conservation practices. Due to transport and other logistical problems, the Department cannot effectively monitor their work.
- The Forests Act authorises Africans in any forest reserve, village reserve or open land to cut and take for their personal domestic use, in reasonable quantities, of any forest produce. This is a racial provision made during

the colonial period. It is now outdated and unnecessary. Though this policy could have been sustainable then, it is now impracticable given the increase in population and the poor land-use patterns being practised. The Constitution also expressly provides that such resources are to be held in trust and protected for the common good of all citizens (Article 237 (b)).

- The definition of firewood to include trees in form of bundles, or loads cut up in a manner in which it is made to cut wood for burning and all refuse wood generally, is restrictive. The Act specifically provides that the definition does not include sound straight timber logs or poles of any kind. Given the high rate of population growth, the definition of firewood is too restricts and the collection of straight timber logs or poles of any kind due to lack of protection or control, may not allow regeneration of forest.
- Very low penalties and fines. The Act creates offences, however, the prescribed punished of imprisonment for a period not exceeding 6 months or a fine not exceeding 2000/- is grossly inadequate. The Forest Officers strongly advocate for prescribing only imprisonment with no option for fine; this is, on the basis that prescribing only imprisonment, no matter how short, will have a greater and more positive impact.
- Under the Forests Act, any local authority may with the approval of the Minister declare any lands occupied by community within its jurisdiction a village forests. It is not clear under what circumstances an area of land can be gazetted as a village forest.

Given the current land tenure system, under the Constitution it is not clear whether with the recognition of Customary land tenure and the provision for Certificate for Occupancy, much land will be left under the control of the District Land Board that can be declared as a village forest; and, whether individual tenants will be willing or will acquire the level of awareness that would lead them to appreciate the need for establishment village forest reserves through the surrender of their customary tenure rights or part of that right. In reality there are currently no village forests in Uganda. This provision is good but lacks implementation. The Constitutional provisions on land tenure systems casts a lot of doubt on the possibility of its effective implementation.

- The Act does not make provisions for public participation in forest management. Forest dwellers; users; local communities; indigenous knowledge and legal systems and traditional rights and property rights; customary law are not mentioned in the Act. Indeed indigenous (traditional) knowledge in forestry is not explicitly recognised under the Act and yet it plays an important role in conservation of forests.

- The Act also does not make any provisions to enable private or groups of persons to take actions to remedy and prevent activities of government official or any other public officer, that are deleterious to the environment done by.
- The Act does not have provision for the management of wildlife within forest reserves.
- The Act does not expressly mention modern tools of management of resources such as Environmental Impact Assessment in relation to development activities in forest areas; and easements and restoration of degraded forests.
- The licensing system is not stream-lined and the fees payable are still low, and so are the penalties for breach of the requirements in a licence.
- Areas with low forest cover which need afforestation or re-forestation are not expressly catered for.
- *Ex Situ* conservation methods are neither mentioned nor are they regulated.
- Agro-forestry is not mentioned at all.
- Mechanisms for forestry assessment including indicators and criteria for forest assessment are absent.
- Issues of trade in forest products and services which are derived from renewable and environmentally sound resources such as investments in forest production (planted estates); exports and imports of forest products; imposition of trade measures to ensure sustainable forest management, are not catered for.
- International trade in forest products, that is, export and import permits, are not catered for under the Act but rather than a separate Act, The Timber Export Act – Cap 247. Possibility of bringing trade regulations under the same Act should be explored.
- Provisions for the implementation of CITES requirements on trade are not addressed, and certification and labelling system which is geared to sustainable forest management is still absent.
- Cross-linkages with other institutions and laws are weak.
- Issues of modern means of enforcement such as incentives and other tax and non-tax incentives are lacking.
- The Act does not make any provisions for the management of private forests.

6.3 The Timber (Export) Act, Cap 247

This Act provides for the control of timber and its inspection, grading, marking and handling in transit. The Act empowers the Minister to restrict or prohibit the movement of any kind of timber from Uganda either by kind or by quantity. The Act requires all timber exports to acquire value certificates for export.

The major deficiency of this Act, is that it is basically a commercial Act that covers timber trade only leaving out other forest products. Furthermore, the penalties under the Act are too low. A fine of Ug. Shs.2000 and imprisonment not exceeding six months or both fine and imprisonment, cannot deter people from committing. There is no clear link between the Forest Act and this Act. This is a big gap in the law. offences under the Act. The magnitude of illegal trade in timber is evidence to this. For monitoring and evaluation purposes, provisions for trade in forest produce are integrated in the proposed Forestry Act, so that the forest officials do not exercise responsibilities only within the reserves but up to the final legislation as well. The Act does not address the requirements of CITES with respect to the international trade. The Act does not specify the link with the Ministry of Tourism, Trade and Industry (MTTI) or other Management Authority or Scientific Authority in Uganda for the implementation of CITES. The responsibility for CITES lies with the MTTI. The fees also need to be revised.

Recommendations

This Act should be repealed and those provisions which are relevant to the Forests Act transferred under the proposed Forestry Act. This will ease management and reduce scattering of legislation in many pieces and places.

A close link should be developed with the organs responsible for CITES implementation and the Forest Department should be involved in the making of regulations to give legal effect to CITES.

6.4 The Town and Country Planning Act, Cap 30

This Act has provisions relating to the management of forest resources. It basically relates to management aspects of forest resources necessary for planning. The Act empowers the Minister by Statutory instrument to declare an area a planning area. It requires that a scheme be prepared by the planning authority, and then empowers the authority to acquire land in respect of which a planning scheme has been prepared, for purpose of roads, open spaces, gardens, schools, places of religious worship, recreation grounds, car-parks, aerodromes, markets, slaughter-houses and cemetery.

The Act exonerates any officer or employee acting in accordance with its provisions, who acts bona fide, for purposes of executing any of its provisions from personal liability. It is noted that a plan to clear a forest reserve may be approved by the Board, under this Act, and once it is proved that the officers were acting bona fide, they will not be prosecuted for approving such a plan and subsequent damage which may be caused to the forestry resources.

Recommendation

This old Act, which does not provide or require the undertaking of environmental impact assessment. It is recommended, therefore, that in order to save forest resources from being destroyed, the planning schemes should be subjected to environmental impact assessment as a mandatory rule. If this is done, the Act will be able to come in line with modern legislation on the protection of the environment and hence, will be able to protect the resources in areas where it applies.

6.5 The Local Government Act, No. 1 of 1997

The Act provides for the decentralisation and devolution of powers, functions and services from the Central Government to Local Governments. It is also intended to ensure good governance and democratic participation in control and decision-making by the people. It gives line-Ministries the mandate to inspect, monitor and where necessary offer technical advice, support, supervision and training within their respective sectors.

A Government line-Ministry is particularly called upon to monitor and co-ordinate Government initiatives and policies as they apply to Local Government; co-ordinate and advise persons and organisations in relation to projects involving direct relations with Local Governments, and generally assist in provision of technical assistance to Local Governments.

The Local Governments Act is based on a district as its main administrative unit. In terms of management of natural resources, therefore, a line-Ministry like the Ministry of Water, Land and Environment has to liaise with the District Council. The Act does not seek to decentralise the management of forests to the District Council, but rather, it seeks to devolve their management to such a level. This means that the sole control and management of forests, whether central forest reserves, collaborative management forest reserves or village forest reserves remains in the hands of the Forest Department under the Ministry. The Act, however, encourages increased public participation in natural resources management by involving the District Council, lower administrative units and the community.

The Land Act, No. 16 of 1998

This Act provides for the tenure, ownership and management of land in Uganda. The Act, in consonance with the Constitution vest all land in Uganda in the people. It, however, enables Government or Local Governments to acquire land in accordance with the provisions of the Constitution for a purpose intended to benefit all the people of Uganda.

It imposes a duty on an owner or occupier of land to manage and utilise the land in accordance with the Forest Act, the Mining Act, the National Environment Statute, 1995, the Water Statute, 1995, the Uganda Wildlife Statute, 1996 and any other law. This means that in case one has a forest reserve on his/her land, he/she must comply with the provision of the proposed Forestry Act.

Where the Government is to acquire interest in land for protection of forest reserves, it shall do so in trust for the people. The Government is, in particular, enjoined to protect natural lakes, rivers, ground-water and other water bodies, and any other land reserved for ecological and touristic purposes, for the common good of citizens of Uganda.

This Act, therefore, considers forest reserves as of prime importance and caters for their preservation and conservation. The Act, further, enhances public participation in the management of land and natural resources by specifically involving women and children in their management. Women and children are particularly important actors in the management of natural resources since they are normally involved in the clearing, cultivation and at times of burning vegetation. They also collect firewood from forest reserves. Their involvement in the decision making process, is therefore, handy in terms of conserving and preserving forest reserves.

6.5 The National Environment Statute, 1995

This Statute provides for sustainable management of all aspects of the environment including forests; and establishes the National Environment Management Authority as a coordination, monitoring and supervisory body for that purpose.

The Statute has several provisions in relation to forest management. These include principles on:

- Conservation and natural resources management.
- Reforestation and Afforestation on hill tops and mountainous areas.
- Community tree-planting and introduction of vegetation in an area.
- Conservation of biological diversity.
- Management of forests in protected areas including forest reserves, and national parks.
- Forests on lands subject to interest held by private persons.
- Conservation of renewable sources of energy.

Currently, there are no relevant regulations to implement the provisions of the National Environment Statutes (NES) on

forests resources. Therefore, regulations should be made to implement the above principles of forestry management as envisaged in the NES. Also the Forests Act should recognise the provisions of NES.

Strategy:

There is need to establish a strong link between the Forest Department and NEMA especially on issues relating to Conservation and Biodiversity.

6.6. Forest Policy, 1998

The revised Forest Policy of 1988, purports to improve the management of Uganda forest resource so as to meet domestic needs for timber, fuel wood, pulp, paper, poles and other forest products and also attempts to meet export demands for forest produce.

The Policy also seeks to manage the forest estate so as to optimise economic and environmental benefits to the country. This is to be done by ensuring that:

- the conversion of the forest resource into timber, charcoal, fuelwood, poles, pulp and paper and other products is carried out efficiently.
- the forest estate is protected against encroachment, illegal tree-cutting, pests, diseases and fires;
- the harvesting of timber, charcoal, fuelwood, poles and other products applies appropriate silvi-cultural methods which ensures sustainable yields and preserves environmental services and biotic diversity; and,
- research is undertaken to improve seed sources for planting stock as another silvi-cultural and protection method needed to regenerate the forest and increase its growth and yield.

Although this Forest Policy provides good ideas for sustainable forest management, it has several loop-holes, which include the following:

- For the execution of this policy to gain meaningful success, the rural populace who form the majority of Uganda's population should have been/must be consulted; however, no effort was made to consult these people during the development of the Forest Policy.
- Reserves mentioned in the Forest Policy statement have not been given the place it deserves. Thus, the Policy is not well implemented.
- There is no effective administration of the Forest Policy. Policy implementation has been the sole responsibility of the Forest Department, which uses its own staff to attempt this Policy. There is no public involvement.

- The interpretation of the Forest Policy has not been well done so as to be understood by the local people. Many people do not understand what role they can play in advancing the good forestry management in their own local settings.
- The Policy has not been adequately translated into legislation, and it is not reflected in the Forest Act. This is a big weakness since no punitive sanctions can be effected or implemented. It is also difficult to enforce compliance especially with the enlightened offenders, without a legal base.
- The Policy does not adequately consider the management of private sectors; that is, there are no guidelines on the management of forests on private lands.

Strategy

Prepare a new policy to incorporate the above issues and implement the policy by making legislative intervention to give the policy moral and administrative authority.

6.7 The Uganda Wildlife Policy, 1995

The Uganda Wildlife Policy is contained in the mission of the Uganda Wildlife Authority (UWA), which is:

"To conserve in perpetuity, for all Ugandans and the global community, the resources within the national parks and wildlife estate and to enable Uganda's people derive ecological, economic, aesthetic and educational benefits from wildlife".

A secondary objective of UWA, which also, embraces part of the Uganda Wildlife Policy is:

"To generate revenue to support these conservation efforts and, therefore, contribute to the national economy."

Uganda's wildlife and protected areas are regarded as resources of immense value and marketability, and as a legitimate and sustainable contribution to land-use. The UWA Policy takes into account the role of the Forestry Department which manages the country's network of over 700 Forest Reserves, comprising approximately 7% of Uganda's total land area. The Policy, also envisages collaboration between UWA and the Forestry Department.

The key aspect of this Policy, is that of local community participation in the management of wildlife resources, and their direct benefit from them. This aspect is not intended to compromise Uganda's obligation to conserve the country's biodiversity, but rather, it is intended to enhance the same.

The UWA Policy, therefore, enhances the preservation and conservation of Uganda's forest reserves by encouraging UWA to coordinate its activities with those of the Forest Department.

6.8 The Uganda Wildlife Statute, 1996

This Statute provides for sustainable management of wildlife and consolidates the law relating to wildlife management. The Statute also establishes the Uganda Wildlife Authority. It provides a framework for protection of wildlife under two strategies: provision for the wildlife conservation areas, and protected species.

“Wildlife” is defined to include any wild plant of a species native to Uganda. According to this definition tree species are included. One could question the inclusion of wild plant in the definition of “wildlife” when the Uganda Wildlife Statute, 1996 is basically to govern the management of wild animals and more so when the responsibility for wild animals lies with a different Ministry. This definition was especially designed to cover areas of concern by both agencies and more so for ease in implementing the CITES requirements.

Under this Statute, the Minister, may after consultation with Local Government council in whose areas a proposed wildlife conservation area falls, declare an area of land or water to be a Wildlife Conservation Area. A Wildlife Conservation Area is categorised either as wildlife protected area or a wildlife management area. A wildlife protected area shall be, *inter alia*, either a National Park or a Wildlife Reserve. One of the activities permitted in a wildlife protected area is the conservation of biological diversity. Of concern, however, is the provision for permitting “any other economic activity in a national park”. A national park under the repealed National Parks Act was a strict protection area. Had this strict protection status been maintained under the Uganda Wildlife Statute, then the legality in awarding saw-milling concessions in areas which were originally forest reserves but which have now been declared as national parks would not have been an issue. In reducing the strict protection status, clear regulatory procedures will have to be developed. Input from the Forest Departments is crucial in this in the interest of conserving protected tree species.

The Wildlife Statute provides for restricted use of resources in wildlife protected areas. The use of resources therein are subject to permission by the Executive Director of UWA. He is responsible for regulating and controlling harvesting in the wildlife protected area. He has to make sure that the annual harvest does not exceed the sustainable yield.

The Statute also provides that the Minister, on the recommendation of the Board, by statutory order, may species of wild animal or plant shall be:

- (a) fully protected species which may not be subject to Wildlife use rights; or.
- (b) partially protected species to be utilised only subject to a format of a wildlife-use right.

Wild-Use rights under the Wildlife Policy, 1995, are granted in areas outside National Parks or Wildlife Reserves. They can be granted to a private land-owner. There is need to extensively consult with the Forest Department in designing the use rights regulations in order to ensure the conservation of protected species in wildlife conservation areas; most especially in wildlife management areas.

