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ELGEYO/MARAKWET COUNTY BILLS, 2020

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**THE ELGEYO/MARAKWET COUNTY SUSTAINABLE
FORESTRY AND TREE GROWING BILL, 2020**

A Bill for

AN ACT of the County Assembly of Elgeyo/Marakwet to provide for a legal and institutional framework for the sustainable management of forest resources and trees outside forests; ensure respect, protection and fulfillment of human rights in all forestry and tree growing actions; implement provisions of the Constitution and national laws on environment, forest conservation and land use planning; provide mechanisms for expansion of forestry and tree growing on public, private and community land; enhance integration of forestry and tree growing into rural and urban land management; increase soil and biodiversity protection during land use activities; promote the development of the socio-economic and environmental value of forests; contribute to the constitutional obligation for Kenya to maintain a minimum national tree cover of ten percent of the land area; entrench public participation in decision making, and for connected purposes.

ENACTED by the County Assembly of Elgeyo/Marakwet, as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Elgeyo/Marakwet County Sustainable Forestry and Tree Growing Act, 2020.

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;

“Climate Change” as used in this Act has the same meaning assigned under section 2 of the Climate Change Act No. 11 of 2016;

“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 No. 11 of 2016;

“Community land” as used in this Act has the same meaning assigned under section 2 of the Community Land Act No. 26 of 2016;

“Community forest” has the meaning given in section 19 of the Act;

“Constitution” means the Constitution of Kenya promulgated on 27 August, 2010;

“Council” means the County Forestry and Tree Growing Council established under section 5 of this Act;

“County Assembly” means the County Assembly lawfully in office at any time under the Constitution;

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

“County Executive Committee Member responsible for climate change mainstreaming” means the County Executive Committee Member for the time being responsible for climate change mainstreaming as designated by the Governor;

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

“County forest officers” means includes the professional, technical and disciplined cadre of the Department as established under section 13 of the Act;

“County Sustainable Forestry and Tree Growing Action and Financing Plan” means the plan specified in section 10 of the Act;

“Department” has the meaning specified in section 13(2) of the Act;

“Directorate” means the County Forestry and Tree Growing Directorate established under section 11 of the Act;

“Environmental Impact Assessment” has the meaning assigned under section 2 of the Environmental Management and Coordination Act, No.8 of 1999 as variously amended;

“Escarpment area” means that area of land within the county commonly defined as lying between the upper and lower spencer line;

“Forest Community” means the persons resident or utilizing land within a distance of ten kilometres from the outer boundaries of a county forest;

“Gazette” means the County Gazette ;

“Governor” means the Governor lawfully in office as provided for by the Constitution;

“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;

“Management Plan” means the plan developed under section 14 of this Act in a participatory manner for the management of county forests, arboreta, botanical gardens and any other county owned and managed public open space, whatsoever the nature of its utilization;

“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 peoples” means indigenous peoples as provided for in article 260 of the Constitution;

“Joint management agreement” means authorization where the Directorate agrees to enter into partnership with other persons for the joint management of a county forest area, specifying the contribution, rights and obligations of each party and setting out the methods of sharing the costs and benefits accruing from the forest so managed;

“Kenya Forest Service” means the service established under section 7 of the Forest Conservation and Management Act. “Private forest” has the meaning given in section 19 of the Act;

“Spencer lines” means that area of the escarpment within the County commonly referred to as such because it was identified during the colonial period by a District Agriculture Officer and classified as vulnerable, and for this reason all forms of human settlement and cultivation were prohibited during that period;

“Strategy Environmental Assessment” has the meaning assigned under section 2 of the Environmental Management and Coordination Act, No.8 of 1999 as variously amended;

“Sustainable forestry” means the practice of forestry whether on private, community or public land in a manner that balances the needs of the environment with the social and economic priorities;

“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;

“Water Resources Authority” means the Authority established under section 12 of the Water Act No. 43 of 2016.

Objects and purposes of the Act

3. (1) This Act shall be applied for the administration and delivery of sustainable forest management and tree growing in Elgeyo/Marakwet County.

(2) Without prejudice to the generality of subsection 1 above, this Act shall be applied to—

- (a) govern all plans, measure and activities to enhance the ecosystem services available from land, forests and trees within the county;
- (b) provide a county-level framework to guide and govern the implementation of the sustainable forestry and tree growing policy, including through the County Integrated Development Plan, Sectoral Plans with meaningful public consultations and awareness;
- (c) establish an institutional mechanism to exercise oversight over all forestry and tree growing activities in the County;
- (d) provide for the mainstreaming of a human rights approach in the design and implementation of sustainable forestry and tree growing activities in the county;
- (e) put in place mechanisms for the County to fully engage with, and support indigenous peoples in realizing their community land rights;
- (f) provide mechanisms for local communities and landowners to participate in forestry and tree growing in a sustainable manner;
- (g) put in place and strengthen institutional structure at the county level to support coordination, mainstreaming and implementation of forest and tree growing planning, measures and activities;
- (h) 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 and tree growing activities;

- (i) provide mechanisms to catalyse the County's transition to cleaner energy sources to lower pressure on forests and trees;
 - (j) incentivize the public, communities and private sector involvement in taking up forestry and tree growing activities including investments;
 - (k) facilitate widespread and participation, ownership and oversight of the County's forestry and tree growing activities and integrate implementation of meaningful 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;
 - (l) provide a framework for the County to mobilise resources for its forestry and tree growing actions and ensure effective and transparent utilisation of the resources;
 - (m) integrate the mainstreaming of gender considerations across all aspects of the County's forestry and tree growing actions, including specific roles for women;
 - (n) provide mechanisms for engagement of youth, and the role of children as the bridge between generations, in sustainable forestry and tree growing actions;
 - (o) enhance research and use of science and technology in policy decisions and sustainable management of resources;
 - (p) ensure the preservation and utilization of indigenous and traditional knowledge to inform decision making, and promote the objectives of this Act;
 - (q) 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.
- (3) The rights and duties conferred by this Act are in addition to those conferred by any other law.

Guiding Principles and Values

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.

(2) Without prejudice to the foregoing, in the implementation of this Act, regulations made thereunder, and Forestry and Tree Growing Policy, the County government shall ensure the following—

- (a) any decisions, measures and activities are screened for compliance to article 10 of the Constitution;
- (b) any decisions, measures and activities are screened for compliance with the requirements for sustainable development stipulated in article 10 and 69(2) of the Constitution as follows—
 - (i) an analysis of all relevant social, cultural, economic and environmental considerations;
 - (ii) an analysis on compliance with the fundamental rights and freedoms set out in Chapter four, including but not limited to public participation in all its forms;
 - (iii) ensuring that, in all circumstances, there is no net-loss in forest and tree cover, and biological diversity;
 - (iv) analysis that forestry and tree growing plans, programmes and policies are subjected to Strategic Environment Assessment or Integrated Environmental Impact Assessment as appropriate.

PART II—POLICY, COORDINATION AND OVERSIGHT

County Forestry and Tree Growing Council

5. (1) There is established an unincorporated body known as the County Forestry and Tree Growing Council.

(2) The Council shall be chaired by the Governor.

(3) The Deputy Governor shall be the Vice-Chairperson of the Council.

(4) The County Executive Committee Member for the time being responsible for forestry shall be Secretary to the Council.

(5) The Directorate established under this Act shall serve as the Secretariat of the Council.

Functions of the Council

6. (1) The Council shall provide oversight and ensure effectiveness and sustainability of forestry and tree growing in the County.

- (2) The Council shall have the following functions —
 - (a) in every ten year period, approve and oversee implementation of the County Sustainable Forestry and Tree Growing Action and Financing Plan prepared in a participatory manner;
 - (b) approving the County framework and guidelines for mainstreaming of sustainable forestry and tree growing in sectors and county agencies that impact or are impacted by forestry;
 - (c) ensure the mainstreaming of the forestry and tree growing by sectors and county agencies referred to in (ii) above;
 - (d) approve and oversee implementation of a County sustainable forestry and tree growing public participation strategy, prepared in a participatory manner;
 - (e) approve a County gender and intergenerational responsive public education awareness strategy on sustainable forestry and tree growing, and oversee its implementation programme;
 - (f) recommend to the County Executive Committee the approval of the allocation of at least ten percent (10%) of the annual county budget to development and implementation of sustainable forestry and tree growing plans, measures and activities;
 - (g) provide guidance and direction on the priorities and undertaking of sustainable forestry and tree growing research, knowledge generation, management and dissemination;
 - (h) ensure that all County sustainable forestry and tree growing plans, measures and activities undertake screening for climate risks vulnerability, Greenhouse Gas emissions reduction potential, targets and benefits and integrate appropriate adaptation and mitigation actions;
 - (i) provide regular guidance on the review and harmonization of county laws and policies in order to achieve the objectives of this Act.

