

SPECIAL ISSUE

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***KITUI COUNTY GAZETTE
SUPPLEMENT***

ACTS, 2014

NAIROBI, 28th November, 2014

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**THE KITUI COUNTY CHARCOAL MANAGEMENT
ACT, 2014**

No. 6 of 2014

Date of Assent: 19th November, 2014

Date of Commencement: 28th November, 2014

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**THE KITUI COUNTY CHARCOAL MANAGEMENT
ACT, 2014**

**AN ACT of the Kitui County Assembly to regulate and
manage the production, use and trade of charcoal
and for connected purposes.**

ENACTED by the County Assembly of Kitui, as
follows—

PART 1— PRELIMINARY

1. This Act may be cited as the Kitui County Charcoal
Management Act, 2014 and shall come into operation upon
publication in the Kitui County Gazette or The Kenya
Gazette.

Short title and
commencement

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

Interpretation

“Charcoal Management Committee” means a
committee established under this Act;

“Commercial use” means any use of forest products or
forest land other than direct use for personal purposes or
infrastructure development and it includes uses involving
Trade or any other deposition of forest products or forest
land for direct or indirect financial benefit;

“Charcoal Producer Association” means an
association of charcoal producer groups registered under
Societies Act Chapter 108 and licensed under this Act to
engage in charcoal production in a specified area;

“County Forest” means;

- (a) Any forest situated on trust land which has been set
aside by the county Government pursuant to the
provisions of the Trust Land Act;
- (b) Any arboretum, recreational park or mini forest
created under section 30 of the forest Act.
- (c) Any forest established as county forest in
accordance with the provisions of section 24 of the
forest Act.

“Deforestation” means the negative reduction of forest
cover from the original status;

“Endangered Species” means a population of tree
species which is facing a high risk of extinction because it

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is either few in number or threatened by changing environmental or predation parameters;

“Enforcement Team” means any persons who collectively have the responsibility of enforcing the provisions of this Act;

“Environmental Impact Assessment” shall have the meaning assigned to it under the Environmental Management and Coordination Act 1999;

“Farm Forestry” means the practice of managing trees on farms whether singly, in rows, lines, boundaries on in woodlots or private forests;

“Forest” means a unit of ecosystem in the form of land comprising biological resources, dominated by trees in their natural forms and environment which cannot be separated from each other;

“Forest Area” means any land declared to be a forestland under this Act or the Forest Act 2005;

“Forest Officer” includes the professional, technical and disciplined cadre of the Kenya Forest Service and County Government and also means an employee of the Kenya Forest Service or Kitui County Public Service Board to whom inspection or enforcement duties have been assigned;

“Forest Owner” means;

- a) in the case of state forests; the Kenya Forest Service;
- b) in the case of a County forests; the County Government;
- c) in the case of private forests; an individual, association, institution or body corporate.

“Forest Produce” includes bark, animal droppings, beeswax, canes, charcoal, creepers, earth, fiber, firewood, frankincense, fruit, galls, grass, gum, honey, leaves, flowers, limestone, moss, murrum, myrrh, peat, plants, reeds, resin, rushes, rubber, sap, seeds, spices, stones, timber, trees, water, wax, withies, and such other things as may be declared by the county be minister to be forest produce for the purpose of this Act;

“Gazette” means the County gazette or the Kenya gazette;

“Kitui County Public Service Board” means the County Public Service Board established under section 57 of the County Governments Act 2012;

“License” means a permit or other written authorization issued under any of the provisions of this Act or Regulations made under this Act.

“Producers” means person (s) who engages in commercial charcoal production either on his or her land or land where consent as been granted by the owner of the land;

“Private Forest” refers to any forest owned privately by an individual, institution or body corporate.

“Protected Tree” means any tree or tree species which have been declared under section 34 of the Forest Act 2005 or this Act to be protected;

“Provisional Forest” means any forest which has been declared a provisional forest under section 26 of the Forest Act 2005;

“Regulations” means regulations made under this Act;

“Sustainable use” in relation to a forest, means the use of a forest and any of its natural resources in manner and to an extent which does not compromise the capacity of the forest and its use by future generations, and does not degrade the carrying capacity of supporting ecosystems;

“Sustainable Management” in relation to a forest means management of the forest so as to permit any such use of it as constitutes sustainable use;

“Threatened Species” means any species of trees including those species of trees which are vulnerable to endangerment in the near future;

“Tree” means any plant, shrub, bush of any kind and includes a seedling sapling or reshoot of any age or any part thereof;

“Woodlands” means an open stand of trees less than ten meters tall, which has come about by natural regeneration.