6.9 The Mining Act, 1949 Cap 248

This Act makes provisions for the ownership, prospecting and mining of mineral resources in Uganda. The Act reserves all mineral oils in Uganda to the Government. It also regulates the granting of permits, licenses and leases for prospecting and mining the same.

The Act makes provisions for the management of trees. Section 5 of the Act permits the holder of a prospecting licence to cut, take and use free of fees which have not been planted by government or an individual, or which is reserved under the Forest Act. The Commissioner, however, is empowered to impose restrictions and regulate the clearing of bush when such clearing shall appear likely to interfere with a stream flow or cause erosion. This provision calls for effective supervision and enforcement.

6.10 The Prohibition of Burning of Grass Decree (Decree 5 of 1974)

This Decree prohibits the unauthorised burning of grass except in accordance with the Decree. In the case of burning of grass in a forest reserve declared under the Forest Act, the burning is to be carried or authorised in writing, by an officer of the Forest Department not below the rank of a Forest Ranger. The provision is useful for the protection of forests against fire. Provisions in the Forests Act on precautions against fire should be maintained, strengthened and enforced. The enforcement machinery, should be exhaustively reviewed and penalties should be made stiffer. A fine of Ug. Shs. 500 or imprisonment of 3 months or both, is inadequate to prevent offenses committed under the Decree.

6.11 The Plant Protection Act Cap 244

This Act provides for the prevention of introduction and spread of diseases destructive to plants. The Commissioner for Agriculture is responsible for the Administration of this Act. He/She can restrict the importation into and export of plants of any kind or nature which are injurious to Agriculture. The Act, however, does not expressly prohibit the destruction or taking of unique species. The Act appears to merely make provision for the prevention of the introduction and spread

of diseases destructive to plants. There is a need to up-date and add more information about plants and more species of plants need protection under the Act. The Act is under review by MAAF and given the strong implication for forests, it is advisable that the input of the Forest Department be considered and where relevant, be incorporated.

This Act also needs to be supplemented by subsidiary legislation in order to up-date it and to make it confirm to current knowledge of plants and other protection measures.

CHAPTER SEVEN

INTERNATIONAL FOREST LAW AND ITS IMPLICATIONS IN UGANDA

It is recognised that there is no global treaty on the conservation and sustainable use of forests. What exists are some instruments which are relevant to forests;

- a) soft law – which like any soft law, reflects general statement of principles on forests;
- b) International Tropical Timber Agreement – globally binding commodity treaty;
- c) the Convention on Biological Diversity – which encompasses, some issues relating to forests;
- d) Ramsar;
- e) CITES;
- f) Framework Committee on Climate Change;

7.1 International Instruments on Management of Forests Customary law in international law (soft law)

7.1.1 The Stockholm Declaration

The Stockholm Declaration (1972), is probably one of the foundations for environmental law in the world. The relevant principle of the Declaration provides that States have sovereign right to exploit their own resources pursuant to their own environmental policies and the obligation to prevent activities within its jurisdiction from causing environmental harm beyond harm beyond the border recognising territorial integrity of a State as required under international law. Although, the Stockholm Declaration is not a legally binding instrument under international law, it has been re-stated in many Conventions such as Convention on Biological Diversity (CBD), for it to be accepted as a general practice, accepted as law or *opinio juris* (see Article 38 (10) of the Statute of the International Court of Justice (ICJ)), the principle judicial organ of the United Nations). Uganda therefore, needs to develop forest policies and laws that correspond to that principle.

7.1.2 The World Conservation Strategy (1980)

This Strategy sets out some desirable objectives for forests management. These objectives are: to maintain essential ecological processes and life support systems; to protect genetics diversity; and to ensure the sustainable utilisation of species and ecosystems. The Conservation Strategy express sustainable utilisation of ecosystems and species. It is not legally binding instrument. The WCS principles have also been echoed in other documents/strategies which have international importance such as *Our Common Future (1987)*; *World Charter for Nature* and *Caring for the Earth (1991)*. The emphasis extends to management actions such as integrated conservation, extinction of species, *in situ* and *ex situ* conservation measures, sustainable development. These strategies have useful management actions which can act as guidelines for developing forest policies and law in Uganda. In the context of forests management, a general admonition that living resources should not be utilised in excess of their natural capacity for regeneration, special protection of endangered and rare species, and forests practices, should be adapted to the natural characteristics and constraints of given areas emphasised.

Other reports of relevance include the Brundtland Commission Report which analysed a number of administrative and judicial problems such as the obligation of States towards their citizens and towards other States. In addition, an Annex to the Report proposes legal principles on environmental protection and sustainable development. Article 3 specifies that:

“States shall maintain ecosystems and ecological processes essential for the functioning of the biosphere to preserve biological diversity and to observe the principles of optimum sustainable yield in the use of living natural resources and ecosystems”

These and other principles stated were developed after the Forests Act. The National Environment Management Authority Statute, 1995, and the Uganda Wildlife Statute, 1996, which were enacted after the Report was made, embody the principles of preserving biological diversity and observing the principles of optimum sustainable yield in the use of living natural resources and ecosystems. With proper implementation, these principles could be important tools in the development of sustainable forest management legislation in Uganda.

During the Rio Summit on Environment and Development (UNCED, 1992), the Rio Declaration was made which, *inter alia*, recognised the substantive requirements for development and procedure requirements for implementing environment protection. The Declaration re-stated the principles as found in the Stockholm Declaration.

Under Agenda 21, the principle action document of UNCED, special programmes and recommendations were made related to forest sustainable management. Of particular interest are the following:

- **Chapter 10** on Integrated Approach to Planning and Management of Land Resources. It provides that States should strengthen their planning, management, institutions, policy instruments and evaluation systems for land and land resources.
- **Chapter 11** on Combating Deforestation. The basis of which relates to strengthening forest related national institutions, management activities, cooperation and coordination.
- **Chapter 12** on Managing Fragile Ecosystem: Combating Desertification and Drought. This relates to combating deforestation and land degradation through, *inter alia*, intensified soil conservation, afforestation and reforestation activities.
- **Chapter 13** on Managing fragile Ecosystems: Sustainable Mountain Development. The objectives relate to, *inter alia*, improvement of regional and national efforts to protect fragile mountain ecosystems through institution of appropriate mechanisms, including regional, legal and other instruments.
- **Chapter 15** on Conservation of Biological Diversity. The objectives and activities are intended to improve the conservation of biological diversity and sustainable use of biological resources, as well as to support the Convention on Biological Diversity.

7.1.3 *The Non-legally Binding Authoritative Principles on all Types of Forests*

A special outcome of UNCED was the adoption of the Non-

legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests.

The guiding object of the principles was to contribute to the management, conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses.

The principles recommended public participation in the management of forests, that is, private sector, non-governmental organisation and local communities; and encouraging international, bilateral and regional cooperation in the promotion of sustainable and environmentally sound development.

The principles re-stated the Stockholm Declaration on State sovereignty over natural resources including forest resources. The principles contain some of the modern principles of sustainable forest management which may be ideal for adoption by a new Uganda Forest legislation.

7.2 **International Binding Instruments Related to Forest Management**

7.2.1 *The African Convention on the Conservation of Nature and Natural Resources*

Uganda became a party to this Convention in 1977. The objectives of the Convention are to encourage individual and joint action for the conservation, utilisation and development of soil, water, flora and fauna for the present and future welfare of mankind, from an economic nutritional, scientific, educational, cultural and aesthetic point of view. Encouragements take such forms such as sharing information between State Parties, imposing bans on the importation and exportation of specified flora and fauna species. Most members of the Organisation of African Unity (OAU) are parties to this Convention. If pursued vigorously, it would benefit regional forest management.

7.2.2. *The Lome IV Convention (1995)*

This Convention provides for sustainable management of forests resources. It gives special priority to actions which support and encourage African, Caribbean and Pacific (ACP) States and their organisations to preserve, re-establish and use sustainably their forestry resources, including the fight against desertification.

The Lome IV Convention provides, *inter alia*, that community shall support efforts made by the ACP States at National,

regional and international level, and also operations by inter-governmental and non-governmental organisations in furtherance of national and inter-governmental policies and priorities, for conservation of endangered tropical forests and their bio-diversity. Uganda should adopt and implement the objectives of this Convention.

7.2.2 *The Biological Diversity Convention (Rio 1992)*

The objectives of the Convention include: the conservation of biological diversity, the sustainable use of its components and the fair, and equitable sharing of the benefits arising out of the utilisation of genetic resources (Article 1).

The Convention is linked to forests in that a significant component of the world's terrestrial biodiversity in forest ecosystems, which includes temperate, tropical, boreal and mangrove forests lands is a major cause of the decline in ecosystems, species, and genetic biodiversity.

Reference to forests in the Convention is that, although though “forests” are not specifically referred to in this Convention, they are part of the definition of the term “biological diversity” in that they are both a component of, and a habitat for terrestrial biodiversity. Thus, most of the provisions of this Convention have bearings on forests. Those relating to *in-situ* conservation and sustainable use of biodiversity are, particularly relevant for the conservation and sustainable management of forests.

The Convention calls for, *inter alia*, development of strategies for in situ and ex situ conservation and sustainable use of biological diversity. These strategies are to be incorporated into existing cross-sectoral planning and development framework [Article 6(a), (b)]

Role of the Convention in Comprehensive Forest Management:

- (i) The Convention operationalises and renders more specific many elements of the Forest Principles for the conservation, management and sustainable development of all types of forests. These include, *inter alia*
 - integrating considerations of conservation and sustainable use of biological resources into national decision –making [Article 10];
 - undertaking EIA of activities which can adversely impact biological diversity within forests, and thereby forest ecosystems health [Article 14];
 - setting aside and developing guidelines for managing protected areas for the purpose of conserving biodiversity [Article 8];

- acknowledging the role and knowledge of indigenous people and local communities in sustainable resource use; and committing to an equitable sharing of the benefits derived from this knowledge [Article 8];
- devising economically and socially sound incentives for the conservation and sustainable use of components of biological diversity [Article 11].

- ii) The Convention helps in defining and operationalising the notion of “sustainable use” of biodiversity, especially the world's forest resources, with various and multiple resources, including most importantly, their biological diversity.

7.2.3 *The UN Framework Convention on Climate Change (FCCC) (1992)*

The objective of this Convention is to stabilise green-house gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system [Article 2].

The Convention is linked to forests in that human activities, particularly the burning of fossil fuels to meet energy needs, can lead to an unprecedented warming of the earth's climate in the foreseeable future unless remedial action is taken. Global warming is feared because of the accumulation in the atmosphere of carbon-dioxide and other green-house gases released during the burning of fossil fuels, and to a much lesser extent, when forest and other vegetative cover is lost.

References to forests in the Convention in article 4(1)(c) calls for the promotion of and process that control, reduce or prevent anthropogenic emissions of green-house gases in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors. Article 4(1)(d) calls explicitly for the enhancement, as appropriate of sinks and reservoirs of green-house gases including biomass, forests, and oceans, among others.

Role of FCCC in comprehensive Forest Management:

- i) the development of research methodologies to measure the carbon sequestration potential of various forest ecosystems, called for under the Convention, partially operationalises the elements of the Forest Principles which call for the need of value and quantify the multiple functions of forests;
- ii) in a general sense, FCCC's emphasis on principles of international environmental laws such as:

- the "common but differentiated principle" [Article 4(1)] of developing countries and developed countries to redress global environment issues, especially climate change;
- Utilisation of the "precautionary principle" [Article 3(3)] in formulating actions on climate change in the face of scientific uncertainty. These have relevance to global discussions of sustainable forest management.

7.2.4 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

The objective of the Convention includes combating desertification and mitigating the effects of drought particularly in Africa through long-term integrated strategies that focus on improved productivity of land, and rehabilitation, conservation and sustainable management of land and water resources, which lead to improved living conditions, particularly at the community level [Articles 2(1), (2)].

The link between desertification and deforestation in the Convention is that desertification or land degradation in arid, semi-arid, and dry sub-humid areas results from, *inter alia*, climate variability and human activities. This is characterised by declining productivity or loss of soil, water scarcity, and loss of vegetative cover. Deforestation contributes to desertification in these areas.

References to forests in the Convention is that, Article 8(3) (b) (1) of the Regional Annex for Africa, emphasises the need to ensure integrated sustainable management of natural resources, including forests in combating desertification.

The Convention calls for national action programmes to combat desertification such as National Action Programmes (NAP) [Article 10 (4)].

7.2.5 The World Heritage Convention

Applies to forests which are of outstanding universal value.

7.2.6 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The objectives of the Convention is to monitor and where necessary, curtail international trade in those species of wild flora or fauna that are either in immediate or eventual danger of extinction due to a variety of factors, including international trade.

In the CITES, reference to trade and deforestation is as follows: If forest products trade in international markets are derived from a resource base which is managed for short-term gain, rather than long-term sustainability, such trade will contribute towards forest loss or fragmentation. CITES provides a window by which to monitor and control the trade in potentially endangered species of flora and fauna which enter the international market.

The trade in forest products can also help to prevent the loss of existing cover competing land uses. This can result if the value of the forest products being traded is accurately assessed [to reflect, for example, the environmental costs and benefits of production], and if such value accrues to the rightful owners and users of the resource base, capturing the true value of forest products in trade can help in the conservation and sustainable management of the resource base, by ensuring that forests remain an economically viable use option.

CITES calls for actions whereby species of flora and fauna at risk of extinction, whether immediate or far in the future, be listed in its appendices. Species listed in Appendix I cannot be traded on the international market, while species in Appendix II require permits from the exporting country certifying that they are not at risk of extinction, and that they have been legally harvested, in order to be traded.

CITES plays an important role in comprehensive strategy in that there are about 15 tree species currently listed in CITES appendices, none of which are heavily traded timber species. Debate is still going on as to whether there is need to list species of American and African mahogany in Appendix II.

7.2.8 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 1971) as amended in 1982

This Convention applies to forest or tree species which are found on wetlands such as those along the shores of Lake Victoria, and other wetlands in the country.

7.3 Other International Legal Instruments of Relevance

7.3.1 The International Tropical Timber Agreement(1994)

The objectives of the Agreement, include among others, provision of an effective framework for cooperation and consultation between producers and consumers of tropical timber, to promote and expand international trade in tropical

timber and to maintain the ecological balance in the regions concerned. The ITTA is commodity agreement designed to facilitate the tropical timber trade. It seeks, *inter alia*, to “provide a forum for consultants to promote non-discriminatory trade practices [Article 1(b)], and “to enhance the capacity of members to managed sources by year 2000 [Article 1(d)].

The link with sustainable forest management is that, since ITTA seeks to facilitate and promote the trade in tropical timber, adherence to this objective of sustainable use is particularly critical to avoid over-use of the resource base in regions where trade is a significant activity.

This Agreement is of particular relevance to the forestry in as far as export and import of timber is concerned; however, it is not clear whether Uganda has a sizeable amount of timber which could be sold at the international trade. If that be the case then its accession to the Agreement could be useful.

