



COUNTY GOVERNMENT OF MAKUENI COUNTY

**THE MAKUENI COUNTY SUSTAINABLE FOREST MANAGEMENT AND TREE
GROWING BILL, 2023**

A LEGISLATIVE PROPOSAL

**BY THE MAKUENI COUNTY DEPARTMENT FOR LAND, URBAN
DEVELOPMENT, ENVIRONMENT AND CLIMATE CHANGE**

THE COUNTY SUSTAINABLE FOREST MANAGEMENT AND TREE GROWING BILL, 2023

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of the Act.
- 4—Guiding Principles and Values.

**PART II—ADMINISTRATION OF SUSTAINABLE FOREST MANAGEMENT
AND TREE GROWING**

- 5—Functions of the County Executive Committee Member.
- 6—Establishment of the Committee.
- 7—Functions of the Committee.
- 8—Reporting requirement.
- 9—Other administrative committees.
- 10—Forest Community Organizations.
- 11—Registration of the organizations.

**PART III—ESTABLISHMENT, CONSERVATION AND MANAGEMENT OF
COUNTY FORESTS**

- 12—Establishment of County forests.
- 13—Ungazetted forests.
- 14—Management of county forests.
- 15—Community user rights and benefits.
- 16—Role of Forest Community Organization in management of forests.
- 17—Management of community forests.
- 18—Management of private forests.
- 19—Arboreta and recreational parks.
- 20—Management of indigenous forests.
- 21—Management of plantation forests.
- 22—Forest management agreements.
- 23—Termination or variation of a management agreement
- 24—Consent for quarrying in public county forests.
- 25—Management plans.
- 26—Joint management of forests
- 27—Mapping for establishment of County forests and determining scope of land degradation.
- 28—Rehabilitation of degraded areas.
- 29—Climate change mainstreaming during tree growing.
- 30—Movement of Forest Products.
- 31—Co-operation regarding Inter-County cross-border forest resources.

PART IV—MISCELLANEOUS PROVISIONS

- 32—Application of other laws.
- 33—Customary rights.
- 34—Incentives and benefit sharing.
- 35—Tax and fiscal incentives.
- 36—County tree planting events and days.
- 37—Application of Part IX of No. 34 of 2016.
- 38—Dispute resolution.
- 39— Regulations.

THE MAKUENI COUNTY SUSTAINABLE FOREST MANAGEMENT AND TREE GROWING BILL, 2023

A BILL for

AN ACT of the Makueni County Assembly to give effect to Article 42, 69 (1) and section 10 (b) of Part 2 to the Fourth Schedule of the Constitution; to provide for sustainable forest management and tree growing and for connected purposes.

ENACTED by the Makueni County Assembly, as follows—

PART I—PRELIMINARY

Short title. 1) This Act may be cited as the County Sustainable Forest Management and Tree Growing Act, 2023.

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

“Arboretum” means an area of land legally designated as such by the County under this Act for the cultivation and growing of trees and other biodiversity for scientific, educational, ornamental, cultural or aesthetic purposes, and which is open for access by the public for the specified uses’

“Authorized officer” means a person designated as a forester, environment officer, or enforcement officer working under Directorate responsible for forestry

“Climate Change Mainstreaming” means the integration of climate change actions into decision making and implementation of functions by the county government, as assigned under section 2 of the Climate Change Act, 2016;

“Community land” as used in this Act has the same meaning assigned under section 2 of the Community Land Act;

“Community forest” has the meaning given in section 17;

“Committee” means the County Forestry and Tree Growing Committee established under section 6;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for forestry and tree growing;

No. 17 of 2012

“County forest” means a forest established on public land within the meaning of Article 62(2) of the Constitution, or such other public land lawfully acquired by the County Government under section 12;

No. 34 of 2016

“Department” means the Department established under Section 46 of the County Government Act, 2012, responsible for matters relating to forestry;

“Forest community” means the persons resident or utilizing land within a distance of five kilometers from the outer boundaries of a public forest;

“Fund” means the County Forest Fund that may be established in accordance with the provisions of the Public Finance Management Act, 2012;

“Green zone” means an area of land within an urban area in the County where development permission has been granted for development of homes, apartments or other structures for human habitation and where it is mandatory for trees to be planted and grown at the rate of no less than ten percent of the total occupied area;

“Recreational park” means an area of land legally designated by the County as a public open space with conservation objectives including serving as cultural or aesthetic area for people whether in an urban or rural setting in the county;

“Indigenous people” means indigenous peoples as provided for in Article 260 of the Constitution

“Service” means the Kenya Forest Service established under section 7 of the Forest Conservation and Management Act.

