



KENYA COMMERCIAL FORESTRY INVESTMENT CONFERENCE

overview of the policy and legal frameworks governing Commercial Forestry in Kenya

Dr. Joram Kagombe, Alfred Gichu and Joyce Ojino

25th November 2021, KEFRI MUGUGA HQT.

Focus of commercial Forests

- ▶ Onfarm tree planting on private and community land - Land tenure
- ▶ Planting in ASALS
- ▶ Investment

Constitution

- ▶ CHAPTER FOUR -THE BILL OF RIGHTS -PART 5 - KENYA NATIONAL HUMAN RIGHTS AND EQUALITY COMMISSION
- ▶ CHAPTER FIVE - LAND AND ENVIRONMENT
 - ▶ Land- claaases of land, Public, private and community. National Land Commission. Legislation on land.
 - ▶ Land and Environment - section 69 obligation of environmemnt - sustainability. 10% tree cover, equity and benenift sharing, EIA, public participation

CHAPTER SIX - LEADERSHIP AND INTEGRITY

CHAPTER ELEVEN - DEVOLVED GOVERNMENT

CHAPTER TWELVE - PUBLIC FINANCE

The Constitution

- ▶ provides a foundation for institutional and governance support for the implementation of forest concessions. Under Section 60-68 it clearly outlines issues with respect to classification, ownership, and administration of land and its resources.
- ▶ Under Section 71(1) (a), it provides for the ratification of concessions. Parliament can ratify transactions that ‘involve the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource of Kenya’ (Constitution of Kenya, 2010).
- ▶ 66. Regulation of land use and property (1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning. (2)
- ▶ Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

Laws dealing with forestry

- ▶ The Forest Conservation and Management Act, 2016•
- ▶ Environment Coordination and Management Act (Amendment) Act, 2015
- ▶ • County Government Act, 2012 (revised 2013)
- ▶ • Intergovernmental Relations, 2012
- ▶ • The Climate Change Act, 2016
- ▶ • The Wildlife Conservation and Management Act, 2013
- ▶ • The Water Act, 2016
- ▶ •Climate change Act
- ▶ PFM Act
- ▶ Public procurement and Disposal Act

- 
- ▶ Agriculture, Fisheries and Food Authority Act, 2013
 - ▶ • The Energy Act, 2019
 - ▶ • The Mining Act, 2016
 - ▶ • The Land Act, 2016
 - ▶ • The Community Land Act, 2016
 - ▶ • The National Land Commission Act, 2016
 - ▶ • Public Private Partnerships Act
 - ▶ • Physical and Land Use Planning Act, 2019
 - ▶ • National Museums and Heritage Act, 2006
 - ▶ • National Land Use Policy, 2017

 - ▶ Laws not directly under Forest affects the sector -
Need to be alert and contribute to review/amedments

POLICIES

- ▶ National Forest Policy
- ▶ Vision 2030
- ▶ Environmental Policy
- ▶ Water Policy
- ▶ The 10% tree strategy
- ▶ Climate change Action Plan
- ▶ Land Policy

National Forest Policy

- ▶ The commercialization of forestry activities through the involvement of the private sector to invest in tree growing, wood processing and value addition.
- ▶ The introduction of a chain-of-custody system for timber and wood products, and legal origin and compliance certificates for exporters of timber and wood products.

Forest plantation

- ▶ (a) promote the establishment and management of commercial forests on public, private and community land and increase the productivity of plantation forests through scientific management.
- ▶ (b) promote private sector participation in establishment and management of plantations on public land.
- ▶ (c) facilitate the management of plantation forests on a commercial basis through appropriate forest management arrangements and incentives.
- ▶ (d) promote plantation species and genetic base diversification to improve ecological resilience and enhance product diversity.
- ▶ (f) identify and invest in commercially viable exotic species with proven potential to supply quality industrial wood

Dryland forestry

- ▶ (a) promote sustainable management of dryland forestry in arid and semi-arid areas
- ▶ (b) support rehabilitation of degraded dryland forests and encourage tree planting in arid and semiarid areas.
- ▶ (c) promote the development of management plans for dryland forests with the participation of
- ▶ local communities and ensure implementation of the plans.
- ▶ (d) promote commercial tree growing of suitable tree species in dryland areas.
- ▶ (e) promote sustainable production of charcoal.
- ▶ (f) promote commercial production of non-timber forest products such as essential oils, silk, edible oils, fruits and honey in dryland forests.
- ▶ (g) create a conducive environment for the establishment of forest-based enterprises.

MANAGEMENT OF TREES OUTSIDE FORESTS

- ▶ (a) support agroforestry and farm forestry through a National Strategy and Action Plan
- ▶ (b) create awareness of and encourage private and community land owners to invest in agroforestry and farm forestry as viable land uses.
- ▶ (c) provide a coordination mechanism for development of agroforestry and farm forestry to avoid duplication and ensure sustainable utilization of available resources..
- ▶ (d) align this Policy with agricultural policies to promote agroforestry and farm forestry for private and community owners

Wood products and industries.