Composition of the Council

7. (1) The Council shall comprise not more than twelve members who shall be appointed by the Governor.

(2) In addition to the Governor, Deputy Governor and County Executive Committee Member responsible for forestry, the Council shall be constituted as follows—

- (a) the County Executive Committee Member responsible for forestry if mandate is assigned differently from Environment;
- (b) the County Executive Committee Member responsible for the County Treasury;
- (c) the County Executive Committee Member responsible for County physical planning and development control;
- (d) the County Executive Committee Member responsible for agriculture;
- (e) a member elected by all the County landowners and community sustainable forestry and tree growing forums;
- (f) a member nominated, through a verifiable representative process, to represent the Sengwer Indigenous community;
- (g) a member nominated, through a verifiable representative process, to represent the Ogiek, Cherangany, and Kiptani communities on a rotational basis;
- (h) a member to represent private sector engaged in the forestry and timber value chain, nominated by the body representing the largest number of institutions in the private sector;
- (i) a member representing Civil society organizations involved in sustainable forestry and tree growing in the County nominated through a verifiable democratic process;
- (j) a member representing the forestry and tree growing research community nominated by the Governor.

(3) A person shall be appointed under subsection (2)(i) and (j), if the person has expertise and experience in matters of sustainable forestry, tree growing, agriculture, human rights, sustainable development financing, climate change, environment and public administration.

(4) The names of persons nominated for appointment under subsection (2)(e)(f)(g)(h)(i) and (j) shall be submitted to County Assembly for approval.

(5) Except for members appointed under subsection (2)(a - g), each person shall be qualified for appointment as member of the Council if such person—

- (a) is a citizen of Kenya;
- (b) fulfils the requirements of Chapter 6 of the Constitution; and
- (c) has at least ten years' experience in the relevant field.

(6) The Governor shall in the appointment of members ensure compliance with the two thirds gender principle.

(7) During the first appointment and every subsequent time where a vacancy arises, no member is nominated under 2(f)(g)(h) and (i) above for a period of three months after the Governor appoints other members, the Council shall be deemed to have requisite quorum.

Term of office and administration of the Council

8. (1) The Term of Office for members of the Council appointed under section subsection 2 (e)(f)(g)(h)(i) and (j) shall be four years, and to ensure continuity, the Council shall at its first sitting, ballot to determine which half of these members shall serve for a two year term to ensure pro rata succession of membership.

(2) All other members of the Council shall remain in office so long as they retain their substantive positions within the County Government.

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

(4) The Council may from time to time establish committees for the better carrying out of its functions.

(5) The members of the Council shall be paid such allowances as the Salaries and Remuneration Commission may determine.

(6) The Council shall meet at least four times in a year but may hold meetings more frequently depending on the urgency of business, and within the guidelines provided by the Salaries and Remuneration Commission.

(7) The annual estimates of the revenue and expenditure of the Council shall be prepared by the County Executive Committee Member.

(8) The procedure for meetings of the Council shall be as set out in the First Schedule.

Powers and Duties of County Executive Committee member

9. (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and provide guidance over sustainable forestry and tree growing, and management, and the implementation of this Act.

(2) Without prejudice to the generality of the foregoing, the County Executive Committee member shall have responsibility to—

- (a) formulate, in every ten year period and in a participatory manner, the County Sustainable Forestry and Tree Growing Action and Financing Plan for approval by the Council;
- (b) coordinate, on behalf of the Council, the mainstreaming of the forestry and tree growing by sectors and county agencies that impact or are impacted by forestry;
- (c) coordinate, on behalf of the Council, implementation of the approved County Sustainable Forestry and Tree Growing Action and Financing Plan prepared in a participatory manner;
- (d) coordinate, on behalf of the Council, implementation of a County sustainable forestry and tree growing public participation strategy, prepared in a participatory manner;
- (e) coordinate, on behalf of the Council, the County gender and intergenerational responsive public education awareness strategy on sustainable forestry and tree growing, and oversee its implementation programme;
- (f) identify and prepare priorities and proposals for undertaking sustainable forestry and tree growing research, knowledge generation, management and dissemination, for approval by the Council;
- (g) prepare a County framework for screening all County sustainable forestry and tree growing plans, measures and activities for climate risks vulnerability, Greenhouse Gas emissions reduction potential, targets and benefits and integrate appropriate adaptation and mitigation actions;
- (h) develop and disseminate a county grievance redress manual for sustainable forestry and tree growing including conflict management and alternative dispute resolution systems that integrate traditional mechanisms;

- (i) provide oversight on the conservation and management of county public forests;
- (j) provide regular guidance on the review and harmonization of county laws and policies in order to achieve the objectives of this Act.

(3) For purposes of securing broad support for sustainable forest management and tree growing, the County Executive Committee member, in performance of functions and duties under this Act—

- (a) may consult with other executive departments, public agencies and departments or agencies of the County whose functions affect or touch on sustainable forest and management and tree growing;
- (b) may consult with relevant non-governmental entities, including private sector and research institutions; and
- (c) shall secure public participation, including setting up, through regulations, of specific mechanism for regular engagement of the public and stakeholders on policy matters, including providing feedback.

(4) In the discharge of the duties and functions under this Act, the County Executive Committee member shall be assisted by the Director of Sustainable Forestry and Tree Growing.

County Sustainable Forestry and Tree Growing Action and Financing Plan

10. (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 ten year County Forestry and Tree Growing Action and Financing Plan prepared in a participatory manner.

(2) The County Sustainable Forestry and Tree Growing Action and Financing Plan shall be published in the Gazette after approval by the Council.

(3) The measures and mechanisms specified by the County Sustainable Forestry and Tree Growing Action and Financing Plan for implementation within the county shall include those—

- (a) to determine the county target for forest and tree cover, and determine the progressive period, plans, measures and activities for its realization;

- (b) to guide the county toward the achievement of the forest and tree cover;
- (c) set out mechanisms required for soil and water conservations;
- (d) set out disaster risk reduction and public safety mechanisms;
- (e) to set out a structure for public awareness and engagement, including access to information including specific thresholds for indigenous people and local communities in the county;
- (f) set out guidelines for sharing information on forestry and tree growing amongst county institutions and departments;
- (g) to identify actions for eliminating charcoal use and promoting household energy security and access to clean energy;
- (h) identify approaches to strengthen research and innovation in forestry and tree growing;
- (i) to resolve grievances relating to the sustainable forestry and tree growing actions;
- (j) to identify outputs, overall budget estimates and timeframes to realize expected results.

(4) The County Forestry and Tree Growing Action and Financing Plan shall specify clear objectives, actions and outputs to ensure its sustainable implementation and review during the ten-year period.

(5) Other matters relevant to sustainable forestry and tree growing, and the objectives of this Act maybe included in the County Sustainable Forestry and Tree Growing Action and Financing Plan with the approval of the Council.

(6) The County Executive Committee member shall, in every five-year period, review and update the County Sustainable Forestry and Tree Growing Action and Financing Plan, and submit to the Council for approval.

(7) The approved County Sustainable Forestry and Tree Growing Action and Financing Plan shall form the basis of forestry and tree growing activities by the County Government, County Executive Committee member, County Government Departments, the Directorate, and all other county agencies in performance of their functions, and for all persons with duties under this Act.

(8) The Governor shall, in every year, report to the County Assembly on the status of implementation of the County Forestry and Tree Growing Action and Financing Plan.

(9) The First County Forestry and Tree Growing Strategy Action and Financing Plan shall be prepared and approved by the Council within one year of commencement of this Act.

(10) Regulations may be made under this section to facilitate the implementation of measures and activities specified in the County Sustainable Forestry and Tree Growing Action and Financing Plan, within the scope of this Act, by any person in the County.

PART III—ESTABLISHMENT OF FORESTRY AND TREE GROWING DIRECTORATE

Forestry Directorate and Director of Forestry

11. (1) The Forestry and Tree Growing Directorate is hereby established as an office in the County Public Service.