“Private forest” has the meaning assigned to under section 30 of the Forest Conservation and Management Act, 2016;

“Public forest” the meaning assigned to under section 30 of the Forest Conservation and Management Act, 2016;

“Tree growing” means a process that involves identification of the right planting materials, planting it in the appropriate places and taking care of the planted seedlings so that they can mature to become grown trees;

Objects of the Act.

- 3) The objectives of this Act are, to —
- (a) provide a framework for the implementation of forestry and tree growing functions in the county-level;
 - (b) Provide framework and guidelines for coordinating forest and landscape restoration in the County;
 - (c) provide for the mainstreaming of human rights approach, including recognition of gender, persons living with disabilities, minorities, youth and the elderly rights, in the design and implementation of sustainable forest management and tree growing activities in the county;
 - (d) put in place mechanisms for public participation of communities, land owners, indigenous and marginalized persons in sustainable forest management;
 - (e) promote the involvement of communities, development partners, private

sector and civil society organizations in taking up forestry and tree growing activities including investments;

- (f) provide a framework for the County to mobilize resources for its forestry and tree growing actions; and
- (g) provide for mechanism to mainstreaming climate change interventions and other relevant aspects to inform county decision making.

Guiding Principles and Values.

4) The values and principles enshrined in the Constitution and in particular Articles 10, 66 (2), 174, 201 (c) and (d), and 232 of the Constitution and the principles of leadership and integrity set out under Chapter Six of the Constitution shall apply in the administration of this Act.

PART II—ADMINISTRATION OF SUSTAINABLE FOREST MANAGEMENT AND TREE GROWING

Establishment and Functions of the Forestry Unit.

5) (1) There is an established Forestry Unit which shall be an office in the County Directorate responsible for Environment

(2) The functions of the Unit shall be —

- (a) Manage county forests, community forests and private forests in accordance with the provisions of this Act;
- (b) Develop and maintain a register of all forest management plans prepared for public forests in the County;
- (c) Establish forest conservancy areas for purposes of conservation and management;
- (d) Establish and implement benefit sharing arrangements in accordance with the provisions of this Act;
- (e) In consultation with relevant stakeholders, develop programs for tourism and for recreational and ceremonial use of forests;
- (f) Promote forestry education and training;
- (g) Collaborate with relevant persons in identifying research needs and applying research findings in relation to county and public forests and forestry;
- (h) Manage water catchment areas in relation to soil and water conservation, carbon sequestration and other environmental services in collaboration with relevant stakeholders;
- (i) Consider and recommend to the County Executive Committee the establishment of public forests on un-alienated public land or any

other public land;

- (j) Consider and recommend to the County Executive Committee the determination and alteration of boundaries of county and public forests;
- (k) Approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons for the sustainable utilization of wood and non-wood forest products;
- (l) Implement and enforce rules and regulations governing inter-county trade in forest produce;
- (m) Develop, maintain and regularly update a geographic information system database of all forests in the County.
- (n) Monitoring and reporting of forest and landscape restoration in County Government; and
- (o) Conduct forest valuation on need basis.

(3) In discharge of the functions and duties under this Act, the Executive Committee Member for forestry sector shall be responsible for coordination of forestry matters. The Executive Committee Member shall develop guidelines for implementation of (a –o).

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

(5) For the purpose of compliance with the above functions, the Executive committee member in charge of forestry shall designate a sub unit to ensure compliance and enforcement.

(6) In operationalization of the above function (5), the Executive Committee Member in charge of forestry shall provide guideline for specific duties and staff establishment.

