

The Forest Act No 7 of 2005:

Opportunities for improved forest conservation and constraints to forest development

by Edna Kaptoyo and Habiba Athman

The Forest Act NO 7 of 2005 received

presidential assent on November 2005. The Act has been much awaited by the forest fraternity and the private sector, and is seen as a panacea that will cure all trauma and downturns that the sector has experienced for several years. The legal and policy framework has not been conducive to farm forestry development, which in part led to the push to review the Forest Act cap 385, resulting in the enactment of the Forest Act No.7 of 2005.

A. Opportunities For Improved Forest Conservation Under The Forest Act 2005

Stakeholder consultation in forestry decision-making

A Key opportunity under the Act is the requirement for intensive stakeholder participation in decision-making. The Act requires public consultation for all major forest decisions under the third schedule, and prescribes an elaborate procedure for the public to present various issues before decisions are made and published. Among others, public consultation is required for Joint Forest management Agreements (Section 46), variation of boundaries of revocation of state or local authority forests among others. The proposal further approves the *locus standi* (legal standing) in a court of law, which legally enables concerned citizens to seek redress in courts if they are dissatisfied with a decision (Section 58: Restraint of breaches of the Act). Under the Forest Act Cap 385, the minister in charge of environment was considered infallible, and his/her decision could not be challenged.

The only requirement of consultation was to publish the intention of a decision in a gazette notice a given number of days before it was made. There was no requirement for the authorities to consider any representation made to it, nor to communicate the decision to the public. This abused process might be considered



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the single biggest cause of national forest decline since independence, and its effect on the loss.

Another Key avenue for community involvement in decision-making is the Forest Conservation Committee (FCC). The FCC has representation from major stakeholders such as community forest associations and local authorities. The FCC communicates opinions of the communities to the board on forest issues, and is involved in day-to-day forestry decision-making at the conservancy level. This provides an avenue through which locals' interests in national forest issues will find an expression at the forest board. The committee also must approve major decisions such as alteration of forest boundaries and applications for private forest development incentives before the board (Section 13)

Enhanced Community and private Sector Participation in forest management

Section 36(1) of the Act empowers the Kenya Forest Service board to enter agreement with any person, company, Forest Association" etc for the joint management of any forests.

..."The director may, with the approval of the Board, enter into an agreement with any person for the joint management of any forests..."

Section 46(2) provides for a community based forest association to apply to the Director for permission to participate in the conservation and management of a state forest or local authority forest.

...'an association registered under subsection (1) may apply to the Director for permission to participate in the conservation and management of a state forest or local authority forest in accordance with the provisions of this Act:

provided that no application under this subsection be made where there is an existing prior agreement or license”.

The management agreement between Director and the association may confer forest user rights such as ecotourism and recreation, harvesting of honey, collection of herbs, harvesting of timber and firewood, contracts to assist in carrying out cultural operations, development of community wood and non wood forest industries, etc. In return for these and other benefits the community forest associations will protect, conserve and manage such forests according to the provisions of the management agreement approved management plan, formulate and implement forest programmes consistent with the traditional forest user rights of the community concerned etc.

The forests that are neglected because of the resources constraint in terms of developing and managing them can be managed according to this provision. These forests are sufficiently productive to guarantee returns. In the past there were no such mechanisms where the abundant human resources within the communities could be harnessed for such productive undertaking in forestry. This offers opportunities for improved management for such reserves whilst providing avenues for income generation for communities.

Recent studies on Participatory Forest management (PFM) in Africa by FAO revealed that 22 states had already institutionalized formal Community Forest Management in their structures (FAO,2003), involving some 5000 communities and three Million people in nationally, locally owned, community or state forest.

Incentives for private forest development

The dwindling forest cover was the major reason for the logging ban, which has led to most forest products such as timber, posts, poles and even charcoal in urban centers to be obtained from outside the public forest estate. The Forest Act Cap 385 had no provisions for the private sector and local authorities to draw credit for establishing and developing forests.

Since the legislation clearly empowers the service to use the funds even on private land, the government will not have any excuse for not allowing the private sector to develop the forests. This provision only applies to forests, which qualify for registration as private forests.



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Due to high population pressure in the high potential zones, within which over two thirds of the population lives, these are characterized by small sizes of land holdings, which further constrain the amount of area that can be put under trees. Opportunities however exist for cooperative efforts by several farmers to breach the threshold forest area required to benefit from the fund.

Section 25(4), which allows owners of to apply for exemption from paying part or all land rate charges, is another incentive for development of private and farm forests. The establishment of trees on such land and their registration as private forests would result in significant savings in rates while earning them income through sale of produce, and with the potential for management assistance from the forest management and conservation fund.