(2) The Directorate shall be headed by a Director of Forestry and Tree Growing, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(3) A person shall not qualify for appointment as Director, under this Act, unless such a person—

- (a) is a citizen of Kenya;
- (b) holds a Post-graduate degree in any one of the following fields or specializations —
 - (i) forestry;
 - (ii) environmental science;
 - (iii) law, with a specialization in environment, land or related fields;
 - (iv) soil science, or related fields;
 - (v) public administration with demonstrable experience in forestry and tree growing;
 - (vi) planning with demonstrable experience in forestry and tree growing;
 - (vii) agriculture with demonstrable experience in agroforestry;

(viii) any other relevant field with demonstrable experience in forestry, agroforestry, soil management;

(c) has had at least ten (10) years experience at senior management level in any of the fields set out in (b) above;

(d) meets the requirements of Chapter 6 of the Constitution; and

(e) has been vetted and approved by the County Assembly in accordance with its procedures.

(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.

(5) The Directorate shall operate under the direction of the County Executive Committee member.

(6) The Directorate shall perform all the technical functions required under this Act on behalf of the County Executive Committee Member.

(7) The Directorate established by this Act shall be the Secretariat for the Council, and in this case shall report directly to the County Executive Committee Members in their capacity as Secretary to the Council.

(8) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—

(a) co-ordination, linkages and oversight over the design, development and implementation of sustainable forestry and tree growing activities in the county government;

(b) development of the County Forestry and Tree Growing Action and Financing Plan;

(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; and

(f) development of county infrastructure for development of the forestry sector on private and community land, including public open spaces.

(9) 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.

(10) The annual estimates of the revenue and expenditure of the Directorate shall be prepared by the County Executive Committee Member.

PART IV—ESTABLISHMENT And MANAGEMENT OF COUNTY FORESTS

Establishment of County Forests Act No. 8 of 1999

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 forests on private and community land provided that just compensation is paid promptly in accordance with article 40 of the Constitution.

(3) Notwithstanding (2) above, 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 will be adjacent to the forest, and any other additional matters as may be approved by the Council.

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

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

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

(8) The County government shall within twelve months of commencing the process in (1) above, submit the proposal that includes

the policy paper and the Integrated Environmental Impact Assessment licence 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*.

County forest officers

13. (1) A county forest shall be managed by the Directorate.

(2) The County Executive Committee Member shall, with concurrence of the County Public Service Board, establish and maintain Forestry Department, within the Directorate, for purposes of managing all county forests.

(3) The staff of the Directorate shall be forest officers comprising of professional, technical and the uniformed and disciplined cadre.

(4) The uniformed and disciplined forest officers shall only have jurisdiction over county forests.

(5) The County Executive Committee Member shall, in consultation with the County Public Service Board, prescribe a disciplinary code for the uniformed and disciplined forest officers which shall be approved by the County Assembly through regulations.

(6) The County Executive Committee Member shall, with concurrence of the County Public Service Board, prescribe the ranks for all categories of forest officers.

(7) The Governor may request the Cabinet Secretary responsible for matters relating to firearms to, through the Inspector-General of Police, make available to the Uniformed and Disciplined Officers such firearms as may be necessary to carry out their functions under this Act.

Management of county forests

14. (1) Every county forest, arboreta, botanical gardens and recreational park shall be managed in accordance with a management plan that complies with the requirements set out in the Third Schedule.

(2) The Directorate shall be responsible for the preparation, through public participation, of 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 Council, with respect to each management plan under implementation.

(5) In every five-year period, the County Executive Committee Member shall appoint an independent third party expert to evaluate implementation of the management plan and prepare a report for submission to the Council.

(6) The Council shall submit the reports in (4) and (5) above to the County Assembly for scrutiny and approval.

Forest communities

15. (1) Forest communities living adjacent to a county forest are entitled to access the forest and collaboratively participate in its management with the following user rights and benefits—

- (a) collection of medicinal herbs;
- (b) harvesting of honey;
- (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 and education activities;
- (h) spiritual and cultural activities;
- (i) contracts to assist in carrying out specified forestry operations;
- (j) development of community wood and non-wood forest based industries;
- (k) carbon credits; and
- (i) other user rights and benefits as maybe defined through regulations.

(2) A member of a forest community may, together with other members or persons resident in the same area, register a Forest Community Organization with the County Department of Social Services.

(3) A Forest Community Organization registered in accordance with this section may apply to the Directorate for permission to participate in

the conservation and management of a county forest and to be assigned user rights and benefits.

(4) The participation in this section may take the form of limited access and benefit rights, or the form of a joint management agreement between the Forest Community Organization and the Directorate.

(5) The participation in sustainable management of county forests under this section shall also define how the forest community will contribute to the generation of benefits, in addition to benefit sharing.

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

PART V—ASSESSMENT FOR COUNTY FORESTS AND SCOPE OF LAND DEGRADATION

Mapping for establishment of county forests and determining scope of land degradation

16. (1) Within one year of this Act coming into force, the Council through the relevant County Departments shall undertake a mapping of all county public land in urban and rural areas in order to determine suitability for establishment of county forests, arboreta, botanical gardens and recreational parks.

(2) The County Executive Committee Member shall, within one year of this Act coming into force, with the approval of the Council and in consultation with the Department responsible for agriculture, undertake inventory and assessment of all private and community land in order to—

- (a) determine the level of land degradation including soil erosion, deforestation, soil health and resilience, soil toxicity, invasive species;
- (b) determine the level of adverse climate change impacts;
- (c) establish the requirements for rehabilitate the land including but not limited to soil fixation, indigenous tree growing, and the recovery of biodiversity;
- (d) evaluate the impacts of the use of fire as cultivation tool;
- (e) assess the impacts of the use of chemical fertilizers and pesticides; and
- (f) examine the environmental management measures utilized by landowners.

(3) In undertaking this task, the County Executive Committee Member shall ensure carry out public participation.

(4) The outcomes of this assessment shall be included in the County Sustainable Forestry and Tree Growing Action and Financing Plan;

(5) In undertaking the assessment under (2) above, the County Executive Committee Member may, as necessary, coordinate with national government agencies responsible for public forests, water towers, water resources, agriculture and forestry research, to obtain technical knowledge and financing for sustainable land management on private and community land.

(6) The assessment under this section shall be undertaken during every subsequent preparation of a County Sustainable Forestry and Tree Growing Action and Financing Plan.

PART VI—SUSTAINABLE COMMUNITY, PRIVATE FORESTS AND TREE GROWING

Mandatory tree growing on private and community land

17. (1) Notwithstanding any provision in this Act and in any other law in force within the County—

- (a) each landowner and occupier of private land in the County shall plant and maintain a minimum tree cover of not less than ten percent for any land not exceeding one acre, and not less than fifteen percent for land exceeding one acre;
- (b) each landowner and occupier of community land in the County shall plant and maintain a minimum tree cover of not less than thirty percent of the total land area; and
- (c) the actions under this section shall ensure the planting and growing of indigenous trees, multiple use trees, and protection of biodiversity is prioritized.

(2) Each landowner and occupier shall be required to implement the provision of this section progressively within a period of three years from commencement of this Act.

(3) Technical support through extension services shall be provided by the Directorate under section 20.

(4) Where landowners and occupiers have attained the tree cover in (1) above, the Council may approve the following incentives to support the maintenance of the standards, and attainment of higher percentage of tree cover, indigenous trees, multiple use trees and biodiversity conservation—

- (a) subsidized organic farm inputs;

- (b) relief from property taxes where applicable;
- (c) exemption from cess for non-wood tree products;
- (d) subsidized loans;
- (e) a county funding basket to provide grants for planting and growing of indigenous trees, and fruit trees;
- (f) subsidized access to seedlings;
- (g) cash rebates for certifiable application of no-till practices on agricultural land;
- (h) negotiate with the national government for concessional rates of tax on income from forestry and tree growing activities;
- (i) subsidized bee hives and bee keeping inputs;
- (j) marketing infrastructure for non-wood products;
- (k) guaranteed minimum returns from non-wood products derived from tree growing activities;
- (l) social benefits; and
- (m) other incentives as may additionally be specified through regulations.

(5) The incentives in (4) above shall be extended to landowners who register their community or private land as forests with the Directorate.

(6) The Council may, from time to time, through the County Executive Committee Member present an estimate of costs and expenditure to the County Assembly for the financing of incentives under this section.