7.3.2 Phyto-Sanitary Convention for Africa (1967)

Its objectives are to control and eliminate plant diseases in Africa and prevent the introduction of new diseases. It calls for member countries to share relevant information on eradication of plant diseases. It calls for vigilance to ensure that plant diseases are not imported into countries signatories to the Convention. This Convention would be of relevance to forest management as it attempts to eradicate disease in plantation mono-cultures.

Conclusion

International cooperation should be encouraged through international agreement to create a favourable ground for managing the environment. To that extent therefore, there is need to consider the establishment of sub-regional forest management organisation. This should aim at coordination and monitoring of forest issues.

CHAPTER EIGHT

PROPOSED REFORM IN THE FORESTRY LAWS IN UGANDA

A review of the present legislation in Uganda indicates that the content of law is out-dated and cannot adequately meet the current challenges of sustainable forest management.

8.1 The Need for Further Development of Forest Legislation

Law is one of the instruments for implementing policy, thus, Forestry Law can be a juridical articulation of forestry policies and programmes and possibly play a role in the development process and environmental protection. The law plays a multi-dimensional role in that, it can:

- Provide institutional mechanisms for the allocation of forestry resource, norms regulating the use and development of those resources and sanctions due to address violations. At this level, the primary concern of the law is to ensure that development and the use are accompanied with resources management measures which pre-empt wastage of forestry resources;
- Set standards and provide sanctions of proper forest management – failure to comply with the standard is followed by punishment or fines. They encourage some standard of sustainable forest management;
- Institute anticipatory mechanisms for assessment and control of the impact of development project such as afforestation schemes or agro-forestry projects, or strategies and programmes for environmental protection. At this level the law creates institutions and confers powers upon them to examine the nature and consequences of development schemes;
- Also set out procedures for persons injured or for taking actions against Government. Thus, the law provides procedures for appeal and compensation.

8.2 Proposals That Are Relevant to a New Forest Legislation

The Forest Policy should be reviewed and the new policy should provide for the conservation and sustainable development of Uganda's forest resources for the maintenance of environmental quality or perpetual flow of benefits to all segments of society. The new policy should signify a commitment to sustainable, democratic and efficient forestry management. This policy should also create an enabling atmosphere for adopting and implementing the concept of participatory management of forest resources be it on private or other form of system.

8.2.1 Consolidation of the Forest Laws

Forest legislation must be comprehensive, well-structured and easy to understand. Thus, the fundamental rules of forest utilisation management and conservation should ideally be assembled in one basic text.

8.2.2 Important Aspects to Be Considered in Revision of Forest Legislation

The legislation should recognise the need to adopt an approach that is more close to specific requirements of sustainable forest management. Amendments may in particular be required to:

- a) promote the conservation of forests and forest ecosystem in order to support sustainable utilisation of forest and forest produce for the benefit of the people of Uganda;
- b) satisfy the people's many diverse and changing needs, particularly those of the indigenous forest dwellers;

- c) provide an enabling environment for the frame-work for promoting the participation of local communities and private sector in forest conservation and management;
- d) enhance the involvement of local authorities especially extension;
- e) develop and ensure collaboration and integration of efforts between the various lead agencies engaged in the management of forests, forest ecosystems and forest produce in order to foster, promote and sustain an effective and coordinated joint/dual management of forest resources;
- f) ensure that public participation in forest management and ensure that the women's role, that of the minority community or indigenous forest dwellers, in forest and tree resource utilisation and management, receives due attention and guidance;
- g) encourage and provide incentives for tree-planting, sustainable forest management and environmentally friendly behavior in forest management;
- h) promote the protection of rare, endangered or reserved species of trees or any wild plants;
- i) enhance economic and social benefits from forest management and the use of forest resource through encouraging the establishment of sustainable development and the income generating activities; encouraging the development of eco-tourism and any other suitable income generating collaborative or commercial arrangements;
- j) develop provisions that facilitate a more comprehensive approach in technical assistance, training, research, financial support and other production incentives; the control of import, export, re-export of forest species and specimens
- k) encourage regional cooperation in forest through regional agreements and also the implementation of relevant agreements or other arrangements to which Uganda is party;
- l) to enter into regional agreements to control trade in trees and any other forest produce especially illegal trans-boundary trade in endangered tree or forest produce; and,
- m) for the better achievement of the purposes of the intended legislation, the Forest Department and every other person responsible for the administration of this law shall ensure that any measures taken or instituted under this Act are based on the results of scientific investigation, in so far as it is economical; including the

monitoring of species status and the state of the forest ecosystem as well as taking into account the views of the affected communities, especially those of the indigenous forest dwellers.

8.2.3 Regulatory Legislation and Promotional Measures

The forest legislation should contain the following:

- Provisions related to forest utilisation, establishment of forest industries that correspond to economic reality of forest management.
- Provisions for creating an organisational structure of the national forest administration as a full government department under the supervision of a ministry with semi-autonomous governmental commission or as a corporation.
- Provisions providing the range of responsibilities, in the internal organisational structure and also inter-linkages with other governmental and non-governmental agencies.
- Provisions for financial arrangements, for example, levy for ear-marked forest revenues and the special forest development funds, and the power to raise funds from extra governmental sources.
- Provisions for collection and assessment of forest revenue.
- Provisions for permits and forest agreements.
- Provisions for conserving the forestry resources as whole.
- Provisions for managing forests held under private land.
- Provisions for forest fees and taxes.
- Provision for greater participation by the local community in the management of the forest reserves and the possibility of them deriving benefits from it.
- Provision on fires

8.2.4 Complementary Legislation

The laws that are of particular relevance to forest resources development should be considered, that is:

- Legislation on land-use planning that affects heavily the scope and effectiveness of forest legislation.
- Legislation on water management
- Legislation on the protection of biological diversity
- Legislation on the environment management.

THE PROPOSED DRAFT OF THE FOREST ACT OR UGANDA

Act. No. 1999

THE FOREST ACT.

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PART I – PRELIMINARY

Short title 1

This Act may be cited as the Forest Act, 1998.

Interpretation 2

In this Act, unless the context otherwise requires – amend” includes repeal, revoke, rescind, cancel, replace, add to or vary and the going of two or more of such things simultaneously or in the same written law;

“animal” means any vertebrate animal, the young of any vertebrate animal, and the eggs of any bird, and includes domestic animals;

“authority” means the Forestry Authority established under section 3 of this Act.

“Collaborative management” means mutually beneficial management which includes a large variety of partnerships with stake holders that meets the objectives of the Authority but does not surrender the ultimate authority and responsibility for management of forestry resources to the partner.

“Director General” means the Director General for Forestry or a person authorised to act on his or her behalf.

“dual or joint management” means any forest reserve that has a shared status with other lead agencies or communities with corporate authority and interest in the reserve;

“firewood” includes parts of trees made up into bundle or loads or cut up in the manner in which it is usual to cut wood for burning, and all refuse wood generally, but does not include sound straight timber logs or poles of any kind;

“forest” means a plant or plants formation that is predominantly composed of trees whose canopies touch to form a closed or partially closed canopy;

“forest ecosystems” means any natural or semi-natural formation of vegetation whose dominant element are trees, with closed or partially closed canopy, together with their biotic and abiotic environment, be it inside or outside a forest reserve;

“forestry officer” includes any officer of the Forestry Authority of the rank of forestry assistant or above and any honorary forestry officer appointed under the provisions of section 3 of this Act;

“forest produce” means –

- (a) trees, timber, firewood, poles, slabs, branch wood, wattles, roots, withers, sawdust, charcoal, bark, fibers, resins, gum, latex, leaves, flowers, fruits and seeds;
- (b) all such honey, mushrooms, grass, orchids, litter, soil, stone, gravel, clay or sand as originates in a forest reserve and is not a mineral within the meaning of the Act;
- (a) vertebrate and invertebrate animals, their eggs and young; provided such animals are not vermin within the meaning of the Uganda Wildlife Statute, 1996.
- (b) Such other things as the Minister may by statutory instrument declare to be forest produce;

“central forest reserve” means a n area of land set aside for forestry, as land use, and declared to be central forest reserve under section 4 of this Act;

“forestry” means forest, forest produce and the Forest Department.

“Indigenous forest dwellers” means communities that have maintained a pristine relationship with the resources of the forest for their basic livelihood;

“lead agency” means any person, Ministry, government department, parastatal agency or public officer in which or whom any law vests functions related to the management of tree, forest, forest reserve or forest produce and for the avoidance of doubt includes any local government council or administrative unit established under the Local Government Act;

Act No. 1 of 1997

“livestock” includes cattle, horses, donkeys, mules, pigs, sheep, goats, camels and all other domesticated animals, fowl and their young and in cases of fowl, their eggs as well;

“local authority” includes administrative units of a Local Government established under section 46 and subsections (2) to (5) of section 4 of the Local Governments Act and, the institution of traditional and cultural leaders as provided for under Chapter 16 of the Constitution;

“local councils” means a local council established under subsections (2) to (5) of section 4 of the Local Government Act;

Act No. 1 of 1997

“local communities” includes, the indigenous forest dwellers, the communities living in close proximity to the forest and, the local authority and the land owners in the area;

“local forest reserve” means an area declared as a local forest reserve under section 4 of this Act;

“Minister” means the Minister on whom responsibility for this Act is assigned;

“open land” means land not being part of a central forest reserve, a local forest reserve, wildlife reserve, a National Park, any other conservation area declared under section 18 of the Uganda Wildlife Statute, 1996 or freehold, leasehold, customary and mailo lands on which the forest produce is reserved to the Government, a local authority or individual; for the avoidance of any doubt shall mean the land held by a District land Board under paragraph (a) of Clause (1) of Article 241 of the Constitution;

Statute No. 13 of 1994

“police officer” has the same meaning assigned in the Police Statute;

“prescribed” means prescribed in this Act or any enactment made under this Act or under subsection (4) of section 12 of this Act;

“rare species” means taxa with small world population but currently not endangered or vulnerable although at risk;

“recreation forest” means a forest reserve or any part of it where ecotourism has been developed or that has potential for eco-tourism;

“reserved species” means tree species scheduled under this Act for protection in public interest and subject to prior authorization and payment of fees of utilisation.

“senior forestry officer” means an officer from the rank of forestry officer and above appointed under section 3 of this Act;

“site of special scientific interest” means an area within the boundaries of a forest reserve set aside as a result of its special attributes from the point of view of technical management and/or presence of rare, endangered and vulnerable species and high biodiversity;

“specimen” includes any wild plant or forest tree, alive or dead, whether or not native to Uganda, and any readily recognized part or derivative of such plant, tree or forest produce;

“strict nature reserve” means an area within the boundaries of a forest reserve set aside for species and habitat

preservation; where only research and monitoring are permitted;

“timber” includes trees, palms, bamboos, canes, shrubs, bushes, climbers, seedlings, saplings and regrowth of all ages of all kinds, any part thereof;

“village forest” means an area declared to be a village forest under this Act;

Statute No. 14 of 1996

“wildlife warden” means a person appointed as a wildlife warden under section 11 of the Uganda Wildlife Statute, 1996.

PART II - INSTITUTIONAL ARRANGEMENT

Establishment of the Authority

3 (1) There is established a body to be called the Uganda Forestry Authority

(a) The Authority shall be a body corporate with perpetual succession and common seal, and shall in its own name be capable of :

(b) acquiring and hold property

(c) suing and being sued, and

(c) doing all acts and things that corporate bodies may lawfully do or suffer

(2) The Authority shall be under the general supervision of the Minister

Functions of the Authority

4. The functions of the Authority are:

(a) to ensure the sustainable management of forestry conservation areas

(b) to develop and recommend policies on management of forestry resources to the Government;

(c) to coordinate the implementation of Government policy in the field of forestry resource management;

(d) to identify and recommend areas for declaration as forestry resource conservation areas and the revocation of such areas;

(e) to develop, implement and monitor collaborative arrangements for the management of forestry resources;

(f) to establish management plans for forestry conservation areas and for forestry species outside forestry conservation areas;

- (g) to establish policies and procedures for the sustainable utilisation of forestry resources by and for the benefit of the communities living in proximity to forestry conservation areas;
- (h) to control and monitor industrial and mining development in forestry conservation areas;
- (i) to control international and external trade in forestry resources;
- (j) in consultation with other lead agencies, to control, develop or licence the development of tourist facilities in forestry conservation areas;
- (k) to consider reports from district forestry committees and make necessary comments and decisions
- (l) to promote the conservation of biological diversity **ex-situ** and to contribute to the establishment of standards and regulations for that purpose;
- (m) to promote scientific research and knowledge of forestry resources and forestry conservation areas;
- (n) to disseminate information and promote public education and awareness of forestry resources conservation and management;
- (o) to prepare an annual report on the state of forestry resource and such other reports as may be prescribed;
- (p) to encourage training in forestry management;
- (q) to charge fees for such services as it provides and for such licences, rights and other permissions that it may grant;
- (r) to perform such other functions as are specifically provided for in this Act or as may be delegated to it by Government or by the Local Government.

Relationship with lead agencies

- 5 (1) The Authority may, in the performance of its functions under this Act, delegate, in writing, any of its functions to a lead agency, a committee or any other public officer.
- (2) The Authority may, in the performance of its duties shall coordinate with any lead agencies involved in the field of forestry resources management.
- (3) In the exercise by the Authority of its functions under Section 4, a lead agency shall not be released from performing its duties as prescribed by law.
- (2) Where the Authority delegates any of its functions in accordance with subsection (1) of this Section, it shall make the necessary arrangements with the lead agency to facilitate the performance of the delegated functions.

The Board

- 6 (1) The Governing body of the Authority shall be the Board of Trustees who shall be appointed by the Minister
- (2) Any member of the Board other than the Director General, may be removed from office by the Minister for:
 - (a) inability to discharge the functions of his/her officer by reason of infirmity of body or mind; or
 - (b) incompetence; or
 - (c) misconduct and misbehaviour
- (3) The Board shall be composed in accordance with and follow the procedure prescribed in the First Schedule
- (4) The Minister may with the prior approval of Parliament signified by its resolution, by statutory instrument, amend this schedule
- (3) Subject to this Act, the Board may regulate its own proceedings.

Functions of the Board

- 7 (1) The Board shall be responsible for the discharge of the business and functions of the Authority.
- (2) Without prejudice to the generality of subsection (1), the Board shall:
 - (a) be the trustee for forestry resources and forestry conservation in Uganda
 - (a) examine and recommend proposals for developing forestry policy;
 - (b) review and approve management and strategic plans;
 - (c) recommend the declaration of forestry conservation areas and the revocation of such declaration;
 - (d) make by-laws for the management of forestry resources and forestry conservation areas;
 - (e) solicit and receive grants, gifts, donations, fees, subscriptions and any other contribution to the Fund;
 - (f) manage the funds and business of the Authority accordance with general acceptable principles of business management;
 - (g) encourage education, training and public awareness of forestry resources and public participation in management; and,

- (h) review and approve annual plans, budgets, reports and audited financial statements.
- (2) The Board may appoint a technical committee to advise the Board on subjects relating to forestry resource management.
- (4) The Board shall, in writing, specify the terms and conditions of service of the members of the committee appointed under subsection (3).