Enforcement

In ASAL areas, people still graze communally and planted trees are not considered as crops. People sued for grazing livestock on other peoples land receive very lenient fines, which discourage forest owners from suing offenders. Similarly those caught cutting trees on neighboring farms equally get away with very lenient fines.

Section 50(1) seeks to give the forest officers powers. It states that the forest officer may

...demand from any person the production of an authority or license for any act done or committed by that person in a state, local authority or provisional forest or in relation to any forest produce for which a license is required under this Act'

The Forest Act No7 of 2005 brings all forests be it private, local authority or state- under the act, and prescribes very heavy penalties for damage to forests and trees. Any person who makes charcoal in a state, local authority or a private forest or farmlands without a license or permit of the owner as the case may be, commits an offence and is liable on conviction to a fine not exceeding 50,000 shillings or to imprisonment for a term not exceeding one year or both (Section 52(2)). These very harsh penalties provides for deterrence to unlawful activities in public and private forests.

Section 52(1) deals with felling, cutting, burning, injuring or removing of any forest produce only cover state, local authority or provisional forest. It sets heavy penalties for damaging trees. This will assist farmers in maximizing benefits from growing trees.

Management of Indigenous forests

Section 40(1) of the act sets to ensure that the forest areas under her management are maintained for biodiversity, cultural or recreational use. In addition it protects the concession area from destruction and encroachment by other persons.

Section 41(1) says that all indigenous forests and woodlands shall be managed on a sustainable basis for purposes of....

“Conservation of water, soil and biodiversity.”

“River line and shoreline protection.”

“Cultural use and heritage.”

“Recreation and tourism...”

“Sustainable production of wood and non wood products.”

“Carbon sequestration and other environmental services.”

“Education and research purpose.”

“Habitat for wildlife in terrestrial forests and fisheries in mangrove forests.”

Section 41(2) in pursuance of subsection (1), the service shall, in consultation with the forest conservation committee for the area where the indigenous forest is situated, prepare forest management plans.

Section 41 (3) The board may enter into a joint management agreement for the management of any state indigenous forest or part thereof with any person, institution, government association or forest association.

The Act recognizes that several groups have close and specific relationship with forests, they include, forest dwellers, forest users who are mainly indigenous peoples. Indigenous Peoples interact closely with forests because their economic livelihood, cultural and spiritual identity, is derived from forests.

The Forest Principle from UNCED(United Nations Conference on Environment and Development) states that governments should promote and provide opportunities for the participation of interested parties, including local communities and indigenous peoples, NGO's and forest dwellers and women, in the development, implementation and planning of national forest policies. It further emphasizes that the commitment and genuine involvement of all social groups will be critical to the effective implementation of the objectives, policies and mechanisms of all government programmes of Agenda 21.

B. Constraints to Forest Development under the New Legislation

The administrative set up

The Forest Act No.7 of 2005 bestows the management of the service to a board whose composition is tilted in favor of civil servants who are appointed and can be dropped by the minister at any time. A Forest Conservation Committee (FCC) will undertake the oversight responsibility in a conservancy. The committee may in turn, recommend the establishment of divisional forest conservation committees.

The conservancy committees have been given responsibilities such as informing the board of desires of people within the forest conservancy on matters of forest conservation and utilization; monitoring, implementation of the Act and other forest regulation; approve alteration of boundaries, and to allocate forest management and development funds. It's evident from these and other duties that a committee will not equitably cater for the interest and desires of all the people in its area.

(i) Provisional forests

Section 26(1) stipulates that the minister, upon the recommendation of Board, may declare a local authority forest or private forest as a provisional forest, if in the opinion of the board is mismanaged or neglected. Once declared a provisional forest the service takes over the management in collaboration with the owner. There is no provision for appeal against the recommendation of the Board. This can be dangerous since some civil servants may take over the forest purely on malicious grounds.

Other National policies and legislation relevant to the forest sector:

- Energy Act
- Water Act
- Forest Act Cap 385
- Sessional Paper No 9 of 2005 on Kenya Forestry Policy
- Vision 2030
- Economic Recovery Strategy (ERS)

Conclusion

The Forest Act 2005 identifies the need to strengthen community-based institutions, by creation of Community Forest Association (CFA). The public can now actively be involved in forest conservation.

A key aspect of the new policy is a greater emphasis on involving stakeholders through participatory management mechanisms in the management and conservation of forests. It is important to note that the current direction in forest policy has recognized that forestry contributes to poverty reduction, employment and improvement of livelihoods through forest management. The public can now actively be involved in forest conservation since it is provided in the Kenya Forests Act of 2005 “ *Participatory Forest Management*”. PFM requires all partners to pull together their diversity to capture the interest of all stakeholders. Resources’ sharing is necessary as a means of facilitating, developing and sustaining partnerships.