(7) Monies set aside for incentives under this section shall be ring-fenced only for that purpose and managed in accordance with the Public Finance Management Act.

Registration of community forests

18. (1) A community landowner may apply to the Directorate for registration of their land or part thereof as a community forest.

(2) Regulations made under this Act will prescribe the manner and form of the application.

(3) The application in (1) above shall either demonstrate tree growing that is compliant with section 17(1) of this Act, or demonstrate a verifiable plan for tree planting, and growing.

(4) Provided that the area of land in (3) above shall not be less than twenty five hectares.

(5) A registered community forest shall be eligible to make application to the Directorate, in accordance with regulations, for access to the incentives in section 17.

(6) The County Executive Committee Member may facilitate the registration of community forests with the Kenya Forest Service to ensure the landowners can access all benefits available under section 32 of the Forest Conservation and Management Act.

(7) In implementing this section, the County Executive Committee Member shall ensure coordination with the Kenya Forest Service prevent deleterious outcomes and enhance sustainable forestry and tree growing benefits.

(8) For the avoidance of doubt, an application for registration of a community forest under this section maybe approved notwithstanding that the formal adjudication and registration as community land is pending or underway, provided that the County Executive Committee Member is satisfied that the applicants have the lawful consent of other members of the community, and all of them possess valid rights to the land under customary law.

Registration of private forests

19. (1) A private landowner may apply to the Directorate for registration of their land or part thereof as a private forest.

(2) Regulations will prescribe the manner and form of the application.

(3) The application in (1) above shall either demonstrate tree growing that is compliant with section 17(1) of this Act.

(4) Provided that the area of land in (3) above on which tree growing is actually being undertaken shall be not less than half a hectare.

(5) A registered private forest shall be eligible to make application to the Directorate, in accordance with regulations, for access to the incentives in section 17.

(6) The County Executive Committee Member may facilitate the registration of private forests with the Kenya Forest Service to ensure the landowners can access all benefits available provided under section 33 of the Forest Conservation and Management Act.

(7) In implementing this section, the County Executive Committee Member shall ensure coordination with the Kenya Forest Service prevent deleterious outcomes and enhance sustainable forestry and tree growing benefits.

Extension services for tree growing

20. (1) The Directorate shall, within one year of commencement of this Act establish and main a county forestry and tree growing extension service with adequate financial and human resources.

(2) The service shall be created and financed as part of the Directorate and the staff establishment for the extension service shall be approved by the County Public Service Board.

(2) The County Executive Committee Member shall, within one year of commencement of this Act, and thereafter in every two years, present a County forestry and tree growing extension strategy, to the Council for approval.

(4) Provision of extension services shall—

- (a) Be driven by county prioritization on implementation of tree growing activities;
- (b) Apply peer-to-peer learning methods by building capacity of landowners to become trainers of other landowners;
- (c) Providing adequate opportunity for landowners to learn from each other;
- (d) Not be provided at a cost to landowners.

(5) County forestry and tree growing extension staff shall, with approval of the Council and upon concurrence of the national Ministry responsible for education, provide school-based extra curricular training on forestry and tree growing.

(6) Extension services under this section may be used to support agriculture and livestock keeping where the practice of such agriculture and livestock keeping is being undertaken to promote and implement the objectives of this Act.

(7) When implementing subsection (6) above, the County Executive Committee of the County shall approve a framework of cooperation and secondment or transfer of staff from the County Departments responsible for agriculture and livestock to the Directorate.

**PART VII—RIGHTS OF INDIGENOUS PEOPLES AND
AFFIRMATIVE ACTION**

Rights of indigenous peoples and local communities

21. (1) The Council shall within one year of commencement of this Act, approve a programme prepared by the County Executive Committee Member in a participatory manner, specifying affirmative action measures to fully integrate the Sengwer and other indigenous communities resident in County into forestry and tree growing activities and benefit sharing.

(2) The Council shall ensure that at all forestry and tree growing plans, measures and activities respect, protect, fulfil the human rights set out in the Bill of Rights in the Constitution.

(3) The County Executive Committee Member shall, within three months of this Act coming into force, and with consent of the County Executive Committee formally engage with the National Land Commission to facilitate the formal admission and hearing of the historical land claims submitted by the indigenous peoples and local communities in the County over lands falling within the meaning of article 63(2)(d)(ii) of the Constitution but currently managed as public forests.

(4) For the avoidance of doubt, reference to indigenous communities means the Sengwer, Cherangany, Ogiek and Kiptany people, and reference to local communities means the Marakwet and Keiyo people.

(5) The Council shall ensure that all plans, measures and activities for forestry and tree growing presented for its approval include specific mechanisms to develop and increase the capacity and participation of women, including in leadership, employment and entrepreneurship.

(6) The Council shall ensure that all plans, measures and activities for forestry and tree growing presented for its approval include specific mechanisms to develop and increase the capacity and participation of the youth, including in leadership, employment and entrepreneurship, and the gradual enhancement of awareness and knowledge for children in the County.

**PART VIII—MATTERS NECESSARY FOR SUSTAINABLE
FORESTRY AND TREE GROWING**

Climate change mainstreaming during tree growing

No. 11 of 2016

22. (1) The County Executive Committee Member shall ensure implementation of this Act mainstreams, taking into account county

circumstances, the provisions of the Climate Change Act and the National Climate Change Action Plan.

(2) All actions, measures and activities undertaken for implementation of this Act shall ensure prior screening for climate change related vulnerability and contribution to greenhouse gas emissions, and integrate relevant adaptation and mitigation measures.

(3) The Council may, after consultation with the national government ministry responsible for climate change, approve carbon emissions trading programme that certifies all legal and technical requirements.

(4) The Council shall ensure that all county forestry and tree growing plans, measures and activities integrate mitigation and adaptation benefits.

(5) The County Executive Committee Member shall during every preparation of the County Sustainable Forestry and Tree Growing Action and Financing Plan undertake an assessment of the Climate Change Act and the National Climate Change Action Plan for the appropriate period in order to ensure the mainstreaming of adaptation and mitigation needs and priorities relevant to the County.

Water

23. (1) The County Executive Committee Member shall identify and map areas of the county that are classified as water towers and prepare additional guidelines or regulations for their land use and management for approval by the Council.

(2) In undertaking (1) above, the County Executive Committee Member may coordinate with the Kenya Water Towers Agency to obtain technical and financial support.

(3) In undertaking (1) above, the County Executive Committee Member shall coordinate with the Water Resources Authority to ensure there are approved catchment management plans to guide this function, and the County may request for technical and financial support to implement this function from the Water Resources Authority.

Charcoal, woodlots and certificates of origin

24. (1) Notwithstanding any other county legislation, the production of charcoal from trees and forests grown under this Act is prohibited except as provided hereunder.

(2) Landowners who wish to grow exotic fast growing trees for charcoal production shall first obtain certification from the Directorate through the format specified through regulations.

(3) The production of charcoal under this section shall be undertaken through efficient kilns certified by the Directorate through standards published by notice in the *Gazette*.

(4) The transportation and sale of charcoal within the County shall be preceded by the issuance of a certificate of origin and transportation permit by the Directorate based on the form and fees prescribed through regulations.

(5) Any person who willfully violates subsection (1) above commits an offence and upon conviction shall be liable to a term of imprisonment not exceeding twelve months, or a fine not exceeding Kenya Shillings Five Hundred Thousands, or community service not exceeding two thousand hours on sustainable forestry and tree growing activities.

(6) Regulations made under this Act shall regulate the powers of the County Executive Committee Member to issue certificates of origin concerning wood or timber derived from tree grown within the county, include payment of fees and other relevant matters.

(7) The County Executive Committee Member shall coordinate with the Kenya Forest Service in order to support sustainable charcoal producers within the county who intend to transport charcoal outside of county boundaries and ensure such persons obtain both permits from the County and from the service prior to any transportation commencing.

Activities prohibited in escarpment area

25. (1) No form of agriculture, livestock keeping or settlement are permitted on the escarpment area and any person who violates this provision commits an offence under this Act.

(2) Within one year of commencement of this Act, the County Executive Committee Member shall present a plan to the Council for—

- (a) the mapping and demarcation of all that part of the escarpment area defined as being between the upper and lower spencer lines;
- (b) the resettlement of any households, farming or livestock keeping activities, other than beekeeping, within this area, and this shall include prior preparation of a resettlement action plan by the County developed in a participatory manner;
- (c) the conversion of that area into a county forest in accordance with the provisions of this Act including mandatory reforestation with indigenous tree species and protection as a catchment area;

(d) the scope of social and economic activities permissible within this area.

