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TAITA TAVETA COUNTY BILLS, 2018

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**THE TAITA TAVETA COUNTY ENVIRONMENT AND FOREST
BILL, 2017**

A Bill for

AN ACT of the County Assembly of Taita Taveta to provide for a legal and institutional framework for the management, protection and conservation of the Environment and Forest; for social economic development of the county

ENACTED by the County Assembly of Taita Taveta, as follows—

PART I—PRELIMINARY

Short title

1. This Act maybe cited as the Taita Taveta County Environment and Forest Act, 2018.

Interpretation

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

“activity” includes any operations, development, works or conduct;

“afforestation” means the establishment of a tree crop on an area where such trees are absent;

“arboretum” means a botanical garden of trees;

“association” means a community forest association registered in accordance with the provisions of this Act;

“biodiversity” means the variability among living organisms from all sources, including the ecological complexes of which they are a part and the diversity within and among species, and ecosystems;

“catchment area” means any land area drained by a river, stream, or fixed body of water and its tributaries having a common source of surface run-off;

“chainsaw” means a motorized equipment used for cutting wood;

“concession” means the right of use granted to an individual or organization in respect of a specified forest area;

“consumptive use” in relation to a forest, means the removal of forest produce, and “non-consumptive use” shall be construed accordingly;

“county” means the County of Taita Taveta;

“county executive committee” means the County executive committee member of Taita Taveta in charge of water, environment and natural resources;

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

“Environment” shall have the meaning assigned to it under the Environment Impact Management and Co-ordination Act;

“environmental impact assessment” shall have the meaning assigned to it under the Environmental Management and Co-ordination Act, (No. 8 of 1999);

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

“forest area” means any land declared to be a forest land under this Act;

“forest community” means a group of persons who—

- (a) have a traditional association with a forest for purposes of livelihood, culture or religion;
- (b) are registered as an association or other organization engaged in forest conservation;

“forest produce” includes bark, animal droppings, beeswax, canes, charcoal, creepers, earth, fibre, 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 Minister to be forest produce for the purpose of this Act;

“forestry” refers to the science of establishing, tending, utilizing and protecting forest and tree resources, and includes the processing and use of forest and tree products;

“Governor” means the elected governor of Taita Taveta County;

“independent environmental impact assessment” means an Environmental Impact Assessment not carried out by interested parties;

“indigenous forest” means a forest which has come about by natural regeneration of trees primarily native to Kenya, and includes mangrove and bamboo forests;

“Kenya Forestry College” means the college of that name operating under the Forest Department;

“Kenya Forestry Society” means the registered professional association of forest officers;

“licence” means a permit or other written authorisation issued under any of the provisions of this Act;

“livestock” means domesticated animals such as cattle, goats, sheep, asses, horses, camels and pigs, and includes the young thereof;

“county government forest” means —

- (a) any forest situated on trust land which has been set aside as a forest by a local authority pursuant to the provisions of the Trust Land Act (Cap. 289);
- (b) any arboretum, recreational park or mini-forest created under this Act;
- (c) any forest established as a county government forest in accordance with the provisions of this Act;

“management agreement” means an agreement between the County Executive Committee Member or any person or organization for the purpose of managing a state or county government forest;

“management plan” refers to a systematic programme showing all activities to be undertaken in a forest or part thereof during a period of at least five years, and includes conservation, utilization, silvicultural operations and infrastructural developments;

“medical officer” means a person holding the office of Medical Officer of Health of the County and includes his deputy and chief Public Health Officer;

“mini-forest” refers to a group of trees occupying less than ten hectares of land;

“nature reserve” means an area of land declared to be a nature reserve under this Act;

“non-consumptive use” in relation to a forest, means non-extractive use of forest;

“person” means a natural person or a corporate person;

“permit” means periodic authority by county to carry out an activity;

“Polythene carry bag” means any plastic bag used for packing, storing, carrying or dispensing any article or commodity;

“public place” means any place or premises of common access to members of the public;

“public street” means any street maintainable by the county;

“plantation forest” means a forest that has been established through afforestation or reforestation for commercial purposes;

“private forest” refers to any forest owned privately by an individual, institution or body corporate;

“property mark” means a mark placed on a log, timber or other forest produce with a prescribed instrument to denote ownership by the government, county government or any other owner;

“protected tree” means any tree or tree species which have been declared under section 34 to be protected;

“responsible authority” in relation to a forest area means the county government concerned;

“recommended thickness” means a thickness of not less than 30 microns;

“sacred grove” means a grove with religious or cultural significance to a forest community;

“sawmill” means a set of machinery used to process and convert wood into saw timber;

“Street” includes any land reserved for a street and any open space to which public can access.