The Director General

- 8. (1) There shall be a Director General appointed by the Minister on the recommendations of the Board.
- (2) The Director General shall be the chief executive officer of the Authority and shall be responsible to the Board for the day to day operation of the Authority and the administration of this Act.
- (3) Without prejudice to the generality of subsection (2), the Director General shall be responsible for:-
 - (a) the development of strategic plans to guide the Authority in achieving its objectives;
 - (b) the development of management plans for forestry conservation areas or for species or classes of species of forestry resources;
 - (c) the development of economic efficient and cost effective internal management structures and processes;
 - (d) any other functions the Board may assign.
- (4) The Director General shall, where so directed by the Board, delegate any of the functions vested in him/her by this Act or any other law to such of his Senior Officers as will enable the functions of the Authority to be discharged in accordance with the principles set out in paragraph (c) of subsection (3) of this Section
- (5) Subject to the direction of the Board, the Director General shall be responsible for the administration, and control of the staff of the Authority.
- (2) The Director General shall at all times keep the Board informed of the business and activities of the Authority and shall prepare quarterly and annual reports for the Board.
- (3) The Director General shall be a member of the Board
- (4) The Director General shall serve for a period of five years and shall be eligible for re-appointment.

- (5) The Director General shall cease to hold office if :-
 - (a) he/she resigns;
 - (b) he/she is removed from office by the Minister upon the recommendation of the Board for,
 - (c) gross misconduct;
 - (i) inability to discharge the functions of his/her office; or
 - (ii) he/she dies.

Other staff of the Authority

- 9.(1) The Board shall appoint the Senior staff of the Authority
- (2) The Director General shall, subject to subsection (4) of Section 8; appoint the junior staff of the Authority
- (3) The Board, on the advice of the Director General, shall from time to time establish or review staff positions and determine their terms and conditions of service.
- (4) Where the terms and conditions of service of the staff member as determined under subsection (3) authorise him/her to possess firearms in the course of his her/ her duties, the member of shall in addition to any other terms and conditions the Authority may impose under this Section, be governed by regulations made by the Minister in consultation with the Inspector General of Police regarding:
 - (a) powers of search and arrest;
 - (b) training
 - (c) discipline; and
 - (d) use of firearms.

Subject to clause (3) and paragraph (a) of clause (4) article 120 of the Constitution and subject to the directions of the Director of Public Prosecutions, in any prosecution under this Act, an officer shall, exercise all the powers of a public prosecutor appointed under any law in force

- (5) The staff positions to which subsection (4) applies shall, on being established, be notified in the Gazette.

Honorary Forestry Officers

- 10. (1) The Board may, on the advice of the Director General appoint Honorary Forestry officers to assist in the implementation of this Act.
- (2) The appointment under subsection (1) shall be on such terms and conditions as the Board may determine.
- (3) The appointment of an Honorary Forestry Officer may

be effective for such area or function as the Board may determine and shall be notified in the Gazette.

Local Government Committees

11. (1) A local government council may, on such terms and conditions as it considers necessary, appoint a committee to advise the Authority on the management and utilisation of forestry resources within the local jurisdiction.
- (2) A Committee appointed by a district council under subsection (1) shall submit an annual report to the Board on its activities and other matters relating to forestry management in its area.
- (3) Any other committee, other than a committee to which subsection (2) applies, shall submit its report through the respective district council.

PART III – GENERAL MANAGEMENT MEASURES

Management Plans

- 12.(1) The Director General shall, with the approval of the Board, as soon as practicable, after the establishment of a forestry reserve, prepare or cause to be prepared a comprehensive management plan for each forestry reserve.
- (2) A management plan shall include such information as may be prescribed.
- (3) The Director General shall publish in a Gazette and a daily newspaper and in any other appropriate forms of media a notice of his intention to prepare a management plan and invite suggestions from all interested parties what matters shall be in the plan.
- (4) The Director General shall request the district council within whose area the forest reserve falls in whole or in part to forward to him within a reasonable time, which time shall not be less than twenty-one days, any proposals for inclusion in the plan.
- (5) In the performance of his duties under this section, the Director General shall hold public meetings and attend meetings of the district council referred to in subsection (4) to explain the proposals in the plan and to consider suggestions put forward by those attending the meeting.

- (2) The Director General shall take into account any proposals or suggestions received under subsections (3), (4) and (5) and prepare a draft management plan.
- (3) The Director General shall submit the draft management plan to the Board for its comments and approval.
- (4) The Director General shall publish the approved plan.
- (5) A plan under subsection (8) shall be reviewed and republished after any such review.

Commercial arrangements to manage forestry conservation areas.

- 13.(1) The Director General may with the approval of the Board enter into any suitable commercial or collaborative arrangements with any person for:
 - (a) the management of a forestry reserve or a portion of the forestry reserve;
 - (b) the provisions of services and infrastructure in a forestry reserve
or
 - (c) the management of a species or class of species of plants.

Environmental Impact Assessment Statute No. 4 of 1995 and S.1 13 of 1998

- 14.(1) Any developer desiring to undertake any project which may have a significant impact on any forestry resources or community shall undertake an environmental impact assessment in accordance with the National Environment Statute, 1995 and the Environmental Impact Assessment Regulations, 1998.
- (2) The Authority shall perform all the functions required of a lead agency for the purposes of environmental impact assessment under the National Environment Statute and the Environmental Impact Assessment Regulations, 1998, unless the Authority is the developer.

Environmental audits and monitoring

15. (1) The Authority shall in consultation with the projects to be carried out in accordance with Sections 23 and 24 of the National Environment Statute, 1995, and any regulations made under the same Statute.

PART IV—FOREST RESERVES AND OTHER FOREST AREAS

Declaration of forest reserves, sites of Forests reserves S.1 63/98 Special scientific interest recreation Forests and dual or joint management

16. (1) The Minister may, by statutory order, declare an area to be –
 - (a) a central forest reserve;
 - (b) a local forest reserve;
 - (c) any other area as may be prescribed as a forest reserve.
- (2) The statutory order made under subsection 91) may declare a portion of the area declared under paragraph 9a) or (b) of the subsection to be:
 - (a) a strict nature reserve;
 - (b) a recreation forest reserve;
 - (c) a site of special scientific interest;
 - (d) a dual or joint management forest reserve;
 - (e) a collaborative management forest reserve;
 - (f) any other area as may be prescribed in the Order.
- (3) The Minister may, by notice in the Gazette, declare any tree specie to be a protected tree.

Statute No. 4 of 1995, and S.1 No.13 of 1998

- (4) Before making a declaration under an environmental impact assessment in accordance with the National Environment Statute, 1995 and the Environmental subsection (1) or (2), the Minister shall ensure that Impact Assessment Regulations, 1998 has been conducted.
- (5) The Measures conducted under subsection (3) shall:
 - (a) investigate and make a report on the social and ecological consequences of the proposed declaration;
 - (b) state the management objectives for the area;
 - (c) state the measures to be taken for sustainable management of the area;
 - (d) any other information the Director General considers necessary.

Schedules of forest reserves S.1 63/98 S.1 No. 63 of 1998

17. (1) Without prejudice to the generality of section 16
 - (a) the forest reserves in the First Schedule of The Forest Reserves (Declaration) Order, 1998 are declared central forest reserves;
 - (b) the forest reserves in the Second Schedule of the Forest Reserves (Declaration) Order, 1998 are declared local forest reserves;
 - (c) the areas in the Third Schedule are declared strict nature reserves;
 - (d) the areas in the Fourth Schedule are declared sites of special scientific interest;
 - (a) the areas in the Fifth Schedule are declared recreation forest areas
 - (g) the areas in the Sixth Schedule are declared dual or joint management forests areas and collaborative management forests reserves.

Management functions and measures

18. (1) A central forest reserve shall be the responsibility of the Authority.
- (2) A local forest reserve shall be the responsibility of the local authorities as specified under subsection (1) of section 11 of this Act.
- (3) In the exercise of the responsibility under subsection (1) or 92) of this section, the Director General or the local authority may, subject to section 22, award concessions or enter into any other suitable arrangement for the sustainable utilisation and management in general of the forest, forest ecosystems or forest produce.

Local authorities to control local forest reserves

19. (1) In any order constituting a local forest or a collaborative management forest maintenance and control of the forest reserve and with effect from the date specified in the order, the duty of maintaining and controlling the local forest reserve shall pass to the local authority specified in the order.

- (2) Nothing in this section shall be deemed to transfer or to vest in a local authority any privilege, right, title, interest or easement over any land declared to be a local forest reserve or a collaborative management forest reserve other than the privilege of management, maintenance and control.
- (3) For the avoidance of any doubt, a local forest reserve or a collaborative management forest reserve shall not be put under any other land use other than for forestry purpose unless the Minister, by statutory order, otherwise prescribe.

Powers of local authorities

- 20 (1) Subject to the Constitution, the powers vested in the Director General and forestry officers by this Act in respect of central forest reserves and forest produce shall, in respect of a local forest reserve, or a collaborative management forest reserve be vested, subject to subsection (2) of section 11, in the local authority maintain and controlling the reserve.

Any revenue derived from the maintenance and control of a local forest reserve or a collaborative management forest reserve shall belong to and form part of the accountable revenues of that local authority.

Local authorities to act on advice of Director General

- 21(1) Every local authority shall manage, maintain and control its local forest reserves or a collaborative management forests reserves in accordance with the advice and supervision of the Director General.
- (2) A local authority in which a local forest reserve is located shall, in consultation with the Director General and the local community prepare a management plan for that reserve.
- (3) A local authority which fails to comply with the advice or supervision of the Director General or local community under subsection (1) or to implement the management plan under subsection (2) shall have its powers transferred as provided under subsection (4).
- (4) When the Minister is of the opinion that it is expedient for ensuring the proper protection, control or management of local forest reserve or collaborative management forest reserve, he or she may, by statutory order, direct that such forest reserve be managed and controlled by the Director General and immediately the

Director General shall exercise all the powers of the local authority over such reserve.

- (5) The Director General shall control any forest reserve or collaborative management forest reserve placed under his or her control under subsection (2) of this section on behalf of and for the benefit of the people of Uganda.

Revocation of local and collaborative management forest reserve

- 22. From the date of any statutory order revoking a declaration of a local forest reserve or a collaborative management reserve, such reserve shall, subject to clause (2) of article (26) of the Constitution, cease to managed, maintained and controlled by the local authority specified in the declaration and all the powers and privileges of such authority in the reserve shall cease.

Declaration of village forest reserves

- 23.(1) Subject to subsections (3) and (4) of Section 4, a District Land Board may, on the advise Director General and the local community, with the approval of the Minister, declare any land occupied by a community within its jurisdiction a village forest reserve.

- (2) Such declaration shall be published in the same manner as the local authority orders are ordinarily published, and also by posting a notice specifying the situation, duly surveyed extent and limits of the village forest reserve, outside the office or other meeting place of the local authority.
- (3) Once declared under subsection (1), a village forest reserve shall not be put under any other land use without prior agreement of the Director General and the approval of the Minister.

Control of village forest reserves

- 24 (1) Subject to the general supervision of Director General, a village forest reserves shall be managed, maintained and controlled by such body of persons as the local authority shall appoint in consultation with the local community for the purpose.
- (2) Any revenue derived from the management and control of the forest reserve under subsection (1) of section (4) shall belong to and form part of the accountable funds of the local authority and shall be devoted to the enhancement of the conservation status of the forest

reserve and the welfare of the community in which area the forest reserve is situated.

- (3) A local authority with the approval of the Minister, may make laws for the protection, management, maintenance and utilisation of any village or collaborative management forest reserve within its jurisdiction.
- (4) The enactment of the laws under subsection (3) of this section shall be in accordance with sections 39, 40, 41, 42, 43, 44, 45 of the Local Governments Act, 1997 or subject to any other written law or enactment of laws by Districts.

Description of and disputes in Respect of forest areas

25. (1) In any notices or enactment made under this Act, forest reserves and village reserves and their boundaries shall be described in such manner as the person issuing such notices or making such enactment deem fit and expedient.
- (2) If any dispute arise as to whether or not any Area is included in a forest reserve, collaborative management forest reserve or village forest reserve the decision of the Commissioner of Lands and surveys or, as the case may be, the District Land Board shall be final, and a certificate under his or her hand recording such decision shall be admissible in evidence in any court of law.

PART V – PROTECTION OF FOREST ECOSYSTEMS, FORESTS AND FOREST RESERVES

Protection and conservation of forest ecosystems

27. (1) No Person shall put any forested area, be it on land held by the District Land Board or private land, to any other land use other than forestry, without written permission from the Director General.
- (2) The provisions of subsection (1) shall not apply if such land was forested by that person.
- (3) In any dispute under subsection (2) the burden of proof shall be on the person to show that he or she forested the area.
- (4) The Director General shall compile and maintain a national forestry inventory.

- (5) The inventory required under subsection (4) shall: –
 - (a) specify the boundary descriptions of forest reserves and of any other land under District Land Board, Uganda Land Commission, or private ownership and being used for forestry, and the type and amount of forest resources they contain; and
 - (b) Identify,
 - (i) water catchments, steep slopes, including areas specified under section 39 of the National Environment Statute, 1995 and any other environmentally fragile areas requiring permanent forest cover; and
 - (ii) areas of high forest potential available for forest plantations.

- (6) On the declaration of an area as a forest reserve, the residence and subsistence rights of indigenous forest dwellers of the particular forest area shall be respected.

Prohibition on fires

28. (1) No person shall in any forest reserve or village reserve negligently light or throw down any lighted match or other lighted or inflammable material, or light or leave any fire without taking due precautions against the fire spreading or causing injury, or do any in consequence of which any forest reserve may be burnt or injured, or may be in danger of being burnt or injured.

- (2) It shall not be a breach of this section for a forestry officer to burn, or empower other persons, such fire-lines or grass or other inflammable material as may in his opinion be necessary for the better protection or better management of any part of a forest reserve or village forest areas.

Public to assist in extinguishing fires

29. (1) It shall be lawful for any forestry Officer, police officer, administrative officer, or person in such charge of a local forest reserve or village forest area to require any person who lives or is a resident within a two-kilometre distance of any forest reserve to assist in a averting, or extinguishing any fire in such forest or securing any property within the forest ecosystem from loss or damage arising from fire or other natural causes.
- (2) Notwithstanding the requirement of subsection (1), the Authority may, but notice in the Gazette,

- (a) define any area in or within five hundred metres of an area under section 4 and declare that area to be a fire management area;
- (b) establish a fire management committee in respect of any fire management area.
- (3) The Constitution, functions and procedures of a fire management committee shall be as prescribed.
- (4) The Authority may, by notice in the Gazette, alter the boundaries of a fire management area or withdraw any notice establishing a fire management area.
- (5) No person shall be entitled to any pay or compensation for any work he is required to do under subsection (1) of this section.
- (6) Any Person who fails to assist in averting or extinguishing any fire or in securing any property from loss or damage when required to do so under subsection (1) of this section commits an offence.

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- (7) A District Council or lower council is created under the Local Government Act may, in addition to the penalty prescribed under subsection (6) of this section make by-laws for additional penalty, including community service, to which the person convicted under subsection (6) may be liable.