(3) Upon approval by the Council, the plan for conversion of the escarpment area into a county forest shall be implemented in accordance with section 12 of this Act.

Fires

26. (1) The use of fires as tools of cultivation on private and community land is hereby prohibited.

(2) Any person who willfully violates this provision commits an offence under this Act and upon conviction shall be liable to a term of imprisonment not exceeding twelve months, or a fine not exceeding Kenya Shillings Five Hundred Thousands, or community service not exceeding two thousand hours on sustainable forestry and tree growing activities.

(3) In addition to (2) above, the person so convicted shall be fully responsible for the financial losses incurred on third party, and, public land.

(4) The Council shall approve guidelines presented by the County Executive Committee Member for the recruitment and training of landowners and residents on indigenous and modern firefighting including organization and facilitation as volunteer firefighters.

(5) Where formed and registered under this Act, the Citizens Forestry and Tree Growing forums may be utilized by the county as a mechanism for training and equipping volunteer firefighters at community level under (4) above.

(6) The guidelines under this section shall be published by the Governor in the *Gazette*.

Arboreta and public recreational parks

27. (1) The County Executive Committee Member may establish and maintain arboreta, botanical gardens or recreational parks for use by persons residing within the county.

(2) The County Executive Committee Member shall establish and maintain public recreational parks for use by persons residing within each urban and market centres in the county.

(3) Implementation of this provision shall be preceded by a plan, including financing, to be presented to the Council and approved by the County Assembly within one year of commencement of this Act.

(4) The procedures set out in Section 12 for the establishment of County Forests shall be applied to this section with the necessary modifications.

Green zones and development control

No. 13 of 2019

28. (1) The County Government shall, through the County Executive Committee Member responsible for physical planning and development control, within one year of commencement of this Act, establish green zones within its area of jurisdiction in the following manner—

- (a) Require all new applications for development permissions for homes, apartments or other structures for human habitation within urban areas to make provision for the establishment of green zones;
- (b) The Green zones shall be established at the rate of no less than ten percent of the total occupied land area, and any person who willfully violates this provision commits an offence under this Act.

(2) For the avoidance of doubt, no applications made to the County government for development permissions in accordance with the Physical and Land Use Planning Act, shall be approved without compliance with the green zone requirement.

(3) The Council shall approve guidelines on green zone management including the appropriate species and techniques for planting of trees within the green zones in manner compatible to the housing land use.

(4) This provision is enacted as enhancing the provisions of section 37 of the Forest Conservation and Management Act by increasing the minimum area of a green zone from five percent to ten percent without restricting to areas of land that are less than half a hectare; and for purposes of the County the enhanced requirements shall be applicable.

(5) The County Executive Committee Member shall, in accordance with section 37(4) of the Forest Conservation and Management Act coordinate with the Kenya Forest Service to initiate provision of technical assistance in the establishment and maintenance of green zones, recreational parks and arboreta by the County.

Environmental assessments

No. 8 of 1999

29. Every plan, measure or activity undertaken under this Act shall, where applicable, be subject to either a Strategic Environmental

Assessment or an Integrated Environmental Assessment in accordance with the Environmental Management and Coordination Act.

Protection of tree and biodiversity species

30. (1) The Council may, on the advice of the County Executive Committee Member, by order published in the *Gazette* by the Governor, declare any tree species or family of tree species to be protected in the whole county or in specific areas thereof, and shall cause this information to be disseminated to the public.

(2) The Council shall, within six months of commencement of this Act, on the recommendation of the County Executive Committee Member, prescribe circumstances under which the growing of eucalyptus tree species is permitted or prohibited.

(3) The action in (2) above shall be notified to the public through a notice in the *Gazette* published by the County Executive Committee Member.

(4) The protection referred to in (1) and (2) above includes measures to restrict the planting, growing, cutting, felling, damaging, removing, or trading in any protected tree or biodiversity species.

(5) Any person who willfully violates this provisions shall be guilty of an offence under this Act.

Special interventions measures on agriculture land use and management

No. 13 of 2013

31. (1) The Council may, on the recommendation of the County Executive Committee Member responsible for agriculture after public consultations prescribe special interventions on any private or community land that is utilized for agriculture.

(2) The special intervention measures may be prescribe as a result of the assessment in section 16 above, or where it is apparent that the land use management has failed or is failing.

(3) Whether land use management has failed or is failing shall be determined through the professional evaluation of relevant county staff based on agriculture and scientific best practices.

(4) The special intervention measures shall be prescribed through an land use improvement order in the form determined through regulations.

(5) The order may prescribe land use improvement measures including—

- (a) Tree growing through agroforestry;
- (b) Mandatory terracing of hillsides;
- (c) Maximum gradient of farming on hillsides;
- (d) Safety measures for farming on hillsides;
- (e) Soil rehabilitation measures;
- (f) Use of conservation agriculture techniques;
- (g) Livestock keeping techniques.

(6) The land use improvement measures in (5) above can include or be higher than those stipulated by the Agriculture and Food Authority Act.

(7) The measures in this section shall be prescribed through a notice in the *Gazette*.

Mining, quarrying and related activities

31. (1) The mining of sand along riverbanks shall only be undertaken after an environmental assessment of the specific proposal, and the issuance of a licence under the Environmental Management and Coordination Act.

(2) Within one year of commencement of this Act, the County Executive Committee Member shall undertake a strategic environmental assessment of sand mining and stone quarrying activities within the county in order to determine limits and environmental management measures to be prescribed.

(3) Stone quarrying activities shall only be undertaken after an environmental assessment of the specific proposal, and the issuance of a licence under the Environmental Management and Coordination Act.

(4) All sand mining and stone quarrying activities shall, in addition to the Environmental Impact Assessment licence in (3) above only be permitted after approval of a plan for mitigation of biodiversity loss, and continuous site rehabilitation including biodiversity replacement.

Disaster risk reduction and public safety

33. (1) The Council shall, within one year of commencement of this Act, prescribe mandatory disaster risk reduction and public safety measures to be followed during disasters, to inform all forms of land uses within the county.

(2) The measures prescribed in (1) above shall be prescribed only after public participation through a process led by the County Executive Committee Member chairing a sub-committee appointed by the Governor comprising all relevant County Executive Committee Members.

(3) The disaster risk reduction measures in prescribed under this section shall be integrated into all land use activities in the County, and any additional financing cost incorporated into the budget of the relevant county department.

(4) The public safety measures prescribed in this section shall be mandatory and be widely disseminated by the county government at all levels, and include period safety drills undertaken with the authority of the Governor.

(5) The measures under this section shall be prescribed through a notice in the *Gazette*, issued by the Governor.

(6) Regulations may provide additional provisions for the better implementation of this section.

Grievance redress mechanisms

34. (1) Any grievances arising from decisions of any officers of the County government with respect to decisions made pursuant to powers and functions under this Act shall first be subjected to mediation and negotiations.

(2) Conflicts arising between landowners concerning implementation of measures prescribed under this Act shall first be resolved through mediation by the Director, or designated representatives.

(3) Where the mediation under (2) is unsuccessful, the parties concerned may seek redress at the Environment and Land Court as set out in section 38.

(4) Where any landowners or person has a grievance resulting from a decision affecting them, taking by a county officer in accordance with this Act, the first stage for resolving the grievance shall be through mediation by the Director, or designated representative taking into account conflict of interest amongst officers.

(5) The Director shall ensure the recording of minutes during mediation processes undertaken under this section in order to provide an official record.

(6) Alternative dispute resolution mechanisms specified under this section shall not preclude aggrieved persons from choosing traditional mechanisms acceptable under article 159 of the Constitution.

(7) Only grievance mechanisms undertaken as prescribed under this section can give rise to an appeal to the National Environment Tribunal under this Act.

(8) Where the dispute resolution in (4) is unsuccessful, an aggrieved person may file an appeal against the decision in question at the National Environment Tribunal.

(9) Any disputes submitted to the National Environment Tribunal shall be determined in accordance with the provisions of the Environmental Management and Coordination Act and the regulations made thereunder, including further appeals to the Environment and Land Court.