6) (1) There is established the Makueni County Forest and Tree Growing Committee.

(2) The Committee shall comprise of—

(a) A non-executive chairperson appointed by the Governor;

(b) The Chief Officer responsible for forestry or a representative appointed in writing;

Establishment of the Makueni County Forest and Tree Growing Committee.

- (c) The Chief Officer responsible for the County Treasury or a representative appointed in writing;
 - (d) The Chief Officer responsible for County physical planning and development control or a representative appointed in writing;
 - (e) The Chief Officer responsible for agriculture or a representative appointed in writing;
 - (f) The National Government Agency responsible for forestry in the County or a representative appointed in writing;
 - (g) Three other persons who shall be appointed by the County Executive Committee Member responsible for forestry fulfilling the following criteria—
 - (i) A member elected by the umbrella body of County landowners and community sustainable forest management and tree growing forums;
 - (ii) A member elected by the umbrella body for Civil society organizations involved in sustainable forest management and tree growing in the County; and
 - (iii) A representative of youth involved in sustainable forest management and tree growing in the County;
 - (h) the Director in-charge of forest and tree growing functions who shall be the secretary of the Committee;
- (3) A person shall not qualify for appointment as Non-executive chairperson, under this Act, unless such a person –
- (a) Is a citizen of Kenya;
 - (b) Holds a degree in a relevant field or specializations in forestry or related fields from a recognized University;
 - (c) Has had at least ten (10) years’ experience at senior management level in any of the fields set out in (b) above; and
 - (d) Meets the requirements of Chapter 6 of the Constitution.
- (4) A person shall be appointed under subsection (2) g) if he or she—
- (a) Is a citizen of Kenya;
 - (b) Is resident of the respective county;
 - (c) Have expertise and experience in matters of sustainable forestry, tree growing, agriculture, sustainable development financing, climate change, environment or public administration;

(5) In the appointment of members under paragraph (2) (g), the County Executive Committee Member shall ensure gender and regional balance.

(6) The County Executive Committee Member shall stagger the appointment of members of the Committee to ensure succession planning.

(7) A person appointed under paragraph (2) (a) and (g) shall hold office for a term of three years and is eligible for re-appointment for one further term.

(8) A member of the Committee under paragraph (b) to (f) shall remain in office so long as they retain their substantive positions within Government.

(9) The Committee may, for a defined temporary period, co-opt members with relevant expertise when needed to advice on specific matters.

(10) The Committee may from time to time establish sub-committees for the better carrying out of its functions.

(11) The Committee shall meet quarterly, a maximum of four times in a year, but may hold meetings more frequently depending on the urgency of business.

(12) The members of the Committee shall be paid such remuneration as recommended by Salaries and Remuneration Commission.

Functions of the Committee.

7) The Committee shall—

- (a) Provide a means for consultation in the County Government on preparation of county plans, policies, guidelines and other matters relating to forestry tree growing;
- (b) Structure co-ordination and collaboration of institutional stakeholders activities based on the project priority list;
- (c) Promote sharing of experiences and best practices and emerging issues in forest management and tree growing;
- (d) Dispute resolution arising from the implementation of this Act;
- (e) Perform any other duty assigned by the County Executive Committee Member.

Reporting requirement.

8) The Committee shall submit to the County Executive Committee Member quarterly reports of its activities.

Other administrative structures.

9) The County Executive Committee member may establish other administrative mechanism for the better carrying into effect the provisions of this Act.

Forest Community Organizations.

10)(1) A member of a community living in close proximity to a forest in the county may, together with other members or persons resident in the same area,

register a Forest Community Organization with the department responsible for matters relating to social services.

- (2) The organization shall—
 - (a) Elect officials to run the affairs of the organisation;
 - (b) Develop bylaws for proper operation, maintainance and management of forests;
 - (c) Resolve disputes relating to utilization of forest resources and benefits;
 - (d) Receive grievances from the public and provide feedback; and
 - (e) Assist in the mobilization and awareness on programs and projects engineered towards management of forests within the county.
- (2) The County Executive Committee Member shall prescribe guidelines on the formation and operations of the organisations.

