

COUNTY GOVERNMENT OF ELGEYO MARAKWET



Annotated Draft

THE ELGEYO MARAKWET FOREST CONSERVATION AND MANAGEMENT BILL

December 2019

THE ELGEYO MARAKWET FOREST CONSERVATION AND MANAGEMENT BILL, 2019

THE ELGEYO MARAKWET FOREST CONSERVATION AND MANAGEMENT ACT

A BILL for -

AN ACT of the County Assembly of Elgeyo Marakwet County to provide for a legal and institutional framework for the sustainable management of forest resources; implement provisions of the Constitution; provide mechanisms for establishment of forests outside public land; entrench public participation in decision making, and for connected purposes

ENACTED by the County Assembly of Elgeyo Marakwet, as follows-

Marginal note	PART 1 – PRELIMINARY
Short Title	1. This Act maybe cited as the The Elgeyo Marakwet County Forest Conservation and Management Act, 2019
Interpretation.	
Objects and purposes of the Act	<p>(1).This Act shall be applied for the administration and delivery of forest conservation and management in Elgeyo Marakwet County.</p> <p>(2). Without prejudice to the generality of subsection 1 above, this Act shall be applied to –</p> <ol style="list-style-type: none">1. Provide a county-level framework to guide and govern the implementation of the forest policy, including through the County Integrated Development Plan, Sectoral Plans with meaningful public consultations and awareness.2. Put in place and strengthen institutional structure at the county level to support coordination, mainstreaming and implementation of forest activities3. Put in place strategies, actions and interventions to reduce vulnerability to the impacts of climate change by building adaptive capacity, enhancing climate change resilience through forestry activities.4. Map out and Catalyse the County’s transition to cleaner energy sources to lower pressure on forests and trees.5. Incentivize the public, communities and private sector involvement in taking up forestry and tree planting activities including investments.6. Facilitate widespread and participation, ownership and oversight of the County’s forestry activities and integrate implementation of meaningful

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	<p>public consultation and awareness in all elements of forestry decision by the county government and provision of feedback to the public on the impact the consultation had on decision making.</p> <p>7. Provide a framework for the County to mobilise resources for its forestry actions and ensure effective and transparent utilisation of the resources.</p> <p>8. Mainstream intergenerational, equitable, inclusive, and gender mainstreaming across all aspects of the County’s forestry actions.</p> <p>9. Enhance research and use of science and technology in policy decisions and sustainable management of resources.</p> <p>10. Support the collection of scientific and other information, data, impacts, actions, mainstreaming, effect of climate change interventions and other relevant aspects to inform county decision making, and for sharing with the national government.</p> <p>(3). The rights and duties conferred by this Act are in addition to those conferred by any other law.</p>
Guiding Principles and Values	<p>4 (1). The County government, and any person administering or applying this Act shall be guided by the principles and values set out in Articles 10, 43(1)(d), and 232 of the Constitution.</p>
<p>PART II: POLICY, COORDINATION AND OVERSIGHT OF FOREST CONSERVATION AND MANAGEMENT</p>	
Powers and Duties of County Executive Committee member	<p>5. (1). Subject to the provisions of this Act, the County Executive Committee member shall exercise control and provide guidance over forest conservation and management, and the implementation of this Act.</p> <p>(2). Without prejudice to the generality of the foregoing, the County Executive Committee member shall have responsibility to:-</p> <p style="padding-left: 40px;">a) [to insert]</p> <p>(3). For purposes of securing broad support for forest conservation and management, the County Executive Committee member, in performance of functions and duties under this Act -</p> <p style="padding-left: 40px;">(i) may consult with other executive departments, public agencies and departments or agencies of the County whose functions affect or touch on forest conservation and management;</p> <p style="padding-left: 40px;">(ii) may consult with relevant non-governmental entities, including private sector and research institutions; and</p> <p style="padding-left: 40px;">(iii) shall secure public participation, including setting up,</p>