County Tree Planting and Growing Days

35. (1) The Governor shall, following a decision of the Council, through a notice in the Gazette proclaim one or more County Tree Planting and Growing Days, immediately before or during rainy seasons, during which the government and public engage in tree planting.

(2) The County Executive Committee Member shall prepare, continuously review and publicly disseminate a manual for use by the public to monitor and report in tree growing and survival rate of trees planted within the county, including during Tree Planting Days.

(3) The County Executive Committee Member shall, within one year of commencement of this Act recommend to the Council for approval, a system of merit awards to be given to residents of the county for excellence in sustainable forestry and tree growing activities that advance the objectives of this Act.

Citizen forestry and tree growing forums

36. (1) Residents of the county within a ward may form not more than one Citizens Forestry and Tree Growing Forum.

(2) A Citizens Forestry and Tree Growing Forum shall be registered as a community based organization by the county government.

(3) A forum formed and registered under this section shall have the following functions—

- (a) mobilize landowners and residents to participate in sustainable forestry and tree growing;

- (b) develop programmes for implementation at farm level or local common areas by members;
- (c) provide an engagement mechanism for delivery of extension education by the county and other partners;
- (d) provide a mechanism for peer learning by members on knowledge concerning sustainable forestry and tree growing;
- (e) undertake climate change adaptation and mitigation activities through the members;
- (f) such other activities, compatible with this Act, as maybe approved by the County Executive Committee Member prior to registration of the forum;
- (g) dissemination of public safety procedures;
- (h) mobilization of volunteer firefighters.

(4) The County Executive Committee Member shall issue guidelines, published in the Gazette, setting out the governance structure and accountability mechanisms for the forums, after undertaking public participation.

Public participation

37. Public participation for this section and for purposes of this Act shall be undertaken in accordance with the procedure set out in the Second Schedule.

Greenhouse gas emission reduction targets and carbon credits

38. (1) The Council may, with the advice of the National Climate Change Directorate established under the Climate Change Act, identify the greenhouse gas emissions reduction target from forestry and land use activities undertaken in the county.

(2) Within two years of commencement of this Act, and with technical advice from the National Climate Change Directorate, the County Executive Committee Member shall undertake a technical assessment on the suitability of the forestry and tree growing actions under this Act for certification and trade in carbon credits.

(3) The assessment in (2) above shall identify any additional measures, including policy modifications, necessary to implement this provision and deliver benefits to landowners.

Maintenance of registers

39. (1) The County Executive Committee Member shall maintain registers of forestry and tree growing plans, measures and activities, including but not limited to the following—

- (a) county forests;
- (b) community forests;
- (c) private forests;
- (d) land use improvement orders;
- (e) incentives granted under this Act, including the identify of the recipient and land parcel numbers or other identifier;
- (f) permits for community participation in county forests;
- (g) joint forest management agreements;
- (h) forest management plans;
- (i) other matters as maybe prescribed through regulations.

(2) Any register maintained under this section shall be open for inspection by the members of the public at the office of the County Executive Committee Member, including any decentralized offices within the county.

(3) Any registered maintained under this section shall, within two years, be available through a county website portal that is optimized for low band width and access through mobile devices.

Access to court for enforcement

40. (1) Any person may, pursuant to Article 22 and 70 of the Constitution, apply to the Environment and Land Court alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards sustainable forestry and tree growing within the county.

(2) Where an application is made under sub-section (1), the Court may make an order or give directions that it considers appropriate to—

- (a) prevent, stop or discontinue an act or omission that is harmful to the environment, sustainable forestry and tree growing;
- (b) compel a public officer to take measures to prevent or discontinue an act or omission that is harmful to the environment sustainable forestry and tree growing; or

(c) provide compensation to a person suffering loss as a result of the violation.

(3) For the purposes of this section, an applicant does not have to demonstrate that a person has incurred loss or suffered injury.

PART IX—CLIMATE CHANGE MAINSTREAMING AT COUNTY LEVEL

County climate change mainstreaming functions

41. (1) The Governor shall, in every period during assignment of duties to County Executive Committee Members, and within three months of commencement of this Act assign a specific County Executive Committee Member to be responsible for Climate Change Mainstreaming within the County.

(2) The County Executive Committee Member appointed under this section shall be responsible for implementation of this Part, and any other climate change duties or responsibilities of the County government under any law in force in Kenya.

(3) For purposes of this Act, “climate change mainstreaming” means the integration of climate change actions into decision making and implementation of functions by the sector ministries, county corporations and county governments.

(4) For purposes of all climate change mainstreaming and decision making actions under this Act, the County shall apply public participation in accordance to section 24 of the Climate Change Act, in addition to the Second Schedule of this Act.

(5) Without prejudice to the foregoing, the County Executive Committee Member responsible for Climate Change Mainstreaming shall have the following additional duties—

(a) Coordinating the mainstreaming and integration of the National Climate Change Action Plan during every preparation and approval of the County Integrated Development Plan taking into account county context and priorities, the balancing between adaptation and mitigation actions, enabling actions, and mobilization of financing for the actions.

(b) Advising the County Executive Committee Member responsible for forestry on priority climate adaptation, mitigation and

enabling actions that need to be mainstreamed into the County Sustainable Forestry and Tree Growing Action and Financing Plan.

- (c) Coordinate, through the County Directorate of Climate Change Mainstreaming, the undertaking of climate change mainstreaming and reporting through the County Climate Change Units established under this section.
- (d) Reporting, annually, to the County Assembly on progress of implementation of climate change mainstreaming and actions by all County Departments and agencies, for scrutiny, review and debate, and a copy of this report shall be forwarded to the Cabinet Secretary responsible Climate Change for information purposes.
- (e) Ensuring that school-based extra curricular training on forestry and tree growing provided extension services provided under section 20 of this integrate content on climate change.
- (f) Through regulations under this Act provide such incentives as may be necessary for the advancement of adaptation and mitigation actions against climate change and the effects of climate change.
- (g) Every year, within the first quarter, present to the County Executive Committee a draft report of the County's contribution to Kenya's reporting and negotiating position during global climate change negotiation meetings, and submit the approved report to the Cabinet Secretary responsible for Climate Change.
- (h) In every financial year, advise the County Executive Committee on the methodology that county departments and agencies can apply for mainstreaming climate change considerations and actions into their budgets prior to submission to the County Assembly.

(6) In every financial year, through the County Executive Committee Member responsible for climate change mainstreaming, the County government shall ensure that budgetary allocation for implementation of climate change mainstreaming shall not be less than five percent of the total budget of the county

(7) In computing the percentage in (6) above, the County Treasury shall take into account monies allocated by county departments and agencies for the mainstreaming of climate change adaptation, mitigation and enabling actions for the financial year, so long as that expenditure is intended to enhance the attainment of a low carbon climate resilient development within the county.

Power of County Executive for climate change mainstreaming to make regulations

42. The County Executive Committee Member responsible for climate change mainstreaming shall have the power, under this Act to make regulations for the better implementation of the provisions of this Act relating to climate change mainstreaming, including –

- (a) Prescribing duties for persons in the county to mainstream climate change considerations in any activity, trade or business whether the person is operating as individual, publicly owned agency of the national government or county, or a private business of whatsoever legal nature;
- (b) Identify and grant incentives to the persons in (a) above who perform their duties beyond the standard stipulated in the regulations;
- (c) Such other matters necessary for enhancing implementation of the climate change provisions of this Act, or relating to county government obligations under the Climate Change Act.

Directorate of climate change mainstreaming

43. (1) There is hereby established a County Directorate of Climate Change Mainstreaming as a department within the County Public Service.

(2) The Directorate shall be headed by a County Director of Climate Change Mainstreaming, who shall be competitively recruiting by the County Public Service Board based on the following qualifications—

- (a) Is a citizen of Kenya;

-
- (b) Holds a Post-graduate degree in any one of the following fields or specializations—
- (i) climate change, climate science, adaptation, mitigation, climate financing with demonstrable experience;
 - (ii) environmental science with demonstrable experience in climate change;
 - (iii) law, with a specialization in climate change or related fields;
 - (iv) public administration with demonstrable experience in climate change;
 - (v) planning with demonstrable experience in climate change;
 - (vi) agriculture with demonstrable experience in climate change;
 - (vii) any other relevant field with demonstrable experience in climate change;
- (c) has had at least ten (10) years experience at senior management level in any of the fields set out in (b) above;
- (d) meets the requirements of Chapter 6 of the Constitution;
- (e) has been vetted and approved by the County Assembly in accordance with its procedures.