Registration of the organisations.

11(1) A community organization intending to manage a forest in the county shall register with the Department.

- (2) A registered organization may apply to the Department to—
 - (a) Participate in the conservation and management of a county forest; and
 - (b) Be assigned user rights and benefits in relation to a particular forest.

(3) The Department shall maintain a register of the organisations in such form as it may determine, and shall enter in the register—

- (a) The particulars of members registered;
- (b) The particulars of the forests;
- (c) The nature of conservation and management duties assigned;
- (d) The user rights and benefits assigned;
- (e) The date of submission of annual returns, indicating the total number of trees cut and grown; and
- (f) Any other particulars the department may deem necessary.

PART III—ESTABLISHMENT, CONSERVATION AND MANAGEMENT OF COUNTY FORESTS

Establishment of County forests.

12(1) The County government may establish and manage county forests on public land defined under Article 62(2) of the Constitution.

(2) The County government may establish a county forest on private or community land provided that just compensation is paid in accordance with Article 40 of the Constitution.

(3) Notwithstanding subsection (2), a county forest may not be established over community land that is occupied and owned by an indigenous community within the meaning set out in Article 260 of the Constitution.

(4) After completing the public consultations, the County government shall prepare a policy position paper with analysis of the benefits of the proposed county forest, assessing the impact of not creating the forest, examining the public benefit, and benefit to communities that are adjacent to the forest, and any other additional matters as may be approved by the Department.

(5) The policy position paper shall also describe the land in question including legal description, locality, current land uses for the land and locality.

(6) The County government shall publish the policy paper in the Gazette and conclude public participation within three months.

(7) The County government shall undertake an Integrated Environmental Impact Assessment following the procedure set out by the Environmental Management and Coordination Act, 2009.

(8) The County government shall within twelve months of commencing the process in subsection (1), submit the proposal that includes the policy paper and the Integrated Environmental Impact Assessment license to the County Assembly for approval.

(9) The County Assembly shall make a determination within six months of receiving the proposal for establishment of a county forest.

(10) Where the County Assembly approves the proposal, the Governor shall within three months of the approval, establish the county forest through a notice in the *Gazette*.

Ungazetted forests.

13) (1) All ungazetted public forests in the County are vested in the County Government, subject to any rights of user in respect thereof, which by or under this Act or other written law, have been or are granted to any other person.

(2) The County Executive Committee Member may, with the approval of the County Assembly and after consultation with the National Land Commission declare through a *Gazette* notice any un-alienated public land or any land purchased or otherwise acquired by the County to be a county forest vested in the County Government.

Management of county forests.

14) (1) Every county forest, arboreta, botanical garden, sand recreational park shall be managed in accordance with a management plan as may be prescribed in regulations by the County Executive Committee Member.

(2) The Department shall be responsible for the preparation, through public participation, a management plan with respect to each county forest, arboretum, botanical garden or recreational park.

(3) A management plan prepared under this section shall set out the primary management objective with respect to the county forest, arboreta, botanical garden or recreational park.

(4) The County Executive Committee Member shall submit an annual compliance report to the County Executive Committee, with respect to each management plan under implementation.

(5) The County Executive Committee Member shall provide the status implementation report to the County Assembly annually.

15(1) A Community living in close proximity to a forest in the county is entitled to access the forest and collaboratively participate in its management with the following user rights and benefits—

- (a) Controlled collection of medicinal herbs;
- (b) Regulated use of non-wood forest products;
- (c) Licensed harvesting of timber or fuel wood;
- (d) Regulated grass harvesting and grazing;
- (e) Regulated collection of forest produce for community based industries;
- (f) Licensed ecotourism and recreational activities;
- (g) Licensed scientific research and education activities;
- (h) Controlled spiritual and cultural activities;
- (i) Development of community wood and non-wood forest based industries;
- (j) Carbon credits; and
- (k) Other user rights and benefits as maybe defined through regulations.

16(1) A Forest Community Organization may participation in conservation and management of forests through—

- (a) Limited access, user and benefit rights; or
- (b) A joint management agreement between the organization and the department, defining benefit sharing and how the forest community may contribute to the generation of benefits.