Border Control

- 30. (1) Subject to section 36, no person shall except with the prior written permission of the Authority –
 - (a) plant a non-indigenous tree
 - (b) cause or permit the growth of any re-shoot or regrowth from a non-indigenous tree; or
 - (c) cause or permit, the growth of any seedling of a non-indigenous tree, other than a seedling which has been planted by man;

Within a distance of fifty metres from the international border between Uganda and other State with which Uganda shares common border.

- (2) In giving permission under subsection (1), the Authority may impose such conditions as it deems fit.
- (3) Any person who contravenes the provisions of subsection (1) or fails to comply with any condition imposed under subsection (2) commits an offence.

Removal of trees on border

- 3 (1) Where any tree, re-shoot, re-growth or seedling referred to in contravention of the provisions of that section or any conditions imposed under subsection (2) of that section, a forestry officer may serve a written notice on the owner of land ordering him or her to remove such tree within the period specified in the notice.
- (2) If removal under subsection (1) of this section is not affected within the period specified in the notice, a forestry officer may, if authorised in writing by the Minister, enter upon the land in question with such assistance as he may require and remove such tree.
- (3) The cost of the removal under subsection (2) of this section shall be a debt due by the owner of the land to the Government of Uganda and may be recovered by the Minister in any competent Court.
- (4) For avoidance of any doubt, the liability under subsection (3) of this section shall be in addition to any other penalty that the Court may award under section 30 or any other section of this Act.

Damage to the forest produce

- 32 (1) Any person lawfully cutting, working or removing forest produce from any forest area or from open land shall take all necessary precautions to prevent damage to other forest produce.
- (2) Any person unnecessarily damaging other forest produce when cutting, working or removing forest produce commits an offence.

Research and training

- 33 (1) The Minister shall, in consultation with the relevant local authority or the Director General and the local community,
 - (a) undertake or allow research to be undertaken for the conservation, development and utilisation of forests as well as to promote the conservation of bio-diversity and genetic resources;
 - (b) ensure the training of forestry officers for the development and sustainable management of forest reserves, forest produce and also provide on the job training;
 - (c) promote awareness in environment protection and ensure the ultimate implementation of this Act.

PART VI – LICENSES FOR FOREST PRODUCE

Issue of licenses and permits

- 34 (1) The Director General or forestry officers authorised by the Director General may, subject on the management plan for the forest reserve and payment of the prescribed fees, if any, issue licences for cutting, taking, working or removal of forest produce from the central forest reserves.
- (2) Permits to remove, take or transport the forest produce under subsection (1) will be issued after payment of the prescribed fees and of any other specified conditions.
- (3) A senior forestry officer shall make and authenticate in the manner, all forest produce within the reserve, county or district code, as the case may be, before the produce is moved.
- (3) A local authority may issue licences on the payment of the prescribed fees, if any, for the cutting, taking or working of forest reserve produce from a village forest within the respective area.
- (4) The exercise of the powers under subsection (4), shall be based on technical advice from the Director General or forestry officers authorised by the Director General.

Licenses to be produced when required

35. Any person holding a licence or permit under the provision of this Act, no person shall cut, take, work or remove forest produce in or from a forest reserve, village forest reserve, or open land or carry any activity that may be harmful to natural resources unless he is licensed to do so under the provision of this Act.

Encroachment

- 36 (1) Subject to any exemption granted under the provisions of this Act, no person shall cut, take, work or remove forest produce in or from a forest reserve, village forest reserve, or open land or carry any activity that may be harmful to natural resources unless he is licensed to do so under the provision of this Act.
- (2) Save as may be permitted by the rules or regulations made under this Act, no person shall:
- (a) clear, use or occupy any land in a forest reserve for:
 - (i) grazing;
 - (ii) camping

- (iii) animal farming
 - (iv) the planting or cultivation of crops
 - (v) the erection of buildings or enclosures or
 - (vi) recreational, commercial, residential, industrial or hunting purposes or
- (b) collect biotic and abiotic specimens or
 - (c) cut reserved species whether on private, forest reserve or land not owned by any person or authority; or
 - (d) construct or re-open any road, track, bridge, airstrip, harbour or landing in a forest reserve.

Domestic use of forest produce

- 37 (1) Subject to any enactment or exemptions made under this Act, local communities may:
- (a) in any forest reserve, Village forest reserve, collaborative management forest reserves, or land held by a District Land Board, cut and take for their own personal domestic use in reasonable quantities any dry wood or bamboo for firewood;
 - (b) in any forest reserve, village forest reserve, or collaborative management forest reserve participate in developing and harvesting of non-wood forest produce as prescribed in the management plan made under this Act.
- (2) The provisions of subsection (1) shall not apply in an area declared as a strict nature reserve or as sites of special scientific interest.
- (3) For the avoidance of any doubt, nothing in this Act or any enactment made under it shall operate so as to prohibit cutting and taking, or so as to impose any fee, or so as to waiver total compliance with sections 27 and 32 of this Act.

PART VII – EXPORT OF TIMBER OR FOREST PRODUCE

Trade in forest produce

- 38 (1) Subject to section 68, no person shall export any Timber to which this Act applies without a valid export permit issued by the Authority or its authorised agent.
- (2) The export permit under subsection (1) shall only be issued for the export of graded timber.
- (3) An export permit issued under section shall expire six months after the date of issue.

Particular restrictions on export

39 No person shall –

- (a) export timber except through such places or ports of exit as the Authority may, by statutory instrument, declare to be places or ports of exit for the purposes of this section; or
- (b) export any timber in respect of which an export certificate has been issued except in the state in which it was when the export certificate was issued.

Power to cancel permit in certain cases

- 40. Where any graded timber is in the opinion Of the Authority, or of a person authorised by it in writing in behalf, so handled or stored during transit so that the timber is not the state in which it was when the export permit was issued, then the export permit in respect of the timber may be cancelled.

Prohibition of false export Certificate

- 41. No person shall sign, issue or use in respect of any timber, whether such timber is timber to which this Act applies or not, any document being or purporting to be an export certificate under this Act knowing or having reason to believe that the same is false, either wholly or in any material particular.

Authority to authorise graders

- 42. (1) The Authority may authorise in writing any Person to be a grader for the purpose of carrying out the provisions of this Act.
- (2) Every authorisation issued under this section shall be personal to the holder of the authorisation and shall expire on the 31st December of the year in which it has been issued.
- (3) The Authority may refuse to issue or to renew any authority under this section or may suspend or revoke any authorisation on the grounds that it is not satisfied with the qualifications or experience of the holder or applicant or with the manner in which the holder has carried out his or her duties.

Inspection of timber by grader, etc

- 43. (1) When any application is made to a grader to inspect

and grade any timber, such timber shall be stacked in parcels to admit of inspection piece by piece by the grader at the owner's mill or such other place the grader shall require.

- (2) A grader may refuse to grade timber if for any reason he considers that it is in an unfit condition for grading.
- (3) All handling charges in connection with grading or in connection with any check on grading shall be at the expense of the owner or consignor who shall provide all necessary labour.

Marking of timber

- 44 (1) No person other than a grader shall mark any timber is timber to which this Act applies or not, with a mark which is the same as a mark, prescribed by any regulations made under this Act.
- (2) No person shall mark any timber, whether such timber is timber to which this Act applies or not, prescribed by any regulations made under this Act that it may be or can be mistaken for timber marked under subsection (1).
- (3) When the owner of a piece of marked timber desires to re-saw it or otherwise to alter its state, he shall before doing so effectively obliterate the mark so that it cannot be mistaken for a mark prescribed under regulations made under this Act.

Application of wildlife Regulations

- 45. The Minister may, subject to section 47, by statutory Instrument, apply the provisions of any statutory instrument made under the Uganda Wildlife Statute, 1996 with respect to trade in wildlife to trade in forest produce.

Information may be required

- 46. The Authority may by notice in writing require any Exporting any timber to furnish him with such particulars in respect of such exports as may be specified in such notice any person who-
 - (a) fails to furnish such particulars within one month from the receipt of such notice; or
 - (b) makes any false statement in respect of such particulars, commits an offence and is liable to conviction to a fine not exceed ten currency points.

Regulations

47. The Authority may make regulations for any purpose for which regulations may be made under this Act, for prescribing anything which may be prescribed under this Act and generally for the purpose of carrying this Act into effect, and, in particular, but without prejudice to the generality of the foregoing provisions, may make regulations with respect to any of the following matters :

- (a) prescribing the fees, if any, to be paid, for the manner of application for, and the conditions to which, any license or permit may be issued under this Act;
- (b) prescribing the fees to be paid for the cutting or removal of forest produce either generally or in respect of any particular produce or area, or prescribing maximum and minimum fees for such cutting or removal either generally or in respect of any particular produce area;
- (c) prescribing the manner in which the Director General or any other person specified in the rules or regulations may sell or dispose of forest produce;
- (d) exempting any person or class of persons from the payment of any fees under this Act, the rules or regulations made under this Act, rules or regulations;
- (e) prescribing the species of trees or other forest produce which may be cut or removed, the seasons for cutting or removing such trees or produce, the quantity of such trees or produce that may be cut or removed, and the manner in which the trees or produce may be removed or cut;
- (f) prescribing the areas in which forest produce may or may not be cut or removed and providing for replanting of trees and the closing or partial closing of areas to cutting and removing the produce;
- (g) prohibiting or regulating the export of forest produce;
- (h) prohibiting or regulating the carrying of materials likely to cause fire or other danger to forest produce and prohibiting or regulating the lighting of fires;
- (i) provide for the notification of plant and animal pests dangerous to forests and forest produce and for the prescription of measures to be taken to control or eradicate such notified pests;
- (j) prescribing the trade names to be used for specific wood species and other forest produce;
- (k) providing for the better implementation of the forest policy and provisions of this Act;

- (l) empowering any person specified in the rules or regulations:
 - (i) issue permits for the carrying out of any work or the doing of any thing which is prohibited under the Act;
 - (ii) regulating the manner and circumstances in which such permits may be applied for, issued, refused, varied, suspended or cancelled;
 - (iii) providing for the conditions or terms subject to which they may be issued;
 - (iv) empowering the person issuing any such permit to impose such additional conditions or terms subject to which the permit may be issued;
 - (v) empowering the person issuing any permit to impose any other additional conditions as he or she thinks fit thereon; and
 - (vi) prescribing the rates and manner of payment of royalties and fees payable for any permit or providing for any such permit to be issued without payment of such rate, royalties or fee;

- (m) prohibiting or controlling acts, materials, machines or situations liable to cause damage to forest reserves for forest produce;
- (n) Prohibiting or regulating the entry of persons, livestock animals or vehicles into any forest reserve or part thereof;
- (o) providing for the compulsory use of approved marks by timber cutters licensed to take timber under this Act;
- (p) providing for the use of such brands, tags or other devices for marking livestock as may be necessary to identify livestock licensed or permitted to graze in forest reserve;
- (q) prescribing the manner and circumstances in which any license issued under this Act may be varied, suspended or cancelled; and
- (r) without prejudice to provisions of section 16, exempting any person or class of person from any provision of subsection (1) of section 36 of this Act, or exempting any area from the provisions of sub-paragraph (i) of paragraph (a) of subsection (2) of the section;
- (s) prescribing the guidelines for forest utilisation practices or the joint/dual management of a forest reserve or area declared under section 16 of this Act;
- (t) prescribing anything required to be prescribed under this Act and for giving effect to the provisions of the Act.

- (2) Without prejudice to the generality of paragraph (g) of subsection (1) of this section, the Authority may make regulations prescribing: –

- (a) the procedure on application for the forms of export permits, and the place or places to which timber may be exported by virtue of such permits;
- (b) the procedure on application for the grading of timber, and the grade or grades of timber in respect of all or different classes and forms of timber;
- (c) the fees to be paid in respect of grading and connected services;
- (d) the marks to be placed upon timber, the method of placing and the registration of such marks;
- (e) the exclusion of any kind of timber from the provisions of this Act;
- (f) the restriction or prohibition of the movement of any kind of timber from Uganda either by kind or quantity;
- (g) generally to give legal effect to the provisions of this Act or any other written law with respect to trade in forest produce.

Rules applicable to village forest Reserves etc

48. (1) A local council may, with consent from the Director General and the approval of the Minister, make by-laws applicable to any village forest reserve which it maintains and controls, in respect of the matters specified in paragraphs (a) to (f), (h), (l), (m), (n), (o), (q), (r), (s) and (t), of section 35 of this Act or any other matter the local council in consultation with the Director General, may deem necessary.
- (2) By-laws made under subsection (1) of this section may provide that any person who contravenes any provision of the By-laws commits an offence and is liable on conviction to imprisonment not exceeding twelve months.
- (3) The Minister may, in consultation with the lead agency and the owner of the land, make regulations for the proper management of forests, forest produce, forest ecosystem, reserve species and vulnerable species on private land.

PART VIII – THE FORESTRY FUND

Establishment of the Fund

49. (1) There is established a Fund to be known as the Forestry Fund.
- (2) The sources of funds for the Fund shall be –
- (a) such sums as shall be appropriated by Parliament for the purposes of the Fund;

- (b) moneys borrowed by the Board under the provisions of the Act;
- (c) such sum as may be received for the purposes of the Fund by way of voluntary contributions;
- (d) payments made into the Fund under any of the provisions of this Act;
- (e) such sums or other assets as may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body;
- (f) payments from fees and charges receivable under this Act;
- (g) any other sums received by the Authority in the performance of its functions under this Act.

Administration of the Fund

50. (1) The Board shall be responsible for the administration of the Fund
- (2) The day-to-day management of the Fund shall be performed by the Director General.
- (3) The Board may authorise the Director General to make such withdrawals as necessary to fulfil the functions of the Authority.

Duty to operate on sound financial principles, investment and borrowing powers

51. (1) The Board in discharging its duties in relation to the Fund shall perform its functions in accordance with sound financial and commercial practice and shall ensure that as far as possible reserve is sufficient to meet expenditure.
- (2) The Board may invest moneys for the purposes of the Fund.
- (3) The Board may borrow moneys for the purposes of the Fund.

Budget of the Authority

52. (1) The Director General shall prepare and submit to the Board for approval estimates of income and expenditure of the Authority for the next year, three months before the beginning of such a year.
- (2) The Director General may prepare estimates supplementary to the current estimates under subsection (1) and submit them to the Board for approval.
- (3) No expenditure shall be made out of funds of the Authority unless that expenditure is part of the approved annual estimates or estimates supplementary thereto.

Accounts of the Fund

53. (1) The Board shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund.
- (2) The accounts of the Fund shall be audited by the Auditor General.
- (3) The Board shall cause to be prepared, as soon as practicable, but not later than ninety days after the end of the financial year, an annual report on all the financial transactions of the Fund.
- (4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the Parliament.

Financial Year

54. The Financial Year of the Fund shall be the period of twelve months ending on the 30th June of each year except that the first financial year of the Fund may be a period shorter than twelve months as the Minister shall determine.