(3) The Director, appointed under subsection (2), shall be responsible for supporting the County Executive Committee Member responsible for climate change mainstreaming in performance of their functions.

PART X—OFFENCES

General Penalty

44. (1) Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(2) In addition to the penalties specified in (1) above, or in place of the term of imprisonment, the court of law may impose community service in forestry and tree growing activities within the county to a period not exceeding two thousand hours.

Regulations

45. (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.

(3) Where the County Executive Committee Member appointed for forestry is different from climate change mainstreaming, regulations concerning Part IX on climate change mainstreaming shall be made pursuant to section 41 of this Act.

FIRST SCHEDULE: CODE OF CONDUCT FOR THE COUNCIL		
Narrative	Section	Provision
PART A – PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS		
Application	1.	<p>Application of Code of Conduct</p> <p>This Code of Conduct is applicable for the members of the Council, and staff assigned to, and supporting the work and functions of the Council.</p>
Meetings	2.	<p>Meetings of the Council</p> <p>(a) The Council shall meet for the dispatch of business at such times and places as it shall appoint, or failing any such appointment, as the Chairperson shall appoint;</p> <p>(b) Provided that the Council shall hold regular meetings not less than four times in any financial year; and</p> <p>(c) Notwithstanding the above, the Council may hold regular meetings as often as is necessary to carry out its mandate.</p>
Special Meetings	3.	<p>Special Meetings of the Council</p> <p>The Chairperson—</p> <p>(a) on their own motion; or</p> <p>(b) on the request of at least one-third of the members;</p> <p>shall, by not less than five days’ written notice to all other members, summon a special meeting of the Council at such time and place as the Council shall appoint, or such other place as the Chairperson may appoint.</p>
Notice of Council Meetings	4.	<p>Notice of Meetings of the Council</p> <p>(a) Except where a shorter period of notice is applicable, such as in (3) above, notice of the date, time and place of each meeting shall be given in writing at least seven clear days beforehand to every member at such physical or electronic mail address in Kenya as they shall have notified to the Council from time to time.</p>

		(b) Provided that the failure of any member to receive such notice shall not invalidate any proceedings, except in instances where such meeting fails to raise the requisite quorum, as set out in (5) below.
Quorum for Meetings	5.	<p>Quorum for Council Meetings</p> <p>(a) The quorum necessary for the transaction of business by the Council one half of the members of the Council.</p> <p>(b) Provided that in computing the quorum, regard shall be had to ensuring a proportional representation of members of the Council appointed by virtue of government positions, and those representing non-governmental stakeholders, as provided for in the Act.</p>
Presiding over Meetings	6.	<p>Presiding over Meetings</p> <p>(a) The Governor, as the Chairperson, shall preside at meetings of the Council;</p> <p>(b) Provided that if the Chairperson is not present at the start or at any time during a meeting, the Deputy Governor, as the Vice Chairperson, shall chair; and</p> <p>(c) if both are absent, the Governor shall appoint the County Executive Committee Member to act as Chairperson, provided the members present are a quorum.</p>
Voting in making of Council Decisions	8.	<p>Decisions of the Council</p> <p>(a) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by concurrence of a majority of all the members.</p> <p>(b) Provided that in the case of any equality of votes, the Chairperson of the meeting shall have a second or casting vote.</p>
Coordination of the Council Operations	9.	<p>Coordination of the Business of the Council</p> <p>(a) The County Executive Committee Member, as Secretary to the Council and having supervisory authority over the Directorate established under the Act, shall coordinate the business of the Council, including but not limited to—</p> <p>(i) Organizing meetings, including a venue, as directed by the Council;</p>

		<p>(ii) Safety of documents and records;</p> <p>(iii) Recording of minutes, resolutions and other decisions or proceedings of Council meetings;</p> <p>(iv) Following up with any and all entity, public or private, which under the Act is required to perform any role whatsoever by the Council; and</p> <p>(v) Processing, in accordance with the Act, any remuneration to which Council members maybe eligible to receive.</p> <p>(b) In performance of this function, The County Executive Committee Member shall be supported by the Directorate, established by the Act, to serve as the Secretariat to the Council.</p> <p>(c) In execution of (b) above, the Director of Forestry and Tree Growing appointed under the Act, shall ensure that the Directorate has established a sufficiently staffed and resourced mechanism for the coordination of the mandate and functions of the Council.</p>
Keeping of Records and Documents	10.	<p>Records and Documents</p> <p>(a) The Council shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the members present there at.</p> <p>(b) In accordance with the Act, the Directorate shall ensure the proper storage and securing of all resolutions, proceedings and other documents relating to the mandate of the Council.</p> <p>(c) In exercise of the function under this section, the The County Executive Committee Member, as the Secretary to the Council, shall be responsible for the accuracy and safety of the records and documents of the Council.</p>
Special Procedures and Co-opting	11.	<p>Special Procedures for Co-opting Participation of Certain Persons in Council Meetings</p> <p>(a) The Council may, on its own motion, invite the attendance, at its meetings, of any person or persons deemed to possess any expertise the Council may require to discharge any matter at hand during such meetings.</p> <p>(b) Any person or persons, invited in terms of (a) above, shall only offer advisory input to the</p>

		Council and shall not participate in decision making or voting on any Questions requiring such decision making or voting.
Committees of the Council	12.	<p>Establishment of Working Committees of the Council</p> <p>(a) The Council may appoint, in accordance with the Act, establish working committees for the better carrying out of its functions.</p> <p>(b) In appointing such committees, the Council shall, in terms the Act, invite participation of persons with the relevant expertise required for performance of the mandate assigned to the committees.</p> <p>(c) The The County Executive Committee Members shall propose to the Council, the establishment of working committees as required to support the functions of the Council.</p> <p>(d) A proposal by the The County Executive Committee Members shall include the purpose of such a committee, its proposed membership, and draft terms of reference, for approval by the Council.</p> <p>(e) Once establishment of a working committee is approved by the Council, the The County Executive Committee Member, through the Directorate, shall provide all required support for the working committee to execute the mandate delegated to it by the Council.</p> <p>(f) All working committees established under this section shall provide reports for discussion and decision making by the Council during each meeting of the Council held over the life of such working committees.</p> <p>(g) Any committees appointed by the Council under the Act shall, <i>mutatis mutandis</i>, apply the provisions of this Code.</p> <p>(h) The Council may, on its own motion, establish a working committee based on a clear purpose and terms of reference.</p> <p>(i) Provided that establishment of the Committees shall not result in the Council operating on a full-time, or substantial full-time basis and taking over the mandate of the The County Executive Committee Member or the Directorate.</p>

Common Seal of the Council	13.	<p>The Common Seal</p> <p>(a) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the County Executive Committee Member.</p> <p>(b) The affixing of the seal shall be authenticated by the Governor and the County Executive Committee Member.</p> <p>(c) Any document purporting to be under the seal of the Council or issued on behalf of the Council shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.</p>
Part B: Provisions as to the Code Of Conduct And Ethics of the Members of the Council in Conducting Official Business		
Matters of conflict of interest	14.	<p>Conflict of Interest</p> <p>(a) If any member of the Council has an interest of a personal or pecuniary nature, in any matters or questions that have come for the discussion and decision making of the Council, such a member must disclose the specific pecuniary or personal interest forthwith.</p> <p>(b) A personal or pecuniary interest, in this context, means any circumstances that will compromise the ability of the member to act impartially, or prudently, and further, that could compromise the credibility or integrity of the Council in execution of its mandate:</p> <p style="padding-left: 20px;">(i) Personal interest in this case means the interest of the member, a spouse, or adult child; and</p> <p style="padding-left: 20px;">(ii) Pecuniary interest in this means the interests of the member, business associate(s), or that of a body corporate in which the members has a business interest.</p> <p>(c) The scope of matters or questions in which a conflict of interest may arise, and therefore requiring immediate disclosure, include contracts, proposed contracts, and oversight functions, and includes the definition of conflict of interest in the County Public Service Board Code of Conduct and Ethics applicable at any time.</p>