Community user rights and benefits.

Role of Forest Community Organization management of forests.

(2) The organization shall—

- (a) Protect, conserve and manage the forest or part of the forest in accordance with an approved management agreement entered into with the Department and the provisions of the management plan for the forest;
- (b) Formulate and implement sustainable forest programs that shall be consistent with the traditional forest user rights of the relevant forest community;
- (c) Protect sacred groves and protected trees;
- (d) Assist the Department or any other relevant authority in enforcing the provisions of this Act including in relation to illegal harvesting of forest products;
- (e) With the approval of the Department, enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of the forest;
- (f) Inform the Department of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity;
- (g) Help in firefighting, reporting illegal activities and other activities that contravene the conservation and management of the forest.
- (h) do any other act that is necessary for the efficient conservation and management of the forest.

(3) The management agreement between the Department and the organization may confer any of the following forest user rights—

- (a) Collection of medicinal herbs;
- (b) Harvesting of non-wood forest products;
- (c) Harvesting of timber or fuel wood;
- (d) Grass harvesting and grazing;
- (e) Collection of forest produce for community based industries;
- (f) Ecotourism and recreational activities;
- (g) Scientific research and education activities;
- (h) Plantation establishment through non-resident cultivation;

- (i) Contracts to assist in carrying out specified forestry operations;
- (j) Development of community wood and non-wood forest based industries; and
- (k) Other benefits which may from time to time be agreed upon between the department and an organization.

(3) Subject to sub section (2)—

- (a) None of the activities specified in this section shall be carried out so as to conflict with county vision as enshrined in the County Integrated Development Plan, community & human rights and conservation of biodiversity; and
- (b) The County Executive Committee Member may, in consultation with an organization, prescribe rules for the conduct of the activities specified in this section.

(4) The County Executive Committee Member may make regulations for the better carrying out of the provisions of this section.

Management of community forests.

17 (1) All community forests shall be vested in the community, subject to any rights of user in respect thereof, which by or under this Act or other written law, have been or are granted to any other person.

(2) The County shall register each community forest in accordance with Regulations prescribed in accordance with this Act.

(3) Upon registration, the community may apply—

- (a) To the County Government, National Government or any other relevant agency for technical advice regarding appropriate forestry practices and conservation; or
- (b) To the Fund, subject to availability of funds, loans from the Fund for the development of the forest.

(4) A community that establishes or owns a community forest may apply to the County Government for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.

Management of private forests.

18 (1) A person who owns a private forest within the county, including a forest in the course of establishment, on land owned by the person, may apply to the County for registration of the forest under this section.

(2) The county shall register the forest under sub-section (1) where the forest meets the criteria prescribed in the rules made under this section.

(3) The Department shall give annual updates of the forests registered under

this section to the County Assembly.

(4) Upon registration under subsection (2), the owner of a private forest may apply to the County for technical advice regarding appropriate forestry practices and conservation;

(5) A person who establishes or owns a private forest may apply to the Department for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.

Arboreta and recreational parks.

19) (1) The County Government, shall establish and maintain arboreta, green zones or recreational parks for use by persons residing within its area of jurisdiction.

(2) For the purposes of subsection (1) the County Government, shall cause housing estate developers within its jurisdiction to make provision for the establishment of green zones.

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

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

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

Management of indigenous forests.

- 20)** (1) All indigenous forests and woodlands shall be managed in a sustainable basis for purposes of—
- (a) Conservation of water, soil and biodiversity;
 - (b) Riparian and shoreline protection;
 - (c) Aesthetic, cultural, spiritual and heritage use;
 - (d) Recreation and eco-tourism;
 - (e) Sustainable production of wood and non-wood products;
 - (f) Carbon sequestration and other environmental services;
 - (g) Education and research purposes; and
 - (h) Habitat for wildlife in terrestrial forests and fisheries in mangrove forests.

(2) In pursuance of sub-section (1), the County shall, in through a public participatory process, prepare forest management plan.

(3) The County government shall use the forest management plan to ensure effective conservation and management of the forest.

Management of plantation forests.