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

“sustainable use”, in relation to a forest, means the use of a forest and any of its natural resources in a 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;

“timber” means —

- (a) any tree which has been felled or which has fallen; or
- (b) the part of any tree which has been cut off or fallen, and all wood whether sawn, split, hewn, or otherwise fashioned;

“tree” means any timber producing plant, or shrubs, bush of any kind, and includes a seedling, sapling or reshoot of any age, or any part thereof;

“vendor” means any person who sells articles/commodities packed or stored in a polythene carry bags.

“wildlife” means all forms of fauna and flora other than domesticated plants and animals;

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

Object and Purpose

3. (1) This Act shall be applied for the management, protection and conservation of the Environment and Forests.

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

- (a) give effect to the Constitution and national laws as regards the provisions of management, protection and conservation of the Environment and Forests.
- (b) establish a directorate that will be tasked with the implementation of policies, plans, programs, activities etc that seek to manage, protect and conserve the Environment and Forest.
- (c) secure and sustain progressive realization of the human right to a clean and sustainable environment.
- (d) engagement of the public and ensure public participation in the management, conservation and protection of the Environment and Forest.
- (e) ensure that there is increase forest cover within the county.
- (f) scale-up and maintain plans, strategies, policies etc aimed at management, protection and conservation of the Environment and Forest within the County.
- (g) provide incentives for communities contribution in management, protection and conservation of Environment and Forest.

(3) The rights and duties conferred by this Act are in addition to those conferred by the other relevant National Laws.

Guiding principles and values

4. Any person administering or applying this Act shall be guided by the principles and values set out in Article 10, 43(1)(d) and 232 of the Constitution.

PART II—POLICY AND ADMINISTRATION

5. (1) Subject to the provisions of this Act the County Executive Committee member shall exercise control and provide guidance over management, protection and conservation of the Environment and Forest and the implementation of this Act.

(2) Without prejudice to the generalities of the foregoing the County Executive Committee member shall have the responsibilities to—

- (a) formulate and periodically review county Environment and Forest policies and plans
- (b) develop strategies for implementation of this Act and related National and County policies and plans including a community based management, protection and conservation plan.
- (c) co-ordinating with the National government on enhancement of management, protection and conservation programs.
- (d) co-ordinating with other county governments on management, protection and conservation programs
- (e) developing a forest resource and information system
- (f) secure and conserve endangered species, trees and plants that are rear and indigenous.
- (g) oversee environment and forest management, protection and conservation programs through an effective Monitoring and Evaluation system.
- (h) align all environment and forest management, protection and conservation sector with social economic development goals of the county.
- (i) make regulations as provided for under or as is necessary for the better implementation of this Act.
- (j) prepare a report to be submitted to the county assembly annually and from time to time as maybe necessary on the state of the environment and forests in the county.

(3) The County Executive Committee member in performance of his duties under the Act—

- (a) may consult with other county governments, public agencies, research institutions, private organization and other government or non governmental entities whose functions relate to those of environment and forest.
- (b) shall secure public participation, including setting up through regulations of specific mechanism for regular engagement of stakeholders on policy matters.

(4) In the discharge of functions under this Act, the County Executive Committee Member shall be assisted by officers and directors within his portfolio.

(5) The County Executive Committee Member shall in accordance with Article 10 of the Constitution and through public participation formulate a county environment and forest development strategy.

(6) The county environment and forest strategy shall be published in the gazette and be displayed in any other public place after approval by the county assembly.

(7) The county environment and forest strategy shall prescribe measures and mechanisms to—

- (a) design a program for afforestation and reclamation for the improvement of forest cover and environment.
- (b) identify outputs overall budget estimates and time frame to realize expected results.
- (c) accelerate the development of clean and sustainable environment.
- (d) identify challenges and provide solutions to matters affecting the counties environment and forest resources.
- (e) develop home grown solutions to the management, protection and conservation of indigenous and endangered species.
- (f) guide roles and actions of stakeholders in the management, protection and conservation of environment and forest resources
- (g) facilitate the participation of all categories of stakeholders in decision making on matters affecting the environment and forest resources.