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	<p>through regulations, of specific mechanism for regular engagement of stakeholders on policy matters</p> <p>(4). In the discharge of the duties and functions under this Act, the County Executive Committee member shall be assisted by the Director of Forestry</p>
<p>County Forest Conservation and Management Strategy</p>	<p>6. (1) The County Executive Committee member shall, in accordance with article 10 of the Constitution, section 4 of this Act, and through public consultation formulate a County Forest Conservation and Management Strategy.</p> <p>(2) County Forest Conservation and Management Strategy shall be published in the Gazette after approval by the County Executive Committee</p> <p>(3) The County Forest Conservation and Management Strategy shall prescribe measures and mechanisms to-</p> <p style="padding-left: 40px;">a) [to insert]</p> <p>(4) The County Executive Committee member shall, in every five-year period, or sooner, review and update the County Forest Conservation and Management Strategy, and by notice in the Gazette, publish a new strategy.</p> <p>(6) The approved County Forest Conservation and Management Strategy shall guide the County Government, County Executive Committee member, the Directorate, the Corporation and all other agencies in performance of their functions</p>
<p>Forestry Directorate</p>	<p>7. (1). The Forestry Directorate is hereby established.</p> <p>(2) The Directorate shall be headed by a Director of Forestry, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.</p> <p>(3) A person shall not qualify for appointment as Director, under this Act, unless such a person –</p> <p style="padding-left: 40px;">(a) Is a citizen of Kenya</p> <p style="padding-left: 40px;">(b) Holds a Post-graduate degree in any one of the following fields or specializations</p> <p style="padding-left: 80px;">a. [to insert]</p> <p style="padding-left: 40px;">(c) Has had at least ten (10) years experience at senior management level in a relevant field</p> <p style="padding-left: 40px;">(d) Meets the requirements of Chapter 6 of the constitution</p>

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	<p>(4) The Director, appointed under subsection (2), shall be responsible for performance of the specific duties and functions of the Directorate set out in subsection (6) below,.</p> <p>(5) The Directorate shall operate under the direction of the County Executive Committee member, and provide advice on matters of legislation, policy, coordination, and the performance of the forestry sector</p> <p>(6) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions -</p> <ul style="list-style-type: none"> (a) Co-ordination, linkages and oversight over forestry activities (b) Development of a forestry master plan, investment and strategic plans for resource mobilization and financing. (c) Development of County forestry sector standards and guidelines including principles, code of practice, quality assurance, and procedures. (d) Collection and dissemination to the public, from time to time, of information on forestry conservation and management, including challenges and opportunities for improvement. (e) Monitoring, evaluation and assessment of the forestry sector performance. (f) Development of county infrastructure for development of the forestry sector on private and community land, including public open spaces. <p>(7) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required for the Directorate to effectively perform its functions under this Act</p>
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PART III: ESTABLISHMENT OF COUNTY CLIMATE CHANGE DIRECTORATE

Establishment of County Climate Change Directorate	<p>8</p> <p>under development – climate change is a major threat to the forestry sector – and taking this opportunity to mainstream it into the county is helpful.</p> <p>Composition</p> <p>Functions</p> <p>Mainstreaming</p>
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PART IV: ADMINISTRATION OF FORESTRY ACTIVITIES

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	<p>9. Establishment and management of forests</p> <p>Private land</p> <p>Community land</p> <p>Registration with KFS to convert from trees to forests if criteria is met</p> <p>Dryland forestry</p> <p>Charcoal woodlots</p> <p>Energy alternatives</p> <p>Incentives for forestry</p> <p>Activities prohibited on the escarpment area</p> <p>Forestry extension education for farmers and schools</p>
Forestry on agriculture	<p>11. farmland and hillsides</p> <p>Agricultural practices and conservation</p> <p>Land husbandry practices compatible with soil management and biodiversity</p> <p>Agro-forestry</p> <p>Mandatory terracing on hillsides</p> <p>Maximum gradient for farming of hillsides</p> <p>Minimum tree coverage on farmland</p> <p>Registration of farmlands a private or community forestry when it meets definition of forest</p> <p>Pesticides / fertilizers</p> <p>Conservation agriculture</p> <p>Extension</p> <p>Soil erosion</p> <p>Irrigation</p>
Affirmative actions	<p>11. Affirmative action for catalyse forestry</p>

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	<ul style="list-style-type: none">a) Indigenous peoplesb) Local communitiesc) Human right to a healthy environmentd) Access to informatione) Public consultationf) Access to courtg) Public awarenessh) Gender mainstreamingi) Youth
PART VI: OFFENCES	
Offences relating to forestry	24. [to insert]
PART X: TRANSITIONAL PROVISIONS	
Regulations	40. (1). The County Executive Committee member shall make regulations for the better carrying out of the provisions of this Act. (2) Regulations made under this Act shall be subjected to public consultations, and be approved by the County Assembly.
MEMORANDUM OF OBJECTS AND REASONS [To insert in second draft]	