		<p>(d) A conflict of interest arises where the Council collectively, or where any member separately, receive gifts (money, property, special favours) from any Public, Private or Civil society entity that is subject to the mandate and authority of the Council under the Act, or that could be impacted adversely by a decision of the Council, except where such transactions happen as defined in (12) below.</p> <p>(e) Where a conflict of interest has arisen, the affected member(s) shall not take part in the consideration or discussion of, or vote on, any question with respect to the matter or issue, or be counted in the quorum of the meeting during the consideration of the matter.</p> <p>(f) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.</p>
<p>Rules on gifts to Council Members</p>	<p>15.</p>	<p>Money, Gifts from Entities within Mandate of the Council</p> <p>(a) The members shall not obtain or accept money (including imprests, sitting allowances, gift vouchers, etc.), property or other favours including job placements for themselves, spouses and relatives from any state, private or civil society entity that falls within the specific mandate of the Council under the Act.</p> <p>(b) Provided that an exception shall be made where clear formal arrangements have been made, with the institution concerned for technical assistance, or funding of the activities of the Council; and</p> <p>(c) Provided further that in case of (b) above, the Council must discuss this in a formal meeting, and make clear considerations of whether this comprises conflict of interest, including an explicit assessment of whether property or favours are involved, and reach an appropriate decision in accordance with this Code.</p> <p>(d) Where the Council determines it is lawful for members to accept money, such will be limited to payment of imprests, for activities of the Council, where a formal agreement is reached between the paying entity and the Council on the terms of the funding to the Council.</p> <p>(e) In the case of (d) above, the Council shall only reach such agreement where no circumstances as</p>

		<p>defined in (11) above are, after assessment, been found to arise.</p> <p>(f) The provisions of the County Public Service Board Code of Conduct, as may currently be in force, shall further apply.</p>
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SECOND SCHEDULE: PROCEDURE FOR PUBLIC PARTICIPATION IN ALL MATTERS UNDER THIS ACT

Section	Provision
(1)	<p>(1) Public participation under this Act means public consultations, access to information, and dissemination of information and provision of public awareness.</p> <p>(2) The County government and its agencies shall, at all times when implementing this Act, conduct public consultations, provide access to relevant information, and undertake public awareness.</p> <p>(3) Public consultations shall require the holding of at least two meetings in all sub-counties, including one meeting to provide feedback on how the contributions by the public impacted the final decision.</p> <p>(4) The county government shall make the relevant decision, document, proposal or other matter requiring public participation available to the public in soft copy on a County government website, in hard copy for inspection at county offices up to ward level.</p>
(2)	<p>Public participation consultations on any matter under this Act shall be preceded by dissemination of relevant documents and information through—</p> <p>(i) Notice in a newspaper of national circulation</p> <p>(ii) Notice in a newspaper of local circulation within the county.</p> <p>(iii) Notice in a local radio station broadcasting within the county</p> <p>(iv) Dissemination of the notices above through county websites, social media platforms, and county officers at all levels.</p> <p>(v) Public notification, using all the above media of how the public input during consultation was taken into account in arriving at the final decision.</p>

(3)	<p>The notices in (2) above shall in each case —</p> <ul style="list-style-type: none"> (a) set out a summary of the proposal; (b) state the premises or the website where the details of the proposal may be inspected; (c) invite written and or oral presentations and comments on the proposal; (d) specify the person or body to which any such presentations and comments are to be submitted; and (e) specify a date and place by which any such comments are required to be received, not being a date earlier than sixty days after publication of the notice. (f) specify the date, venue and hours within which public consultation meetings will be held.
(4)	<p>Upon conclusion of public consultation period for receiving comments, the responsible county department shall consider —</p> <ul style="list-style-type: none"> (a) any written comments or objections received on or before the date specified; and (b) any comments whether in writing or not, received at any public meeting held in relation to the proposal at which the Council, County Executive Committee Member or Directorate was represented, or pursuant to any other invitation, to comment.
(5)	<p>The Council, County Executive Committee Member or Directorate shall publish, through the same media as were employed pursuant to paragraph 1, notice of the fact that a copy of the decision, and of the reasons thereof, is available for public inspection at the same premises or website as were notified under paragraph (2) above.</p>
(6) No. 31 of 2016	<p>(1) The Council and the Directorate shall publish and publicize all important information within their mandate.</p> <p>(2) Any person may request for information from the Council and the Directorate, and such request for information—</p> <ul style="list-style-type: none"> (a) shall be addressed to the Secretary of the Council or the Director or such person designated as the access to information officer under the Access to Information Act; (b) may be subject to the payment of the prescribed fee in instances where the Council or Directorate incurs an expense

	<p>in providing information; and</p> <p>(c) may be subject to confidentiality requirements of the Council or Directorate;</p> <p>(d) shall in any event be made available as provided for under the Access to Information Act and regulations made thereunder including the circumstances under which the Council or the Directorate may decline to provide the information requested for.</p>
(7)	<p>All consultations undertaken under this section, where applicable, shall ensure special measures are put in place for engagement with indigenous communities within the county, including –</p> <ol style="list-style-type: none">(1) Organizing special sessions for dissemination of the content being consulted about; and for receiving feedback from the community.(2) Organizing consultation at community level and ensuring broad-based participation with gender balance and inclusion of the indigenous youth.(3) Provision of translation services by a person proficient in the relevant indigenous peoples language either as a volunteer or through the consulting office.

THIRD SCHEDULE – MANAGEMENT PLANS

PART I—GENERAL

(1) A management plan is the instrument in which all the ingredients for active management are described, in particular which persons or organizations will undertake what responsibilities and what actions are intended to achieve the objectives of this Act on sustainable forestry and tree growing. The specific objective of a management plan will vary, depending on whether it is intended for a county forest, arboreta, or recreational park.

(2) Management tools are primary tools for undertaking sustainable forestry and tree growing in a manner that balances social, economic, and environmental needs and considerations. These tools often go unused because of a failure to see management plans as a dynamic working document requiring annual updates and because of a tendency to be over elaborate.

(3) The level of planning should be tailored to the capacities of the agencies and communities involved. Management planning should be a practical tool, that can be created in simple form and built upon over time, using progress reports.

(4) A management plan process, under this Act includes the production of an annual compliance report and a 5 year third-party management report for approval by the Council and submission to the County Assembly for scrutiny and approval.

PART 2 – PLANNING FRAMEWORK

(1) Each management plan developed under this Act should, at a minimum, include the following information—

- (a) a legal description of the area covered by the plan. This may include or officially recognize customary land boundaries and/or natural boundaries (e.g. rivers, river basins, mountain ranges, etc.);
- (b) a brief statement of the sustainable forestry and tree growing management goals and objectives;
- (c) the time period for which the plan is valid;
- (d) the species covered by the plan;
- (e) a description of habitat types, amounts, and plant composition (where possible);

- (f) A description of the activities being undertaken;
- (g) A report detailing the participation of local communities and indigenous peoples in the preparation of the plan;
- (h) A description of the anticipated benefits and beneficiaries;
- (i) Social and environmental challenges anticipated in management and proposed interventions;
- (j) Results of a strategic environmental assessment undertaken for the management plan;
- (k) Conflict management and dispute resolutions mechanisms to be implemented;
- (l) Consideration of climate change mainstreaming in the management plan;
- (m) Evidence of gender mainstreaming in the management plan;
- (n) Evidence of consideration of the role of youth and children in the management objectives.

(2) The County Executive Committee Member may, after approval by the County Assembly and through a notice in the Gazette, vary the information required in a management plan as stipulated in this schedule.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for a legal and institutional framework for the sustainable management of forest resources and trees outside forests. The Bill contains measures to ensure respect, protection and fulfillment of human rights in all forestry and tree growing actions. Once enacted it will implement provisions of the Constitution and national laws on environment, forest conservation and land use planning.

The Bill will provide mechanisms for expansion of forestry and tree growing on public, private and community land. It will enhance integration of forestry and tree growing into rural and urban land management, and support to increase soil and biodiversity protection during land use activities; promote the development of the socio-economic and environmental value of forests. Overall the Bill will contribute to the constitutional obligation for Kenya to maintain a minimum national tree cover of ten percent of the land area; while entrenching public participation in decision making, and for connected purposes.

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

The Bill delegates power to various County Executive Committee Members. The Bill does not limit any fundamental rights and freedoms.

Statement that the Bill will require the expenditure of public funds.

The Bill confers new and additional responsibilities to the county government and will require the allocation and expenditure of public funds by the County.

Dated the 13th October, 2020.

JOHN LOCHAA,
Chairperson, Environment, Water and Natural Resources.