6. County Executive Committee Member shall after every five (5) years period or sooner review and update the county environment and forest resources strategy and by notice publish it in the gazette and display it on all public places.

7. The approved environment and forest resources strategy shall guide the county government, county executive committee member and all relevant stakeholders.

PART III—MANAGEMENT OF ENVIRONMENT & FOREST RESOURCES

Creation of a county forest

8. Upon the recommendation of the community for the area within which a forest is situated the county government and forest associations the County Executive Committee Member shall, declare any land under

the jurisdiction of a county government to be county government forest where —

- (a) land is an important catchment area, a source of water, springs, or is a fragile environment.
- (b) the land is rich in bio diversity or contains rare, threatened or endangered species.
- (c) the forest is of cultural or scientific significance.
- (d) the forest supports an important industry and is a major source of livelihood for the community.

Arboreta, recreational parks, mini-forests

9. Every County Government shall establish and maintain arboreta, mini-forests or recreational parks for the non-consumptive use of persons residing within its area of jurisdiction —

- (a) for the purposes of this section, the county government shall cause housing estate developers within its jurisdiction to make provision for the establishment of mini-forests at the rate of at least five percent of the total land area of any housing estate intended to be developed.
- (b) every county government shall establish and maintain a recreational park in every market center within its area of jurisdiction.
- (c) the County Executive Committee Member shall facilitate and initiate the provision of technical assistance in the establishment and maintenance of mini-forests, recreational parks and arboreta by the county government.
- (d) no arboretum, mini forest or recreational park shall be converted to any other use unless the county government consults the community residents of the area in the jurisdiction within which such arboretum, mini forest or recreational park is situated.
- (e) for purposes of this section, the County Executive Committee Member may in consultation with the community and other stakeholders prescribe conditions as to the species of trees to be planted in a mini-forest, arboretum or recreational park.

Customary rights

10. Nothing in this Act shall be deemed to prevent any member of a forest community from using, subject to such conditions as may be prescribed, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.

Declaration of a nature reserve

11. Upon the recommendation of the community and other stakeholders, the Governor may, in consultation with the County Executive Committee Member responsible where appropriate, by notice in the *Gazette* declare any forest area, or woodland or any part thereof, which has a particular environmental, cultural, scientific, or other special significance, to be a nature reserve for the purpose of preserving its biodiversity and natural amenities thereof.

- (a) where a nature reserve declared as such under this section occurs within a private forest, the Minister shall make such arrangements for compensation to the owner of such forest as may be arrived at by an independent valuer.
- (b) no cutting, grazing, removal of forest produce, hunting or fishing, shall be allowed in a nature reserve except with the permission of the County Executive Committee Member granted in consultation with the community and other conservation agencies, which permission shall only be given with the object of facilitating research.

Special use of nature reserve

12. (1) Any forest community, or person who is desirous of utilising or conserving any grove or forest which is part of a nature reserve for cultural, religious, educational, scientific or other reasons shall submit an application, in the prescribed form, to the County Executive Committee Member for the area in which the nature reserve occurs.

(2) Upon receipt of the application referred to in this section, the County Executive Committee Member shall make inquiries regarding the application, including the authenticity of the application and the suitability of the site *vis-à-vis* the activities for which the application is made, and, based on such inquiry, the County Executive Committee Member may within three months of receipt of the application —

- (a) grant the application as requested
- (b) grant the application on specified terms and conditions; or
- (c) refuse to grant the application, giving reasons for such refusal.

(3) Where an application has been submitted under subsection (1), a person aggrieved by the decision of the County Executive Committee Member may appeal to the National Environment Tribunal established under the National Environmental Management and Co-ordination Act (No. 8 of 1999).

(4) Sacred groves found in any State forest, nature reserve, county government forest or private forest shall not be interfered with and any person who, without lawful authority, fells, cuts, damages or removes any such grove or tree or regeneration thereof, or biodiversity therein, or abets in the commission of any such act commits an offence. **Governors' protection of tress**

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

(2) Any person who fells, cuts, damages or removes, trades in or exports or attempts to export any protected tree, species or family of trees or regeneration thereof or abets in the commission of any such act commits an offence.