21) (1) All plantation forests shall be managed in a sustainable basis for the production of wood and other forest products and services for commercial purposes.

(2) The County Government may collaborate with relevant agencies in setting aside land for establishment of seed sources that shall be used to produce quality germplasm.

(3) The County Government shall enhance marketing and value addition of products from plantation forestry.

(4) The forest plantation land owner shall observe the precautionary and other principles.

(5) The plantation owner shall ensure proper species site matching for superior plantation trees.

Forest management agreements.

22) (1) The Department may advertise, receive applications from any person, institution or organization and through a competitive process, approve and enter into an appropriate management agreement for all or part of a public forest.

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

- (a) The period for which the forest shall be managed;
- (b) The terms and conditions under which the applicant shall manage

the forest;

- (c) Any royalties and charges payable in respect thereof to the county;
- (d) The mechanism for settlement of disputes arising in respect of the agreement;
- (e) The circumstances under which the agreement may be terminated; and
- (f) The benefits which the applicant shall extend to the local community.

(3) Nothing in this section shall be deemed to transfer or to vest in any person, institution, or organization any right of ownership of any land declared to be public, other than the privilege of management and control.

(4) The County Executive Committee Member may prescribe Regulations to give effect to this section.

Termination or variation of a management agreement

23) (1) The Department may terminate a management agreement or withdraw a particular user right where—

- (a) The community adjacent to a County forest breaches the terms and conditions thereof;
- (b) It is necessary for the purpose of protecting or conserving biodiversity; or
- (c) The community adjacent to a County forest asks the Department to terminate the agreement or withdraw the user right.

(2) Where the Department intends to terminate a management agreement or withdraw a particular user right the Department shall notify the association at least thirty days before the management agreement is terminated or the user rights withdrawn.

(4) Nothing in this section shall be construed to limit the grounds on which, in accordance with the terms of a management agreement, the agreement or any user right may be terminated.

(5) The County Executive Committee Member shall prescribe guidelines on the procedure to be followed in the event a party wished to terminate the agreement.

Consent for quarrying in public county forests.

24) (1) The County Government shall only give its consent for quarrying operations in a forest area where—

- (a) The area does not contain rare, threatened or endangered species;
- (b) The forest does not have any cultural importance or contain sacred trees or groves;

- (c) An independent environmental impact assessment or audit has been carried out;
- (d) The forest is not an important catchment area or source of springs: provided that the county executive committee member shall, on the recommendation of the department and in consultation with the relevant national government agencies publish rules to regulate and govern quarrying operations in forest areas; and
- (e) The carrying on of the quarrying operations shall not contravene any regulations made in accordance with this act.

(2) Subject to subsection (1), quarrying may be carried out in a forest in the county under the authority of a license issued by the County Government and in accordance with any other relevant written law.

(3) A license under subsection (2) shall not be issued unless the applicant has implemented mitigation measures to prevent injury to human beings, livestock and wildlife traversing the forest.

(4) The conditions on which a license for quarrying and any allied activity carried out in the forest, shall, where the activity concerned is likely to result in the depletion of forest cover in any forest, include a condition requiring the licensee to undertake compulsory restoration and re-vegetation immediately upon the completion of the activity.

(5) Re-vegetation shall be undertaken in consultation with the County, which shall determine the seeds and seedlings proposed to be used in such re-vegetation.

(6) A license shall not be issued under this section unless the applicant has deposited a bond to the County Government which shall be commensurate to the extent of the rehabilitation of the quarry site.

Management plans.

25) (1) Every County public forest and nature reserve shall be managed in accordance with a management plan that complies with the requirements prescribed by Regulations made by the County Executive committee member.

(2) The County shall be responsible for the preparation of a management plan with respect to each county public forest and nature reserve.

(3) A community that owns a community forest shall prepare a management plan, in consultation with a relevant agency, for the management of the community forest.

(4) The County Executive Committee Member shall approve and supervise the implementation of forest management plans for public, community and private forests in the county.

Joint management of forests

26) (1) A forest owner may enter into an agreement with any person for joint management of then forest for a period specified in the agreement.