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“Woodlots” means an open stand of trees less than ten meters tall, which has come about by human planting.

3. This Act shall apply to all forests and woodlands on the county and private land within the county.

Application

4. The objectives of this Act are to—

Objects and purposes.

- a) Contribute to poverty reduction, employment creation and improved livelihoods through sustainable use, conservation and management of forests and trees.
- b) Contribute to sustainable land use through soil, water and biodiversity conservation, and tree planting through the sustainable management of forests and trees.
- c) Promote the participation of the communities, private sector and other stakeholders in forest management to conserve water catchment areas, create employment, reduce poverty and ensure sustainability of the forest sector.
- d) Promote dry land forestry to produce wood fuel, charcoal and non-wood forest products.
- e) Promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches and technologies and;
- f) Promote forest research, training and education to ensure sustainable charcoal production.
- g) Promote adaptation and mitigation efforts in Climate Change.

PART II— ADMINISTRATION

5. There is established the County Charcoal Management Committee. The County Executive Committee Member for Environment, Energy and Minerals investment Development will establish through appointment the members of this committee while ensuring gender representation.

Establishment of the County Charcoal Management Committee

6. The County Charcoal Management Committee shall comprise—

Composition of the County Charcoal Management Committee

- (a) The Chief Officer in the County Ministry of Environment, Energy and Minerals Investments

Development, who shall be the Chair of the Committee;

- (b) Director of the County Department of Environment, Energy and minerals investments development;
- (c) Director General of National Environmental Management Authority appointed under the National Environmental Management Act, 1999 or his or her designated representative who shall be an environmental officer based in the County;
- (d) Representative of the County Revenue Department;
- (e) An officer from the Ministry of Energy and Petroleum;
- (f) Representative of civil society Organizations;
- (g) The Kenya Forest Service County officer or county Ecosystem Conservator appointed under the Forest Act, 2005 or his or her designated representative;
- (h) Three community representatives;
- (i) Representative of the County Commissioner; and
- (j) A representative of the Private Sector.

7. The functions of the County Charcoal Management Committee shall be to—

Functions of the
County Charcoal
Management
committee

- a) Vet and approve applications recommended by the Chief Officer in the County Ministry of Environment, Energy and Minerals Investments Development from Charcoal Producer Associations, Transporters and individual farmers for the purpose of regulation;
- b) Review and recommend licensing of Charcoal Producer Associations and Charcoal Transporter Associations;
- c) Review of Charcoal Producer Associations restoration plans;
- d) Approve Charcoal producers associations charcoal brand and packaging. All charcoal shall be

packaged in bags and branded using traceable codes; and

- e) Monitoring of tree planting events by the Charcoal Producer Associations

8. The Committee shall have all the powers necessary for the performance of its functions under this Act and, in particular but without prejudice to the generality of the foregoing, the committee shall have power to—

Powers of the
County Charcoal
Management
Committee

- a) Approve and ratify all policies and restoration plans of the Charcoal Producer Associations;
- b) Revoke or suspend a license issued under this Act;
- c) Partner with other organizations with similar functions to its' own whether within the county or otherwise; and
- d) Any person who is aggrieved by the decision of the County Charcoal Management Committee may within thirty days of communication to him of such decision appeal to the National Environmental Tribunal established under the Environmental Management and Coordination Act, 1999.

PART III—COMMUNITY PARTICIPATION

9. All commercial charcoal producers are required to organize themselves and form Charcoal Producer Associations.

Charcoal
Producer
Associations

10. The roles of a Charcoal Producer Association are—

Roles of a
Charcoal
Producer
Associations

- a) Facilitate sustainable production of charcoal by members;
- b) Ensure that members implement the restoration and conservation plans;
- c) Develop and implement a code of conduct for its members for self-regulation; and
- d) Assist the county Government and the Kenya Forest Service in enforcing the provision of this Act relating to sustainable charcoal production, transportation and marketing.