(3) The provisions of section (19) shall be reversed when the Governor is, on the advice of the County Executive Committee Member, satisfied that the protection is no longer necessary.

Management Plans for the Environment and Forest

14. The environment and forests within the county shall be managed in accordance with a management plan that complies with the requirements prescribed by rules made under this Act—

- (a) the County Executive Committee Member shall be responsible for the preparation of a management plan with respect the environment and every forest within the county, in consultation with the local communities.
- (b) the county government may discharge its responsibilities under this section by preparing any requisite plan and adopting it or by adopting a plan prepared by the community or any another person or body.
- (c) the County Executive Committee Member may, with the approval of the County Assembly, make rules to give effect to the provisions of management plans.

Management agreements

15. (1) Each County Executive Committee Member shall, with the assistance of the director of environment and natural resources, be responsible for the protection and management of all forests and woodlands under its jurisdiction, and shall ensure that such forests are

managed on a sustainable basis in accordance with an approved management plan.

- (a) the provisions contained in this Act regarding the management of indigenous forests shall apply to the management of indigenous forests situated within the jurisdiction of the County.
- (b) the authorized officer responsible for the area shall, in consultation with the ward administrator, forest association and local community, make inspection visits at least twice a year, and shall make a report thereon to the County Executive Committee Member as to whether such forests are managed in accordance with the provisions of this Act.
- (c) the County Executive Committee Member shall report to the County Assembly on the authorized officer's report received under subsection (b), and the County Assembly may, if it is satisfied that it is in the public interest for a county forest to be managed by the county, make appropriate recommendations to the county executive committee member.

(2) A county government may, upon application by a company, government agency, a forest community, a professional association, an educational institution, or non-governmental organisation, a co-operative society, or an individual, and after approval by the County Executive Committee Member has been obtained, enter into an appropriate management agreement for all or part of any forest within its jurisdiction.

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

- (a) the period for which the forest shall be managed;
- (b) the terms and conditions under which the applicant shall manage the forest;
- (c) any royalties and charges payable in respect thereof to the county government;
- (d) the mechanism for settlement of disputes arising in respect of the agreement; and
- (e) the circumstances under which the agreement may be terminated.

(4) Where the forest referred in subsection (1) lies within the jurisdiction of more than one county government, an application shall be made to each of such county governments, and such county governments may jointly agree to enter into a management.

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

(6) No management agreement shall convert a local authority forest into a settlement area.

Management of indigenous forests

16. (1) All indigenous forests and woodlands shall be managed on a sustainable basis for purposes of—

- (a) conservation of water, soil and biodiversity;
- (b) riverline and shoreline protection;
- (c) cultural use and heritage;
- (d) recreation and tourism;
- (e) sustainable production of wood and non-wood products;
- (f) carbon sequestration and other environmental services;
- (g) education and research purposes;
- (h) habitat for wildlife in terrestrial forests and fisheries in mangrove forests.

(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.

Consent for mining and quarrying

17. The County Executive Committee Member shall only give its consent for mining and quarrying operations in a forest area where—

- (a) the area does not contain rare, threatened or endangered species;
- (b) the forest does not have any cultural importance or contain sacred trees or groves;
- (c) an independent Environmental Impact Assessment has been carried out.
- (d) the miner has undertaken through execution of a bond the value of which will be determined by the Board, to rehabilitate the site upon completion of his operation to a level prescribed by the County Executive Committee Member;
- (e) the forest is not an important catchment area or source of springs;
- (f) the carrying on of the mining and quarrying operations shall not contravene any rules made under this Act.

Offences in relation to mining, quarrying or re-vegetation

18. Any person who contravenes the provisions of this Act in relation to activities in forest areas relating to mining, quarrying or re-vegetation commits an offence and shall be liable on conviction to imprisonment for a term of not less than six months, or to a fine of not less than five hundred thousand shillings, or to both such fine and imprisonment.

Polythene carry bags

19. (1) No person shall—

- (a) sell, import, manufacture, produce or store non bio degradable polythene carry bags of less than the recommended thickness within the jurisdiction of the county;
- (b) being a vendor use a polythene carry bag for storing, carrying, dispensing or packaging of any articles or commodity;
- (c) litter any public place with polythene carry bags.