PART IX – OFFENSES AND LEGAL PROCEEDINGS

Contravention

55. (1) Any person who contravenes any of the provisions of this Act or any enactment under it or any of the terms and conditions of a license or permit granted under this Act or who knowingly receives or keep in his or her possession any forest produce which is fraudulently marked or had been cut or removed in contravention of the provisions of this Act or any enactment under it or of any of the terms and conditions of a licence granted under this Act commits an offence.

Counterfeiting and similar offenses

56. Any person who –
 - (a) counterfeits or fraudulently uses on any forest produce a mark used by forest officers;
 - (b) counterfeits or issues without due authority any licence or permit for forest produce;
 - (a) counterfeits, alters, obliterates or defaces any stamp, mark, sign, licence, permit of forest fee receipt used or issued under this Act or any enactment made under it;

- (b) without due authority alters, moves, destroys or defaces any boundary mark of a forest reserve;
- (c) transports, deals in or stores unmarked timber or any other unauthenticated forest produce;
- (d) is found in possession of a licence or permit is fraudulently issued; commits an offence and is liable to conviction to imprisonment for a period exceeding two years or a fine not less than five currency points.

Penalties

57. (1) Subject to the provisions of this Act, a person convicted of an offence under this or any enactment made under this Act or any enactment made under it for which no special or other penalty is provided shall be liable:
 - (a) in the case of first offence, to a fine not exceeding five currency points or imprisonment for a term not less than two year or both;
 - (b) in the case of second or subsequent offence, to imprisonment for a term not less than three years.
- (2) Any person who fails to comply with the advise and supervision of the Director General under this Act commits an offence.
- (3) Any person fails to manage, maintain or control a forest reserve under this Act in accordance with the management plan commits an offence.

Power of Court to confiscate forest produce, and order restrictions

58. (1) When a person is convicted of an offence under this Act or any enactment made under it, all forest produce in respect of which such offence has been committed, and all livestock, animals, tools, boats, vehicles, machinery and other implements used in committing such offence shall be immediately forfeited.
- (2) For the avoidance of any doubt, the forfeiture under subsection 91) shall be in addition to any other punishment that the Court may award.
- (3) Any forest produce forfeited under subsection (1) shall, unless otherwise ordered by the court, be sold or otherwise disposed of as the Director General may direct.
- (4) On conviction of any person of an offence under this Act, the court may, in addition to any other punishment that it may award, order –

- (a) that any licence or permit held by the offender be cancelled;
 - (b) that any forest produce in respect of which the offence has been committed, and anything which has been used in the commission of the offence be forfeited;
 - (c) that where forest produce has been damaged, injured or removed in the commission of the offence, the offender pay compensation equivalent to the value of the produce;
 - (d) that the offender pay ten times the amount of any fees, royalties or other payments which, had the act constituting the offence been authorised, would have been payable in respect of the authorised act.
- (5) Where any order is made under subsection (4) in respect of forest produce from a local forest reserve, a village forest reserve or a private forest reserve, the articles ordered to be forfeited shall be forfeited to or the amounts ordered to be paid shall be paid to the management authority specified under subsection (1) and (2) of section 18 or appointed under subsection (1) of section 24 or the owner of the private forest under section 26 of this Act.

Further Powers of Court

59. (1) A Court on convicting any person of clearing, using or occupying land in a forest reserve contrary to any provision of this Act, shall, in addition to any other penalty it may impose order such person within a time to be specified in order, in any case which time should not exceed thirty working days, to vacate such land and to remove from it any animals, buildings or enclosures which he may have erected and any crops which he may have planted on such land.
- (2) If any person fails to comply with an order made under subsection (1) of this section, the court which made the order shall, on application being made to it by the Authority or the authority maintaining and controlling the forest reserve within which the land to which the order relates is situated, issue a warrant addressed to any police officer directing him to:
- (a) enter upon such land;
 - (b) dispossess and remove from such land the person convicted together with the family, dependants and servants of such person; and
 - (c) take possession of such land on behalf of the Authority by or on behalf of which the application is made together with all crops growing on it and

all buildings and immovable property on and affixed on it.

The warrant under subsection (2) shall contain the directive mentioned in paragraph (c) of this subsection if the court is satisfied that some person, other than the person convicted or his family, dependants and servants, is in lawful occupation of the land.

Presumption

60. (1) Where, in any proceedings under this Act, a question arises whether any forest produce belongs to government, such forest produce shall be presumed to belong to the government until the contrary is proved.
- (2) In any proceedings under this Act, evidence of the use or occupation of land in a forest reserve by the wife, including a wife under customary law, servant or agent of any person shall be *prima facie* evidence of the use or occupation of that land by that person.

Arrest without warrant

61. (1) A forestry officer, wildlife warden or police officer arrest without warrant any person whom he or she reasonably suspects has committed or is about to commit an offence under this Act or under any rules made under it and who, on demand by the officer, refuses or fails to give his name and address or who gives a name and address which the officer believes to be false, or whom the officer has good reason to believe will abscond.
- (2) An authorised person employed by a local authority may arrest without warrant any person subject to the jurisdiction of such local authority whom he or she, on reasonable grounds, suspects of having committed or is about to commit an offence under this Act in respect of a local forest reserve managed, maintained and controlled by a local authority or, on any land not owned by a person or authority in any area within the jurisdiction of that local authority.
- (3) A person arrested under subsection (2) of this section shall be handed over to the police within twenty four hours of the arrest.
- (4) In this section, "authorised person" means a forestry assistant and above, wildlife officer, or any person declared by the Minister to be an authorised person for the purposes of this section.

Power to search for forest produce

62. (1) Whenever a forestry officer, wildlife warden or police officer suspects that any person has been guilty of an offence under this Act or of any rules made under it or is in possession of any forest produce unlawfully obtained, he may search the person or any baggage, package, parcel, conveyance, tent or building under the control of the person.
- (2) Any person who obstructs a forestry officer, wildlife warden, or a police officer in the execution of his or her duties under subsection (1) commits an offence.

Power to seize and detain

- (1) A forestry officer, wildlife warden or a police officer may seize and detain any forest produce, livestock, animals, tools, boats, vehicles, machinery, or other implements which he reasonably suspects are liable to be forfeited under this Act.
- (2) If the officer acting under subsection (1) is of the opinion that the thing seized is subject to speedy and natural decay or will entail avoidable expenses on the part of the government, he may sell such thing, and the proceeds of such sale shall be treated in the manner as the thing would have been treated if there had been no sale.
- (3) No action shall be brought against the forestry officer, wildlife warden, a police officer or a person acting under his or her direction in respect of any deterioration in quality or value of any forest produce, instrument or thing seized under subsection (1).
- (4) An officer seizing or detaining any thing under subsection (1) of this section shall commence proceedings in respect of which such thing has been seized without delay and in any case not later than one week from the date on which the thing was seized.
- (5) A court convicting any person of an offence under this Act or any enactment made under it may order the person convicted to pay, in addition to any penalty it may impose, the expenses of seizure and detention to any thing seized in connection with such offence under subsection (1) of this section.

Power to accept compensation

64. Notwithstanding any other provision of this Act, the Commissioner, a Senior Forestry Officer or a local authority authorised by the Commissioner, may in any

case he or she deems proper and in substitution for any proceedings, accept on behalf of the Government a sum of money by way of compensation from any person reasonably suspected of a contravention of this Act or any enactment made under it, not being an offence under section 56 of this Act except that –

- (a) such compensation shall be accepted only where the person reasonably suspected of such contravention
- (i) has expressed his willingness in the prescribed form that the contravention as aforesaid shall be so dealt with;
 - (ii) voluntarily surrendered any confiscated produce or object used in the commission of the offence;
- (b) such compensation shall:
- (i) not exceed five times the value of the forest produce or animal or thing in respect of which contravention has taken place; and
 - (ii) be evidenced by the issuance of a valid receipt as proof of sale.

PART X – MISCELLANEOUS

Relations with lead agencies

65. (1) The Authority may, in the performance of its functions under this Act, delegate, in writing and where necessary by statutory instrument issued by the Minister, any of its functions to a lead agency, a committee, or any other public officer.
- (2) The Authority in the performance of its duties shall coordinate with any lead agencies involved in the management of forest reserves and other related fields towards the strengthening of conservation, development and management of forests reserves.
- (3) The functions of the Authority shall be performed without prejudice to the functions of other lead agencies with related functions.
- (4) Where the Authority delegates any of its functions in accordance with subsection (1) of this Section, it shall make the necessary arrangements with the lead agency to facilitate the performance of the delegated functions.

General indemnity

66. The Director General or any other forestry officer shall not be held liable in damages or otherwise to any person by reason of his or her exercise or non-exercise in good

faith and without negligence of the powers vested in him or hereunder this Act.

International agreements

67. (1) Where Uganda is a party to any convention or treaty concerning trees, forest reserves and forest resources specified in this Act, or in case after the convention or treaty has been ratified in accordance with the Constitution where such ratification is required, the Minister may, by statutory order with the approval of the Legislature, by resolution:

- (a) set out the provisions of the convention or treaty;
- (b) give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given the force of laws in Uganda;
- (c) amend any enactment other than the Constitution for the purpose of giving effect to the convention or the treaty;
- (d) make such other provision as may be necessary for giving effect to the convention or treaty in Uganda or for enabling Uganda to perform its obligations or exercise its rights under the convention or treaty.

(2) This section applies to any convention or treaty whether adopted before or after the coming into force of this Act and whether Uganda became a party to it before, or becomes a party to it after the coming into force of this Act.

(3) Without prejudice to the general effect of the foregoing provisions, a statutory order under this section may make provisions for the imposition of penalties not exceeding such fine or imprisonment or both as may be prescribed by the Minister and may prescribe the payment of such fees or charges as the Minister thinks necessary in respect of any service or other things to be done or given under the statutory order.

(4) The Provisions of any convention or treaty set out in any order made under this section shall be evidence of the contents of the convention or treaty in any proceedings or matter in which the provisions of the convention or treaty came into question.

PART XI - AMENDMENT, SAVING AND TRANSITIONAL PROVISIONS

Amendment, saving and Transitional provisions Cap.246, Cap247

68. (1) The following Acts are repealed:

- (a) The Forests Act
- (b) The Timber (Export) Act.

(2) The Minister may, on the advice of the Director General, by statutory instrument, amend or revoke any statutory instrument or rules made by a local authority under the Act repealed under subsection (1)

(3) Notwithstanding the repeal under subsection (1) or the amendment under subsection (2) of this section, any statutory instrument or rules made under the Act repealed shall continue in force until amended by a statutory instrument, rules or laws made under sections 47 and 48 of this Act.

(4) Any agreement or similar arrangement made under the Act repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions of the agreement or similar arrangement or in the interest of conservation, by mutual consent of the parties.

Validation

69. Anything done or made before the commencement of this Act in relation to the management of trees, forests, forest reserves or forest produce, which acts would have been done or made under this Act, shall be deemed to have been done or made under this Act

Existing laws Statute No. 4 of 1995

70 (1) Section 46 and 47 of the National Environment Statute shall have legal effect as if made under the provisions of this Act.

(2) Without prejudice to subsection (1) of this section where under the National Environment Statute, any matter is required to be done by the National Environment Management Authority in consultation with a lead Agency, the lead agency for the management and conservation of trees, forests, forest reserves and forest produce for the purposes of that Statute shall be the institution established under section 3 of this Act.

Transfer of assets and liabilities

71 All property and assets which were vested in the Department before the commencement of this Act shall vest in the Authority subject to all interests, charges, obligations and trusts affecting the property.

FIRST SCHEDULE

Section 6

COMPOSITION AND PROCEEDINGS OF THE BOARD

Composition of the Board

1. The Board shall consist of –
 - (a) not more than fifteen members to be appointed from the following sectors –
 - (i) five representatives of local communities residing in areas with forestry reserves;
 - (ii) two representatives of the private sector with specific reference to those involved in activities related to forestry reserves;
 - (iii) three representatives of the tourism industry
 - (iv) two representatives of the scientific community;
 - (v) two other individuals, representing a community, institution or on being selected to serve in their personal capacity on the recommendation of the Board;
 - (vi) the Director General; and,
 - (b) the following ex-officio members to be appointed from the Ministry or institution responsible for –
 - (i) forestry;
 - (ii) tourism;
 - (iii) economic development
 - (iv) wildlife;
 - (v) local government;
 - (vi) the National Environment management Authority.

Tenure

- 2 (1) A member, other than the Director General or a appointed under subparagraph (b) of paragraph 91), shall hold office for three years or until his/her appointment is revoked by the nominating or appointing authority.
- (2) A member of the Board referred to in subparagraph (10 of this paragraph is eligible for reappointment upon ceasing to hold office under that paragraph; except that where the said member has held office for two consecutive terms, he/she shall not be re-appointed to the Board unless if a period of two years has passed since his/her last term of office has expired.

Meetings

- 3 (1) The Minister shall appoint a member of the Board appointed under subsection 91) of Section 8 to be the Chairman of the Board.
- (2) The Board shall meet at least four times a year for the transactions of its business at such time and place as the Chairman may determine.
- (3) The Director General shall keep minutes of each meeting of the Board.
- (4) The minutes kept under subparagraph 93) shall be confirmed by the Board at the next meeting and signed by the Chairman of that meeting.

Quorum, voting and power to co-opt

- 4 (1) Five members of the Board shall form a quorum.
- (2) Questions proposed at a meeting of the Board shall be determined by a simple majority vote of members present and voting.
- (3) Where there is an equality of votes under sub-paragraph (2), the Chairman shall have a casting vote.
- (4) The Board may co-opt a person to attend its meeting and a person so co-opted may participate at the deliberations of the Board but shall have not right to vote.

Discussions of interest

- 5 (1) A member of the Board who has a direct or indirect personal interest in a matter being considered or about to be considered by the Board shall, as soon as the relevant facts have come to his or her knowledge, disclose the nature of his/her interest to the Board.
- (2) a disclosure of interest under subparagraph (1) shall be recorded in the minutes of the meeting of the Board and the member making such disclosure shall not, unless the Board otherwise determine in respect of that matter –

- (a) be present during any deliberation on the matter by the Board
 - (b) take part in the decision of the Board.
- (2) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberation on a matter in which he/she has disclosed a personal interest, the other members present may postpone the considerations of that matter until a quorum, without that member, is realised.

(4) ANNEX II

UNEP/UNDP/JOINT ENVIRONMENTAL LAW AND INSTITUTIONS PROJECT EAST AFRICAN SUB-REGIONAL PROJECT

UGANDA COMPONENT

REPORT ON THE NATIONAL CONSENSUS WORKSHOP HELD ON DECEMBER 18 1998 AT HOTEL AFRICANA – KAMPALA ON THE PROPOSED FOREST ACT FOR UGANDA

Introduction

In accordance with the terms of reference (annex 1) the Consultant prepared a draft Report on the proposed Forestry Act for Uganda. She also prepared a draft Bill for the proposed Forestry Act for Uganda.

These drafts, in accordance with the Consultant's terms of reference, were presented in a national workshop of stakeholders in the management of forestry resources in Uganda. The national workshop was held on December 18, 1998 at hotel Africana, Kampala. A list of participants is appendage to this Report in Annex III.