11. 1) The charcoal producer association formation shall include—

- a) List of all members and their addresses;
- b) Prepare their constitution and rules;
- c) Register as an association with the registrar of societies and compliance to all statutory requirements;
- d) List of operational areas of the group and their scope of work;
- e) List the group's record of activities relating to charcoal production and transportation;
- f) Carry out environmental impact assessment test for each charcoal producing area and further carry out area zoning for charcoal production;
- g) Give information relating to land ownership;
- h) Give a record of the present activities on the land;
- i) Provide a list of intended technology to be used in charcoal production;
- j) Provide information on the quantity of charcoal they produce;
- k) Provide information of charcoal collection points in their area of application.
- l) Package, Label and brand their charcoal and any other value addition strategies
- m) Forward the application to the Chairperson of the County Charcoal Management Committee for review.

Charcoal
 Producer
 Association
 Formation and
 Licensing

2) A Charcoal Producer Association that meets all the requirements provided under this section and any other requirements set by this Act may be issued with a license.

12. (1) All persons desirous of engaging in the business of transporting Charcoal within or from Kitui County shall organize themselves in a transporters association.

(2) The association under sub-section (1) shall be registered under the Societies Act.

Charcoal
 Transporters
 Association

(3) The formation of charcoal transporters association shall entail the following-

- a) List of all members and their addresses;
- b) Prepare their constitution and rules;
- c) Register as an association with the registrar of societies and compliance to all statutory requirements;
- d) List operational areas of the group and their scope of work;
- e) List the group's record of activities relating to charcoal transportation;
- f) Provide information on the quantity of charcoal they transport;
- g) Provide information of charcoal collection points in their area of application;
- h) Provide a description of the intended means of transportation for the charcoal;
- i) Forward the application to the chairperson of the county charcoal management committee for review.

(4) A charcoal transporters association that meets all the requirements stipulated under this Section and any other requirements set by this Act may be issued with a transportation permit.

PART IV—ENFORCEMENT

13. (1) For the purposes of this Act, the Enforcement team shall comprise but not limited to—

Enforcement
Team

- a) all police officers working in the county pursuant to their duties under the National Police Service Act, 2011;
- b) all officers of the Kenya Forestry Service working in the County pursuant to their duties under the Forest Act, 2005;
- c) all officers of the Kenya Wildlife Service working in the County pursuant to their duties under the Wildlife Conservation and Management Act, 2013;

- d) Officers of the County Revenue department;
- e) County Village, Ward and Sub county administrators;
- f) Persons authorized to be community policing members pursuant to the National Police Service Act, 2011; and
- g) Any other persons as the County Charcoal Management Committee may deem necessary for carrying out enforcement of this Act.

(2) There shall be a forum established between the National Government and the County Government of Kitui in order to promote cooperation and consultation in the execution of the charcoal regulation and management in the County.

14. The enforcement officers may —

Powers Of The
Enforcement
Team

- a) Demand from any person the production of an authority or license for any act done or committed by that person in a County or provisional forest, or in relation to any forest produce for which a license required under this Act or under any rules made hereunder;
- b) Require any person found within or without a County or provisional forest who has in his possession any forest produce suspected to have been taken from such forest, to give an account of the manner in which he became possessed thereof, and, where the account given is not satisfactory, arrest and take such person before a magistrate.
- c) Search any person suspected of having committed an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and arrest the person, seize conveyance, tent, hut or building under the control of that person or his agent or servant, Provided that no person shall be arrested under this section unless the enforcement officer has reasonable cause to believe that that person may fail to appear to answer summons, or unless that Person refuses to give his or her name and address

or gives a name and address which there is reasonable cause to believe is false;

- d) Search any vehicle or any vessel and seize and detain any forest produce in respect of which there is reason to believe that an offence has been committed, together with any tools, equipments, vessels, vehicles or livestock used in the commission of the offence.
- e) Confiscate any equipment or receptacle placed without authority in a County forest.

15. Any person who, without lawful authority—;

Offences and
Penalty

- a) Marks any forest produce, or affixes upon any forest produce, a mark ordinarily used by a forest officer to indicate that the forest produce is the property of the County Government, or that it may or has been lawfully cut or removed;
- b) Alters, obliterates, removes or defaces any stamp, mark, sign, license, permit or other document lawfully issued under authority of this Act, or removes or destroys any part or a tree bearing the stamp or other mark used by any forest officer;
- c) Covers any tree stump in any County forest or any County alienated land with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;
- d) Wears any uniform or part of a uniform, or any badge or other mark issued under the regulations of the disciplined forces, or who in any other way holds himself out to an employee of a disciplined force; or
- e) Counterfeits or issues without lawful authority any license or document purporting it to be a license or document issued under this Act or any rules made hereunder,

Commits an offence and shall be liable on conviction to a fine of not less than two hundred thousand Kenya shillings, or to imprisonment for a term of not less than three years, or to both such fine and imprisonment.