(2) Any person who contravenes section (33) shall be guilty of an offense and liable on conviction to a fine not exceeding KSh. 200,000 or imprisonment of a term not exceeding six months.

PART IV—COMMUNITY PARTICIPATION

Application for community participation

20. (a) a member of a community may, together with other members or persons resident in the same area, register an environment and community forest association under the law.
- (b) an association registered under subsection (a) may apply to the County Executive Committee Member for permission to participate in the conservation and management the environment or county government forest in accordance with the provisions of this Act:
- (c) provided that no application under this subsection shall be made where there is an existing prior agreement or licence.

21. (1) The application referred to in section (35) shall be in the prescribed form and shall contain—

- (a) a list of the members of the association and its address;
- (b) the constitution of the association
- (c) the association's financial regulations

- (d) the area of the environment and/or forest for which the association proposes to undertake conservation and management
- (e) the association's proposals concerning- use of the environment and forest, methods of environmental and forest conservation, any other relevant information as maybe required.

(2) Where there is no management plan in respect of the area, or where the association proposes that there be a new management plan, the application shall be accompanied by a draft management plan.

(3) The County Executive Committee Member shall cause to be kept an up to date record of all associations participating in the conservation or management of the environment and forests.

Functions of the community environment and forest associations

22. (1) An association approved by the county executive committee member under this Act to participate in the management or conservation of the environment and forest or part of such forest shall —

- (a) protect, conserve and manage such environment and/or forest or part thereof pursuant to an approved management agreement entered into under this Act and the provisions of the management plan for the environment and/or forest;
- (b) formulate and implement environmental and/or forest programmes consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria;
- (c) protect sacred groves and protected trees;
- (d) assist the Service in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular in relation to act and omissions that destroy the environment and forest;
- (e) with the approval of the County Executive Committee Member enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of the environment and/or forests;
- (f) keep the county executive committee member informed of any developments, changes and occurrences within the environment and/or forest which are critical for the conservation of biodiversity;
- (g) help in fire fighting and soil erosion and

- (h) do any other act that is necessary for the efficient conservation and management of the environment and forest.

(2) The management agreement between the county executive committee member and the association shall confer on the association all or any of the following forest user rights—

- (a) collection of medical herbs;
- (b) harvesting of honey,
- (c) harvesting of timber and fuel wood,
- (d) grass harvesting and grazing,
- (e) collection of forest produce for community based industries
- (f) ecotourism and recreational activities
- (g) scientific and educational activities

Termination or variation of a management agreement

23. (1) The county executive committee member may terminate a management agreement with an association or withdraw a particular user right where—

- (a) an association breaches the terms and conditions thereof;
- (b) he considers such action as necessary for purposes of protecting and conserving biodiversity; or
- (c) the association itself so requests

(2) Where the county executive committee member intends to terminate a management agreement or withdraw a particular user right on either of the grounds stipulated in subsection (a) or (b) of this section, he/she shall give the affected association thirty days' notice to show cause why the management agreement should not be so terminated or the user right so withdrawn.

(2) Where an association is aggrieved by the decision of the county executive committee member under this section, it may, within thirty days after being notified of the decision, appeal to the National Environment Tribunal established under the National Environment Management and Coordination Act (No. 8 of 1999) against the decision.

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

PART V—ENFORCEMENT

Powers of authorized officers

24. A authorized officer may—

- (a) demand from any person the production of an authority or licence for any act done or committed by that person to the environment or forest, or in relation to any forest produce for which a licence is required under this Act or under any rules made thereunder;
- (b) require any person found within or without a 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 and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or his agent or servant;
- (d) search any vehicle or 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) seize and detain any livestock found in a forest without any person in charge of them;
- (f) confiscate any equipment or receptacle placed without authority in a forest.