(2)The County Executive Committee Member may make regulations for better carrying out the provisions of this section.

Mapping for establishment of County forests and determining scope of land degradation.

27) (1) The County Executive Committee Member, in collaboration with other relevant County departments shall–

(a) Undertake a mapping of all county public land in urban and rural areas;

(b) Determine suitability for establishment of county forests, arboreta, botanical gardens and recreational parks;

(c) Determine the level of land degradation including soil erosion, deforestation, soil health and resilience, soil toxicity, invasive species;

(d) Asses the level of climate change impacts on forest;

(e) Establish the requirements for rehabilitating the land including but not limited to soil fixation, indigenous tree growing, and the recovery of biodiversity;

(f) Evaluate the use of fire as a management tool for the forest;

(g) Examine the environmental management measures utilized by landowners

(2) The outcomes of this assessment shall be included in the forest management and tree growing Action plan, Financing Plan and County Development Plan for the determined duration.

Rehabilitation of degraded areas.

- 28)** (1) The County Government shall —
- (a) In rehabilitation of public degrade areas
 - (i) Develop rehabilitation strategies;
 - (ii) Set aside funds for the rehabilitation of the public sites;
 - (iii) Collaborate with other stakeholders and the community for rehabilitation of the degraded areas; and
 - (iv) Monitor the progress of the rehabilitation of the degraded sites.
 - (b) On recommendation of the county executive committee member issue guidelines on the rehabilitation of private degraded areas.

Climate change mainstreaming during tree growing.

29) The County Executive Committee Member shall ensure that this Act is implemented in line with the County Climate Change Action Plan.

Movement of Forest Products.

- 30)** (1) The County Executive Committee Member shall issue a certificate of origin and transportation to any person who wishes to transport any forest products.
- (2) The certificate shall be issued upon payment of prescribed fees.
 - (3) The County Executive Committee Member may make regulations for implementation of this section.

Co-operation regarding Inter-County cross-border forest resources.

31) The County Governments may form joint Committees under Inter-Governmental Relations Act, 2012 for purposes of sustainable management of inter-county cross-border forest resources.

PART IV—FINANCIAL PROVISIONS

Funds of the Forestry Unit and the Committee.

- 32)** The funds and assets of the Unit and Committee shall consist of
- (1) Such moneys as may be appropriated by County Assembly for the purposes of the Unit and the Committee;
 - (2) All moneys from any other source provided or donated to the Unit and the Committee.

PART V—OFFENCES AND PENALTIES

Prohibited activities in forests

- 33)** (1) Except under a license or permit or a management agreement issued or entered into under this Act, no person shall, in a county or community forest –
- (a) fell, cut, take, burn, injure or remove any forest produce;
 - (b) be or remain therein between the hours of 7 p.m. and 6 a.m. unless using a recognized road or footpath, or is taking part in cultural, scientific or recreational activities;
 - (c) erect any building or livestock enclosure, except where the same is allowed for a prescribed fee;
 - (d) smoke, where smoking is by notice prohibited, or kindle, carry or throw down any fire, match or other lighted material;
 - (e) de-pasture or allow any livestock to be therein;
 - (f) clear, cultivate or break up land for cultivation or for any other purpose;
 - (g) enter any part thereof which may be closed to any person;
 - (h) collect any honey or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax, or enter therein for the purpose of collecting honey and beeswax, or be therein with any equipment designed for the purpose of collecting honey or beeswax;
 - (i) construct any road or path;
 - (j) set fire to, or assist any person to set fire to, any grass or undergrowth or any forest produce;
 - (k) possess, bring or introduce any chain saw or logging tools or equipment;
 - (l) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, boundary mark, fence notice or notice board.

Prohibitions on farm forest produce

- 34)** (1) Except under a license or permit issued under this Act, no person shall transport any farm forest produce.
- (2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

PART VI—MISCELLANEOUS PROVISIONS

Application of other laws.

35) (1) Where a provision of this Act requires a person to conserve or protect the environment, the relevant provisions of the Environmental Management and Co-ordination Act, 1999, shall also apply with respect to the manner in which the conservation or protection shall proceed.