16. 1) Any person who—

- a) Commits a breach of, or fails to comply with the provisions of this Act;
- b) Commits a breach of, or fails to comply with any of, the terms or conditions of a license issued to him under this Act;
- c) Fails to comply with a lawful requirement or demand made or given by a law enforcement officer;

d) Obstructs a person in the execution of his powers or duties under this Act;

e) Makes or is found in possession of charcoal in a county and/or private farmland without a license or permit of the owner as the case may be;

Commits an offence and is liable on conviction to a fine of not less than fifty thousand Kenya shillings or to imprisonment for a term of not less than one year, or to both such fine and imprisonment.

2) Any person who, in any forest area—;

a) Introduces any exotic genetic material or invasive plants without authority from the County Government;

b) Dumps any solid, liquid, toxic or other wastes;

c) Grows any plant from which narcotic drugs can be extracted; or

d) Extracts, removes or causes to be removed, any tree, shrub or part thereof for export,

e) Destroys or cuts down an endangered species of tree, shrub or other plant thereof;

Commits an offence and is liable on conviction to a fine of not less than three million or to imprisonment for a term of not less than ten years, or to both such fine and imprisonment.

17.1) The County Government may, through the Inspector General of police, make available to the County enforcement Officers such firearms as may be necessary for the department to carry out its functions under this Act.

Use Of Firearms

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2) A member of the County Enforcement Department, after acquiring the requisite training, and when authorized, may use firearms for the following purposes—

- a) In the course of law enforcement against—
 - i) Any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody.
 - ii) Any person who, by force, attempts to prevent the lawful arrest of himself or any other person
 - iii) Any person who, by force, removes or attempts to remove any other person from lawful custody.

Notwithstanding the foregoing, an officer of the County Enforcement Department shall not resort to the use of firearms under paragraph (a)(i), (ii) and (iii) unless—

- a) The officer has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he/she is about to use a firearm against him/her, and the warning is unheeded; or
- b) The officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm.

PART V—MISCELLANEOUS

18. 1) Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the court may in addition to any other ruling order—

Compensation
For Loss Or
Damages

- a) that such person pay to the forest owner, by way of compensation, a sum equal to the determined value of the forest produce so damaged, injured or removed and where the value cannot be estimated, ten thousand shillings for each offence;
- b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;

- c) the forest produce be removed, and any vessels, vehicles, tools or implements used in the commission of the offence, be forfeited to the County:

Provided that the value of the forest produce shall be either the commercial value of the forest produce or the cost of repairing the damage caused to biodiversity as a result of the activities complained of.

2) Where a person is convicted of an offence of occupying or cultivating land in a forest area without a license, the court may, in addition to any other penalty imposed under this Act, order such person to remove any buildings, enclosures, huts or crops within a period to be specified in the order, and if the person so convicted fails to comply with an order within the period so specified, the buildings, enclosures, huts or crops shall be deemed to be the property of the State, local authority or forest owner, as the case may be, and may be disposed of as the State, Local Authority or Forest owner may think fit:

Provided, however, that expenses incurred as a result of keeping in custody anything seized or detained under this section shall be borne by the person whose property is seized or detained.

19. 1) The County Executive Committee Member for Environment, Energy and Minerals investment Development may, or on the recommendation of the County cabinet make rules for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

Rules

2) Without prejudice to the generality of the foregoing, rules may be made under this section for—

- a) Controlling the harvesting, collection, sale of and disposal of charcoal;
- b) Prescribing and reviewing the amount of fees payable under this Act generally or in particular cases;
- c) The circumstances in which licenses, permits, leases, and other agreement may be applied for, and the manner in which a person to whom a license is granted may exercise a right or privilege conferred upon him/her by the license;

- d) Regulating the felling, working and removal of trees for charcoal production from areas where trees may be felled or removed;
- e) Providing for compulsory use of property marks by the County Government and owners of private forests for the purpose of identification;
- f) Promotion of the use of appropriate modern charcoal production technology in charcoal production and regulating the establishment of charcoal based industries;
- g) Providing for measures that enhance community participation in the conservation and management of forest at the local level; and
- h) Regulating the production, transportation and marketing of charcoal.

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