Prohibited activities

25. (1) Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall—

- (a) fell, cut, take, burn, injure or remove any forest produce;
- (b) be or remain therein between the hours of 7 p.m. and 6 a.m. unless he is using a recognised road or footpath, or is in occupation of a building authorised by the county executive committee member, or is taking part in cultural, scientific or recreational activities;

- (c) erect any building or livestock enclosure, except where the same is allowed for a prescribed fee;
- (d) smoke, where smoking is by notice prohibited, or kindle, carry or throw down any fire, match or other lighted material;
- (e) de-pasture or allow any livestock to be therein;
- (f) clear, cultivate or break up land for cultivation or for any other purpose;
- (g) enter any part thereof which may be closed to any person;
- (h) collect any honey or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax, or enter therein for the purpose of collecting honey and beeswax, or be therein with any equipment designed for the purpose of collecting honey or beeswax;
- (i) construct any road or path;
- (j) set fire to, or assist any person to set fire to, any grass or undergrowth or any forest produce;
- (k) possess, bring or introduce any chain saw or logging tools or equipment;
- (l) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, boundary mark, fence notice or notice board.
- (m) makes or is found in possession of charcoal in a forest without a licence or permit of the owner as the case may be,

(2) Any person who contravenes the provisions of section (47) of this section commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

(3) Any person who counterfeits or issues without lawful authority any licence or other document purporting it to be a licence or document issued under this Act or any rules made thereunder commits an offence,

(4) Any person who contravenes the provisions of section (49) of this section is liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than one year, or to both such fine and imprisonment.

(5) Any person who—

- (a) introduces any exotic genetic material or invasive plants without authority from the county executive committee member;

- (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,

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

Compensation for damages

26. (1) Where any condition attached to a permit requires any person to execute any works within specified time or where the county government has incurred expenses to reclaim and rehabilitate the environment or forest. Expenses incurred shall be recoverable from the person required to execute such work as a civil debt.

(2) Where a person is convicted of an offence of occupying or cultivating land in a forest area without a licence, 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 county government and may be disposed of as the county may think fit.

Power to impound

27. Any authorized officer shall have the power, right and authority to seize any tools or goods of any person found carrying on or entering into or engaged in any destruction of environment and forest without valid permit.

Prosecutorial powers

28. An authorized officer may with the leave of the Director of Public Prosecution given under the Criminal Procedure Code, conduct any prosecution for any offence committed under this Act.

General penalty

29. Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable to a fine of not less than ten thousand shillings or to imprisonment for a term not exceeding three months.

Protection of the environment and forests

30. Every person has a duty to protect and conserve the environment and forest and may petition the Environment and Land Court for—

- (a) a declaration that the provisions of this Act are being, or have been, or are about to be contravened;
- (b) an order of compensation;
- (c) an order for conservatory orders;
- (d) judicial review orders of certiorari, prohibition and mandamus.
- (e) an injunction restraining any specified person from carrying out such a contravention;
- (f) the writ of mandamus against any officer or person who has failed to perform any duty imposed by or under this Act; and
- (g) any remedy at law or equity for preventing or enforcing the provisions of this Act.

PART VI—MISCELLANEOUS

Regulations

31. (1) The County Executive Committee Member on the recommendation of the public and other stakeholders make rules for or with respect to any matter which is necessary for giving effect to this Act.

(2) The County Executive Committee Member to maintain all necessary registers.

(3) All registers shall be open for inspection by the public during official working hours.

(4) All international obligations, treaties, convention, agreements shall be applied in the implementation of this Act.

(5) Before enactment of any regulations, the Member of the Executive committee shall invite public views and take considerations of such views.

(6) The county assembly must approve such regulations before they take effect.

Annual Report

32. The County Executive Committee Member shall cause to be published an annual report on the status of the environment and forest to be tabled before the county assembly and circulate the same to the public.

MEMORANDUM OF OBJECTS AND REASONS

This bill seeks to put into effect the provisions of fourth schedule part 2 clause 10 of the constitution of Kenya to put in place the legal framework for the management protection and conservation of the environment and forests. It seeks to put procedures necessary for the establishment of directorate that will be mandated to implement policies, plans, programs, for the conservation of the environment and forests. With the enactment of this bill into an act there will be security and sustainability of the progressive realization of human rights to a clean sustainable environment and ensure the increase of forest cover within the county, scale up and maintain plans, strategies, policies and provision of incentives for communities' contributions aimed at managing, protecting and conserving the environment and forests within the county.

Dated the 27th March, 2018.

ABRAHAM JUMA,
*Chairperson Environment, Natural Resources and Mining
Committee.*