The workshop was opened by the Commissioner of Forestry Department, who called on participants to be positive in their contributions to the drafts before them. He emphasised that participants should make adequate contributions to the drafts and assured them that what will be eventually submitted to the Parliament shall contain what would have been agreed upon in the national workshop.

After the official opening of the Workshop, the Acting Permanent Secretary for ministry of Water, Land and Environment made a key address to the participants. He told the participants that legislative process for the sustainable management of natural resources in Uganda started in 1994, with the national Environment Action Programme (NEAP) process. He told the participants that, therefore, the draft reports before them, which were the Consultant's work should have assessed the needs of the Forestry Department to enhance the management of forest resources in Uganda, for the benefit of all.

He assured the participants that the Government of Uganda had already approved the forest programme and that, therefore, their inputs at that stage were very crucial.

The Acting Permanent Secretary, then briefly discussed the history of forest legislation in Uganda; challenging the participants to be very vigilant, he stated that the current Forests Act was last revised in 1954, and that, therefore, it does not incorporate modern methods of environmental and resource management. That, therefore, the revision should include current trends of natural resources and environmental management, both at a national and international level.

He emphasised to the participants that Uganda's forests have been degraded due to lack of adequate laws to protect them. That this fact had, therefore, led to a decrease in the overall government revenue. He then castigated the participants to iron out deleterious activities in the proposed legislation, if Uganda's forest resources are to be adequately protected.

Setting the parameters for deliberations by the participants, the Acting Permanent Secretary emphasised that the proposed Forestry legislation should reflect key aspects of public participation, user rights, decentralisation policy and that their inputs, which were to be incorporated in the Consultant's work should reflect the views of the Government, which include sustainable utilisation of the forest resources and promotion of ecotourism.

Discussion of the consultants report

The Commissioner of Forest Department re-echoed the Acting Permanent Secretary's remarks, thanked the East African Environmental Institute for their inputs into this project and welcomed the members of the Press, who, he said were a valuable input into the noble task before the participants.

Thereafter, the Consultant presented the report. The Consultant highlighted the main issues in the report which requires the keen attention of the participants.

At the end of the Consultant's presentation of the report, the Chairperson opened the discussion to the participants. The participants inputs, which included recommendations that the report be amended to include other aspects like the Savannah woodlands, the Wildlife Policy, the Land Act and the Local Governments Act, 1997, were recorded by the Rapporteur and have been included in the amended version of the report.

Aspects of the report which were found not necessary by the workshop participants, have been left out of the current report.

After discussion of the Report, the Consultant then presented the draft of the proposed Forest Act. Participants highlighted

issues which had not been adequately addressed in the draft Act. These included, the institutional arrangement. The Forest Department presented to the workshop the proposed institutional structure of the proposed Forest Authority. This has been adopted in the new draft. Other aspect, which have been included in the new report as a result of the inputs from the workshop include, the collaborative management aspects of forestry resources by the proposed Forest Authority and the community and amendments in the provisions relating to offences.

All in all, the inputs from the workshop participants, as was agreed, have been incorporated in both the new Report and draft Act. The workshop was closed by the Commissioner of Forest Department.

ANNEX I

UNITED NATIONS ENVIRONMENT PROGRAMME PROGRAMME DES NATIONS UNIS POUR L'ENVIRONNEMENT UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL LAW AND INSTITUTIONS IN AFRICA

WORKSHOP ON DEVELOPMENT AND HARMONISATION OF ENVIRONMENTAL LAW ON SELECTED TOPICS IN EAST AFRICA

2nd to 10th February 1998

Venue: Sunset Hotel, Kisumu, Kenya

I. INTRODUCTION

This is a synoptic outline for a workshop to discuss the development and harmonisation of environmental law on selected topics in the East African Region under the UNEP/UNDP/DUTCH Joint Project on Environmental Law and Institutions in Africa. The purpose is to provide a handy brief on the objects of the workshop. A brief background, particularly how the workshop falls into the overall picture of the Joint Project, is provided. The section on participants indicates the mode of selection and the role to be played by the individuals. That is directly related to the scheduled of the workshop, which outlines the procedure for the participation of those invited.

II. BACKGROUND

The East African Sub-Regional Project is a component of the UNEP/UNDP/Joint Project on Environmental Law and Institutions in Africa funded by the Dutch Government. Systematic and essentially national activities are being conducted in Burkina Faso, Malawi, Mozambique and in Sao Tome and Principe. Although South Africa was identified by the Project Steering Committee as a project country, no systematic activities have been done there and no firm decision has been taken by the government as to whether they will, in fact, be so involved. This uncertainty is occasioned by the broad constitutional, policy and legislative reorientations which have been evolving in the country since 1994.

The activities of the Joint Project in East Africa (Kenya, Tanzania and Uganda) focus on matters of sub-regional character. The underlying presupposition is that the physical and historical

situation in East Africa offered an opportunity to initiate and encourage dealing with environmental issues according to problem-sheds. The historical facts are that (a) there is shared legal tradition which derives from common law origins. It was resolved by the Project Steering Committee that the two historical facts should be relied upon to support harmonised legislation on selected themes in the commonly share environment.

Representatives of the three governments met in February 1995 to work out general principles and modalities for their cooperation. Their second meeting was in May 1995 to discuss the general terrain of topics amenable to development and harmonisation of laws. The final decision on six priority topics was taken at their third meeting in February 1996.

The six topic which were selected for the Project's activities are: (i) Development and harmonisation of EIA Regulations (ii) Development and harmonisation of laws relating to transboundary movement of hazardous wastes; (iii) Development and harmonisation of the methodologies for the development of environmental standards; (iv) Development and harmonisation of forestry laws; (v) Development and harmonisation of wildlife laws; and (vi) Recommendation for legal and institutional framework for the protection of the environment of Lake Victoria. For each of the topics, the delegates worked out generic terms of reference. However, each national team was subsequently to work out country-specific terms of reference to reflect national legal and institutional situations as well as existing priorities.

The respective national consultants were also selected by the National Co-ordinating Committees (NCC), working in consultation with an officer at the UNDP country office.

The national consultants have now completed their work. In each case, the reports have been reviewed by the national panels constituted under the aegis of the respective NCCs. Draft reports, as they evolved, were circulated to the consultants in the three countries. In some cases, the consultants were able to take reports of their counterparts into account in finalising their reports. Therefore, some degree of harmonisation of reports, will, presumably, have been done.

The workshop which is proposed herein, will bring together the consultants for each topic for substantive discussions of their reports and to agree on recommendations as to what should be done next and by whom.

III OBJECTIVES

The objectives of the workshop may be summarised as follows:

- (1) to ensure that the recommendations for policies and law for the respective topics are in harmony as far as possible;
- (2) to promote the development of legal and institutional machineries which are comparable in all the three East African countries in the absence of an over-arching sub-regional framework;
- (3) to harmonise the normative prescriptions and institutional machineries and therefore create an opportunity for harmonised enforcement procedures;
- (4) to create an opportunity for dealing with the respect environmental problems according to the problem-sheds, which are essentially sub-regional.
- (5) to make recommendations on how each country should proceed towards implementation of the recommendations.

IV. PARTICIPANTS

There will be four (4) broad categories of participants, over a seven days period:

- (1) Consultants who worked on each respective topic. These will work as specific sub-regional teams of experts of each topic and the number per topic varies by the subject from country to country. The selection of consultants was done so as to ensure complementarity of expertise, and therefore, full coverage of topic.

A list of consultants by the topics is attached.

- (2) National Co-ordinators for the project will attend from each of the three countries. Since they are in the picture of the project and how the consultancies were carried out at the national level, the coordinators will attend through the workshop. They are to carry the national spirit and ownership, ensuring that the workshop recommendations are consistent with national legislative procedures and policies. They can therefore suggest adjustments in the recommendations while maintaining the overall objectives.

The meeting of country representatives in February 1995 had suggested that the national coordinator, who would eventually attend this workshop, should ideally have legal training. However, where the coordinator has no legal training then he/she should be accompanied to this workshop by another government officer who is fully aware of this project and is legally trained.

The rationale for this position is that the coordinator (and such an associate) would be responsible for ensuring that the documents emanating from the workshop are consistent with the national legislative framework, procedures and policies.

This provision should explain instances where the one national coordinator may be accompanied by an additional officer. The national coordinator and his/her associate would also have two procedural functions at the workshop. First, they would be advisors to the meeting of permanent secretaries (see below) on the substance and procedures of the project. Secondly, they will present the status report on the evolution of the project at country level, to the meeting of permanent secretaries.

- (3) There will be two principal Facilitators at the Workshop. The persons will have read all the six reports from the three countries and identified the main features/typologies which require (i) improvement for internal cogency and/or (ii) harmonisation from normative, procedural or institutional point of view.

It is proposed here that while the foregoing preparation should ideally cover all the six topics from the three countries, it may be practical for the respective facilitator to read broadly, but prepare detailed comments on only three topics. We anticipate that two teams of respective consultants on each topic will run concurrently for a maximum of two days for each topic, making a total of three days for the consultants'

sessions. Thus, a facilitator would work in details with one group on three teams for the respective three days.

The East African Sub-Regional Project has been an intriguing experiment not only for the project management but also for members of the Steering Committee. The latter group is keen to follow the procedure and see the quality of the outcome. For these reasons, the project management has deemed it fit that the facilitators for each team of consultants should be from the institutions and members of the Steering Committee.

It is with gratitude we record here that Professor David Freestone (The World Bank) and Mr. Jonathan Lindsay (FAO) have accepted to assist as facilitators for the workshop.

- (4) A meeting for Permanent/Principal Secretaries responsible for environment from the three countries, was proposed by the 1995, as a component of each sub-regional workshop. Therefore, there would be only one such officer from each of the three countries, making a total of three.

Their meeting will be attended by the national coordinators as discussed above.

The Permanent/Principal Secretaries are the accounting officers and policy leaders in their ministries. It was deemed essential that they receive a full briefing on the aspirations and activities of the project. In this way they can discuss the deliberations and take decisions and assume actual ownership of the outcome.

Ultimately, their cooperation and support is essential for the national level adoption and enactment of the recommendations of this project.

This explains the necessity of a meeting of these senior officers together with their national coordinators, with pertinent legal

backing. It is also essential that this meeting be held towards the end of the workshop, to receive the report or outcome of the sessions of consultants.

The meeting will comprise a briefing on the overall Joint Project by the management, and a report on the national activities by each of the three coordinators; workshop reports from the meeting of consultants on each of the project topics, given by the national coordinators. In other words, each national coordinator will assume the repertory role for two of the six topics.

- (5) The overall workshop Chair will be by Director, UNEP Environmental Law Institutions, Programme Activity Centre.

V. PROGRAMME OF THE WORKSHOP

The Workshop will be divided into two broad categories.

1. Meeting of Experts/Consultants
2. Meeting of Permanent/Principal Secretaries.

The duration is from 2nd to 26th February 1998. The daily schedule will be from 0830 hours to 1700 hours, subject to variation by necessity.

Although the records of the proceedings will be kept by the Secretariat, it is proposed that a representative /consultant from one of the countries be the official rapporteur, responsible to the workshops, for the accuracy of reports. Subject to confirmation by the meeting of consultants, we propose that the country teams be designated as rapporteurs as follows: EIA Regulations (Uganda); Lake Victoria Environment (Tanzania); Hazardous Wastes (Tanzania); Environmental Standards (Uganda); Wildlife (Kenya) and Forestry (Kenya).

Daily meeting of the experts will run on two Tracks as below:		
Dates	Track I in Topics	Track II in Topics
2 nd & 4 th February	EIA Regulations	Lake Victoria Environment
3 rd & 5 th February	Hazardous Wastes	Wildlife Legislation
6 th & 7 th February	Environmental Standards	Forestry Legislation

Consultants for each topic will arrive the day before their respective schedules on the programme and depart after the end of the second day. The Coordinators as described above will stay from 1st to 10th February 1998.

- 8th February
 - Preparation of reports by the Coordinators
 - Arrival of the Permanent/Principal Secretaries
- 9th and 10th February
 - Meeting of the Permanent/Principal Secretaries (with Facilitators from FAO and The World Bank and the National Coordinators). The six topics will be paced out over the two days and resolution adopted at the end of the deliberations. A detailed programme of work for the two days will be drawn in consultations with the national coordinators.

V. OUTLOOK

At the end of the meeting of the experts, each consultant will be expected to have a clear picture of what additional amendments or changes they need to do to effect the harmonisation. It will be urged that such amendments are completed within approximately two weeks after the workshop.

Secondly, the national coordinators will advise on the approximate schedule for national consensus-building workshops and implementation of recommendations.

Finally, the consultants will make such other adjustments as may be recommended by the workshop. The national coordinators will advise on when the final reports will be submitted and, therefore, the activities concluded.

The principal/permanent secretaries may, in instances where they deem it practical, advise on when the legislative actions might be taken at national level on each topic.

UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL LAW AND INSTITUTIONS IN AFRICA

EAST AFRICAN SUB-REGIONAL PROJECT MEETING OF THE PERMANENT SECRETARIES RESPONSIBLE FOR ENVIRONMENTAL MATTERS

Nairobi, 15 April 1998

REPORT OF THE MEETING OF THE PERMANENT SECRETARIES ON THE DEVELOPMENT AND HARMONISATION OF ENVIRONMENTAL LAW ON SELECTED TOPICS UNDER THE EAST AFRICAN SUB-REGIONAL PROJECT

Background:

1. The meeting of the Permanent Secretaries responsible for environmental matters in Kenya, Uganda and Tanzania met in Nairobi, Kenya at the UNEP Headquarters on 15 April 1998. The meeting marked a culmination of series of activities executed under the East African Sub-Regional Project of the UNEP/UNDP/Dutch Joint Project on Environmental Law and Institutions in Africa which began in 1995. In particular, the Permanent Secretaries met to discuss, evaluate and assess the recommendations made by a series of six sub-workshops held simultaneously and back to back in Kisumu, Kenya from 2-10 February, 1998.
2. The sub-workshops had reviewed and assessed the reports prepared by national consultants on the six priority areas identified earlier on, namely, Environmental Impact Assessment (EIA) Regulations, Hazardous Wastes, Environmental Standards, Lake Victoria Environment, Wildlife laws and Forestry laws. Further more, each sub-workshop had made a series of recommendations geared towards assisting the national consultants with mechanisms to strengthen their reports on the basis of discussions and comments made in the relevant sub-workshops.
3. Based on recommendations made by the experts in the six sub-workshops, the meeting of Permanent Secretaries was convened as above stated to review the work of the experts and the recommendations for action. The one day meeting was followed by another day's meeting of the National Coordinators of the Project to finalise the documents, on the basis of instructions given by the Permanent Secretaries.