(2) No user rights or other licence or permit granted under this Act shall exempt a person from complying with the relevant provisions of the Environmental Management and Co-ordination Act, 1999, or any other written law concerning the conservation and protection of the environment.

(3) A user or other related right shall not be granted under this Act where the requirement for a strategic environmental, cultural, economic and social impact assessment licence under the Environmental Management and Co-ordination Act, 1999, has not been complied with.

Customary rights.

36) Nothing in this Act shall be deemed to prevent any member of a community in close proximity to a County forest from using, subject to such conditions as may be prescribed by this Act or any other written law, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.

Incentives and benefit sharing.

37) Subject to Article 69 of the Constitution, benefits accruing from investments in forests shall be shared equitably among local communities by applying various options including—

(a) Infrastructure;

(b) Education;

(c) Employment; and

(d) Social amenities, in accordance with rules made under this act or other relevant laws

Tax and fiscal incentives.

38) (1) The County Executive Committee Member may recommend to the County Executive Committee Member responsible for finance tax and other fiscal incentives for purposes of increasing investments in forest land use and forest resource utilization in order to promote forest conservation and management, and to prevent or abate forest degradation.

(2) The County Assembly may determine the tax and fiscal incentives applicable.

- County tree planting events and days. **39)** The County Executive Committee Member shall plan and execute programs necessary for observing the County tree-growing events and other relevant national and international tree planting days.
- Application of Part IX of No. 34 of 2016 **40)** The offences set out in Part IX of the Forest Conservation and Management Act, 2016 shall apply to this Act with necessary modifications.
- Dispute resolution. **41)** (1) Any dispute that may arise in respect of forest conservation, management and utilization shall in the first instance be referred to the Committee.
- (2) Any matter that may remain un-resolved in the manner prescribed above, shall be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act, 2011.
- Regulations. **42)** (1) The County Executive Committee Member shall make regulations for the better carrying out of the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing, the County Executive Committee Member may prescribe regulations—
- (e) On incentives and benefit sharing;
 - (f) Conditions subject to which any licence, permit or authorization may be granted or issued under this act;
 - (g) Regulating activities in public forests, provisional forests, nature reserve and visitor indemnity;
 - (h) Prescribing measures that enhance community participation in the conservation and management of forests;
 - (i) Providing for protection of endangered and threatened tree species;
 - (j) Controlling the harvesting, collection, sale of and disposal of forest produce including timber grading and marking, production, transportation and marketing of charcoal;
 - (k) Prescribing the amount of royalties or fees payable under this act generally or in particular cases;
 - (l) Regulating the use and occupation of county forests for the purposes of residence, cultivation, and grazing;
 - (m) For eco-tourism including recreation, camping, picnicking and cultural activities; and
 - (n) Providing for compulsory use of property marks by the county government and owners of private forests for the purpose of identifying wood sold from county, community, provisional and private

forests.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for implementation of specific national government policies on forestry in accordance with Section 10 of Part 2 to the Fourth Schedule of the Constitution, 2010.

PART I—PRELIMINARY

This Part contains section 1—4. It contains the short title of the Bill, interpretation of terms as used in the Bill, the objects of the Bill and guiding principles and values.

PART II—ADMINISTRATION OF SUSTAINABLE FOREST MANAGEMENT AND TREE GROWING

This part comprises of section 5—11. It contains provision on the functions of the County Executive Committee Member, establishment of the Committee which has coordinating and advisory functions powers and further, it provides for establishment of forest Community Organizations and their registration.

PART III—ESTABLISHMENT, CONSERVATION AND MANAGEMENT OF COUNTY FORESTS

This Part contains section 12-31. It contains substantive provision of establishment, conservation and management of county forests.

PART IV – MISCELLANEOUS PROVISIONS

This part comprises section 32-39. It contains provision on application of other laws, customary rights and incentives and benefits sharing. It further provides for tax and fiscal incentives and county tree planting and events and the extension of offences under Part IX of the Forest Conservation and Management Act, 2016, dispute resolution and provision on regulations.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Dated the,..... 2023.

[Government of Makeni County]