OPENING OF THE MEETING

4. The meeting of the Permanent Secretaries was officially opened by Mr. Donald Kaniaru, Director, UNEP, ELL/PAC, at 9.10 a.m. on 15 April 1998 at UNEP Headquarters. The morning part of the meeting was chaired by Mr. Donald Kaniaru, while the latter afternoon part was chaired by Mr. Patrick Kahangire, Acting Permanent Secretary, Ministry of Natural Resources, Uganda.
5. In his opening remarks, Mr. Kaniaru expressed his hope that the intervening period had provided appropriate opportunities to the Permanent Secretaries to be briefed on the results of the sub-workshops by their National Coordinators, and that in turn, they had consulted their other colleagues in the relevant Government departments on the issues discussed. In that regard, he called upon the Permanent Secretaries to commend on each of the six areas, principally focussing on updates and actions taken since the sub-workshops in February 1998. He further requested them to endorse or modify or add to the recommendations or specific points made by the consultants to pave the way for targeted implementation.
6. He concluded by urging that the three Governments should advise the relevant departments dealing with the East African Co-operation Secretariat (EAC) of the evolving need to take up environmental policy coordination questions urgently, and the possibility of negotiating treaties or protocols to give legal effect to the recommendations made by the consultants. He assured the Permanent Secretaries that once EAC is advised by the Governments, UNEP would be ready to assist by making its expertise available to the Governments.

BRIEF ON THE SCOPE OF THE PROJECT

The Task Manager of the UNEP/UNDP Joint Project in Environmental Law and Institutions in Africa, Professor Charles O. Okidi, briefed the Permanent Secretaries on the scope, objective and status of the Joint Project including the sub-regional project. He clearly showed them what the Sub-Regional Project has achieved to date and where it stands in relation to the overall Joint Project.

STATEMENT BY PERMANENT SECRETARIES

The Permanent Secretaries made statements and, in particular, informed the other participants the role of the Joint Project was played in their countries, in particular, in the field of the development of environmental law and institutions including building the capabilities of their officials and institutions. Status of development of environmental legislation in each country were narrated in the statements including the constraints faced in the implementation of some of the activities.

The Permanent Secretaries appreciated the Joint Project efforts in organising several capacity building workshops in the field of environmental law. They were also delighted with the efforts taken by the Project to utilise national experts to undertake review of the six priority areas. The exercise has succeeded in building a cadre of national experts in the field of environmental law and ensures national ownership of the reports produced and laws and/or implementing regulations prepared.

- VI. All of them were thankful to the sponsor of the Joint Project, the Dutch Government, the implementors of the Project, UNEP and UNDP as well as the other supporting partner organisations, IUCN, FAO and the World Bank. To this end, they unanimously recommended the extension of the Joint Project to permit them to complete the on-going activities and allow the Governments to develop regulations to implement the six areas. They emphasised that the extended period would equally permit them to focus on new priority areas identified by their experts.

PRESENTATION OF THE REPORTS OF THE SUB-WORKSHOPS

- VIII. On behalf of the National Coordinator from Tanzania, the National Coordinators from Kenya and Uganda officially presented to the Permanent Secretaries the reports which were adopted by the experts of each Sub-Workshop on the six areas discussed during their meetings held in Kisumu, Kenya from 2 to 10 February 1998. The presentation of each report was followed by discussion issues raised and recommendations made.

As necessary, an update of the facts or situation since February 1998 in each country was made. For instance, Uganda reported that they had their national consensus building workshop to review the reports and the revised reports have already been forwarded to UNEP. Kenya reported that it was going to hold its national workshop from 26 April to 1 May 1998 to review the consultants' reports and recommendations. Tanzania on the hand, reported that it held its national workshop on 11 April 1998 whereby the reports were reviewed and recommendations made. As the result of the national workshop recommendations, Tanzania had requested for extension of time to permit the consultant to prepare the report on EIA while the one dealing the forestry legislation to rewrite it to the required standards.

- IX. The reports presented were on the development and harmonisation on the following six areas –

- (i) Environmental Impact Assessment Regulations
- (ii) Forestry Legislation
- (i) Transboundary Movement of Hazardous Wastes
- (ii) Methodology for the Development of Environmental Standards
- (iii) Management of the Lake Victoria Environment
- (iv) Wildlife Legislation

- X. The presentation of each report was divided into four main sectors. They were namely:-

- (i) General overview of the reports as presented by the national consultants in the sub-workshop.
- (ii) Reasons justifying the need for sub-regional harmonisation of each area presented.
- (iii) Common elements to be considered by Governments during the preparation of national legislation in each of the six areas.
- (iv) Conclusions made by each sub-workshop, namely, requesting the EAC to assist in the preparation of an overarching agreement on the environment with sectoral Protocols on each of the six areas. While requesting UNEP to facilitate the development of the agreement and the protocols, reports urged the donor to favourably consider extending the Joint Project.

RECOMMENDATIONS

- IX. The Permanent Secretaries endorsed all the six reports of the sub-workshop together with the recommendations made with minor adjustments. They all acknowledged that the reports were a clear testimony of success of the capacity which the Joint Project has built in their countries during the execution of Joint Project activities.

They expressed satisfaction with the good quality of the reports which were presented to them. While they agreed that the Joint Project has succeeded in organising capacity building in a number of areas in environmental management, they recommended more training programmes to include the private sector. Of priority importance, the Permanent Secretaries emphasized a training programme on EIA for the private sector.

- XII. While requesting UNEP to assist in the implementation of all the recommendations made, the Permanent Secretaries promised to commit themselves to support implementation of activities at national level. In addition, they promised to ensure that the recommendations they have adopted are forwarded to the EAC for implementation as proposed. They recognized the need for an overarching treaty/protocol on the environment which will facilitate future development of sectoral protocols on different priority areas. To this end, they requested UNEP to facilitate future development EAC and the Governments in the development of the proposed protocols, at appropriate moments.
- XI. To synthesize their endorsement of the recommendations made by their experts, the Permanent Secretaries requested UNEP to assist and support them in the preparation of a Memorandum of Understanding (MOU) on Environment as a matter of urgency. Consequently, the Permanent Secretaries mandated and instructed their National Coordinators to commence preparation of the draft MOU for their consideration. After consultation, the meeting agreed the first meeting of the National Legal Experts under the sub-regional project will be held from 25 to 26 May 1998 to discuss and review the draft text which would have by then been prepared and circulated to the national experts for their input. The Permanent Secretaries expect the text to be ready for adoption at the latest in July 1998.
- XIV. Furthermore, as recommended by the experts, the Permanent Secretaries strongly requested the extension of the Joint Project to allow them to complete the activities already under way. Extension would also permit Governments to strengthen and reinforce the completed activities by developing implementing regulations. They hope that the extended period would equally permit them to focus on new priority areas to be identified.

FOLLOW UP

- XV. The Permanent Secretaries instructed the National Coordinators who met for another extra day on 16 April

1998, to finalise and compile documents discussed in their meeting.

They were instructed to prepare the following from the recommendations of the experts the six areas which had been endorsed and the new recommendations which emanated from the meeting.

- (i) To identify from the reports of the Sub-Workshops recommendations which cut across and common to all the six areas and those recommendations specific only to certain areas. The identification of these issues are attached as *Annex IV*.
- (ii) To identify recommendations which are addressed to Governments for their implementation. These are attached as *Annex V*.
- (iii) To identify recommendations addressed specifically to EAC for their action and execution. These are enclosed as *Annex VI*.
- (iv) To identify those recommendations which requested the support and assistance of UNEP and its affiliates in their implementation. These are enclosed as *Annex VII*.
- (v) To prepare for their adoption and signature, by July 1998, a MOU on Environment. MOU, they emphasized, will be benchmark for the success of the activities under the East African Sub-project.

CLOSING REMARKS

- XV. After usual exchange of courtesies and appreciations for the cordial and friendly atmosphere, the meeting was declared closed at 18.00 hrs on 15 April 1998.

RECOMMENDATIONS ON THE HARMONISATION OF ISSUES FOR THE DEVELOPMENT OF FORESTRY LAWS

The three reports of Kenya, Tanzania and Uganda were harmonised and the following are the major themes for the development of forestry laws.

- (a) In each of the countries need to be thoroughly revised to reflect modern views about the multiple economic, social and ecological roles of forests. The existing forests laws are too narrowly focused on exploitation and policing of government forests.
- (b) Forest laws should reflect a holistic perspective, addressing the integrated management of forest resources on a national basis, rather than focusing solely on gazetted forest areas.

- (c) As is in the case of wildlife and other natural resources, forests cannot be managed on a narrow sectoral basis. Effective national forest management will require internal harmonisation of policies, laws and institutions across sectors, including agriculture, water resources, wetlands, wildlife, etc. Such internal harmonisation will provide a firmer basis for effective sub-regional harmonisation.
- (d) An essential step in achieving internal harmonisation is the enactment of framework environmental legislation. Therefore, Kenya and Tanzania should move speedily to develop and adopt their own.
- (e) The objectives of forest management should be clearly spelled out in forest laws.
- (f) Forest laws should provide for different categories of forests and establish different management regimes that are compatible with the purpose of each category. Current forest laws tend to treat all types of forests alike.
- (g) Based on a systematic inventory and planning process, the countries should, individually and in consultation with each other, identify valuable forest areas that require a great degree of legal protection than they now receive.
- (h) Countries should agree on a common protection and management regime for forests that straddle borders.
- (i) Environmental impact assessment should become an integral part of forest management. The EIA requirements and procedures should be contained in the framework environmental law. If such a law does not yet exist, interim provisions for EIA should be made in sectoral legislation. (Note: Harmonisation of EIA between countries is dealt with in the report of the EIA group, above). EIA may be particularly critical for such activities as the proposed degazettement of reserve forests; the establishment of industrial plantations; and other major changes in land use.
- (j) Laws should require management plans for forest areas, and require that the use of such forests, including the issuance of licenses and permits, be carried out in accordance with those plans.
- (k) Countries should collaborate on a common strategy to carefully assess and control the introduction of new and exotic species.
- (l) Laws in the three countries should reflect a common policy toward the sustainable management of indigenous forests.

Community Involvement

- (a) The right of all people to participate meaningfully in decisions regarding the management of forest resources in their communities.
- (b) Public consultation should be required by law for all major actions affecting forest resources. Such consultation must be more than a formality. This will require that notice is effectively transmitted to all interested parties, in vernacular languages, through local papers and radio, public displays and the like. Open public hearings near the affected area should be held well advance of any major decision being finalised.
- (c) Community involvement in the development of local forests management plans is a specific type of public consultation that requires attention. This will ensure that planning is guided by the aspirations, needs and traditional knowledge of local people. The conservation of such forests require their co-operation.
- (d) Forest laws should provide more effective mechanisms for direct involvement of local people in the management of forest resources. Provision should be made for:
 - the use of joint management agreements in governments forests, with an equitable sharing of rights, benefits and responsibilities.
 - Incentives for the establishment of forests on community or private land.
- (a) Countries should review laws concerning land tenure and land use to identify and address potential constraints to the promotion of private and community forestry.

Enforcement and Compliance

- (a) Structure for forest-related offenses, and to harmonise them among countries. Current penalties are completely inadequate to deter criminal behaviour and should be restructured to reflect prevailing economic conditions.
- (b) The definition of offenses and the judicial and administrative procedures that apply to them need to be harmonised among the three countries.
- (c) Public interest suits to enforce forest-related laws should be encouraged through broadened rules of standing, to facilitate more effective implementation. The countries should consider reducing or eliminating filing fees for such suits.

- (d) Government cannot rely on its own resources alone to enforce forest laws, due to manpower and financial constraints and the magnetite of forest areas. It will need to employ new techniques to enhance compliance, such as honorary forest guards, the provision of incentives and partnerships with local people.

Capacity Building

- (a) Promote joint programmes for research, training of personnel, and exchange of information concerning forest resources.
- (b) The countries should collaborate on development of harmonised curricula for forest-related training institutions.
- (c) The countries should each develop national resource centres on environmental law, including forestry-related law.
- (d) Efforts should be made to increase overall public awareness of environment and natural resource issues

through targeted and harmonised curriculum reform throughout the educational systems of the sub-region.

- (e) There is a critical need to educate prosecutors, judges, magistrates, Members of Parliament and other public officials in laws related to forests and other natural resources.
- (f) Each country should consider the establishment of specialized units within their judicial/legal apparatus e.g. chambers in their respective courts to deal with environmental matters, environmental tribunals, committees on environment under the Law Societies, desks within the Attorney General's office to deal with environmental and natural resource issues, including forest issues.
- (g) Each country should perform and keep up-to-date forest resource inventories, and exchange relevant information.
- (h) Countries should collaborate on research into alternative and renewable sources of fuel.

UNEP/UNDP/DUTCH JOINT PROJECT ON ENVIRONMENTAL LAW AND INSTITUTIONS IN AFRICA

EAST AFRICAN SUB-REGIONAL PROJECT WORKSHOP ON HARMONISATION OF DRAFT REPORTS AND LAWS

February 2-10 1998

List of Participants

Senior Government Officials

Permanent Secretary, Ministry of Environment and Natural
Resources, Kenya
Principal Secretary, Office of the President, Tanzania
Permanent Secretary, Ministry of Natural Resources, Uganda

Co-ordinators

Ms. Joyce Onyango - Kenya
Ms. Verdiano Macha* - Tanzania
Mr. Robert Wabunoha - Uganda

Consultants

Development of Forest Legislation

Prof. J. B. Ojwang - Kenya
Mr. Alinikisa A. Mafwenga - Tanzania
Ms. Jane Anywar - Uganda
Mr. Emmanuel Kasimbazi - Uganda

Development of Wildlife Legislation

Mr. Caroli Omondi - Kenya
Mr. R. V. Makaramba - Tanzania
Ms. Jane Anywar - Uganda

Development of EIA Regulations

Dr. Albert Mumma - Kenya
Mr. F.M. Werema - Tanzania
Mr. M. J. T. Ngalo - Tanzania
Mr. John Ntambirweki - Uganda

Development of Hazardous Waste and Chemicals Regulations

Prof. Shem O. Wandiga - Kenya
Mr. Justy P. L. Nyaberi - Kenya
Mr. C. W. A. Tenga - Tanzania
Mr. J. Ntambirweki - Uganda

Development of Environmental Standards

Dr. Francis Situma - Kenya
Mr. E. L. Songole - Kenya
Mr. E. K. Njuguna - Kenya
Ms. M. A. Abira - Kenya
Mr. V. D. Shauri - Tanzania
Mr. S. A. Mapande - Tanzania
Mr. L. S. Kinabo - Tanzania
Mr. C. Kyamanywa - Uganda
Dr. D. A. Ogaram - Uganda
Mr. J. Aniku - Uganda
Dr. M. K. Magunda - Uganda

Legal and Institutional Aspects of the LVEMP

Mr. B. P. Kubo - Kenya
Dr. M. J. Ntiba - Kenya
Ms. V. N. Macha* - Tanzania
Mr. Phidel Mwindunda - Tanzania
Eng. Enoch M. Dribidu - Uganda
Mr. Emmanuel Kasimbazi - Uganda

***Coordinator and Consultant**

UNEP

Prof. C. O. Okidi
Task Manager
UNEP/UNDP/Dutch Joint Project on
Environmental Law and Institutions in Africa
UNEP, NAIROBI, KENYA

Ms. Elizabeth Mrema
UNEP/ELI/PAC
NAIROBI, KENYA

Facilitators

Mr. Jonathan M. Lindsay
Development Law Service, FAO
ROME, ITALY

Prof. David Freestone
THE WORLD BANK.