- ▶ (a) promote the sustainable supply of timber and wood for subsistence and industrial needs from all forests.
- ▶ (b) promote investment in the wood industry to enhance efficiency in wood conversion and value-addition.
- ▶ (c) develop globally acceptable indicators and standards for certification for trade in wood and wood products to enhance access to export markets.
- ▶ (d) promote efficient production and utilization of wood fuel and adoption of alternative forms of renewable energy.

- ▶ (e) promote forest-based value additions and integrated utilization of forest products
- ▶ (f) support efficient forest-based enterprises for production and marketing of forest products for the local and export markets.
- ▶ (g) develop and implement a national chain of custody system to track the movement of forest products for local and export markets.
- ▶ (g) promote small, medium and large-scale investments in diverse forest-based industries and enterprises.
- ▶ (h) encourage timber industry actors and commercial tree growers to enter into long term partnership arrangements for supply and marketing of forest products.

Forest Management and Coordination Act (FMCA), 2016

- ▶ 44. (1) Where the Service is satisfied that utilization of a public forest can be done through the granting of a concession, the Service shall grant the concession subject to the provisions of the Constitution, this Act and any other relevant written law.
- ▶ Section 71 (2) (m) also provides for the creation of regulations that provide the conditions for the application, granting, variation and cancellation of licences, permits, leases,
- ▶ The provisions on forest concession under the FMCA (2016) meet most of the requirements proposed under FAO forest concession guidelines. However, some components such as **harvesting value of an area, forest revenue collection, management of rescinded concessions, and evaluation of the concession process** are not indicated.

- ▶ 45. (1) The Service may advertise, receive applications from any person, institution or organization and through a competitive process, approve and enter into an appropriate **management agreement** for all or part of a public forest.
- ▶ 53. Subject to Article 66 of the Constitution, **investors in forests shall share the benefits of their investment with local communities** by applying various options including but not limited to infrastructure, education, employment and social amenities and in accordance with rules made under this act or other relevant laws.
- ▶ 54. (1) The Cabinet Secretary for the National Treasury, may on the recommendation by the Cabinet Secretary, propose tax and other fiscal incentives to increase investments in forest land use and forest resource utilization in order to promote forest conservation and management, and to prevent or abate forest degradation

- 
- ▶ Though the Act has included procedures to ensure transparency such as public participation and inspection of registers by members of the public, there are no clear provisions to promote competitive bidding.
 - ▶ KFS oversees the whole process of bidding without provisions for independent observation. This could provide an opportunity for administrative collusion and corruption.

.Forest Management and forest products Chain of Custody (CoC) certification

- ▶ Forest management certification is an independent assessment of a forest management unit to verify that the forest complies with internationally recognised standards such as those of the FSC
- ▶ The demand for wood products from well managed forests and controlled sources is driven by the trend of mandatory requirements becoming more stringent, and growing consumer awareness of environmental issues.
- ▶ Interim FSC Forest standards for Kenya launched

Forest Product Chain of Custody (CoC)

- ▶ Forest product CoC involves tracking of the origin of wood products to guarantee its authenticity throughout the supply chain (SGS Kenya, 2021).
- ▶ FSC has provision for the certification of products that may carry a different composition from the FSC-certified forest material (100%). This includes controlled wood and/or reclaimed materials. Reclaimed material is included due to its role in the protection of forests (FSC International, 2021).
- ▶ The FMCA (2016) has provisions for the publication of a chain of custody system by KFS.
- ▶ Policy also calls for the development and implementation of a national chain of custody system to track the movement of forest products for local and export markets.

Lessons and Recommendations

- ▶ The potential gains of commercial forestry need to be visible through employment creation, and profits for farmers and forest owners. This will help create public support for commercial forestry activities especially in view of other competitive value streams such as agriculture.
- ▶ Lack of transparency in the allocation of forest tenure is a key limiting factor in the proper functioning of a forest concession. It also makes policy instruments ineffective. Therefore,

- ▶ There is need for an enabling policy framework throughout the entire forest value chain to support commercial forestry in Kenya. The forest policy should be simple and focus on key issues that need resolution while ensuring a good balance of the needs of various stakeholders.
- ▶ .Policies for commercial forestry should adopt a long-term perspective and be supported by reliable facts based on science and proven experience in areas such as status and trends in forest resources, and economics of forest operations and industry.
- ▶ Third-party observers of all types should be welcomed as contributors to good governance because of their independence and access to information.
- ▶ There are inherent gender inequalities across the forestry value chain that hinder access to land and capital for women. There is need for innovative incentive based schemes that can provide grants and low cost capital as well as initiatives and policies to provide access to public land for the enhanced participation of women in commercial forestry activities.

- ▶ .

- ▶ The Government needs to provide cost-effective technical support to commercial forestry activities. This could be achieved through forestry research, extension services, education and training, inventories of forests and tree resources, market information and analysis, and monitoring and evaluation systems.
- ▶ There is also need for increased institutional capacity of lead forestry agencies and the strengthening of linkages between science, policy and practice in the forestry sector. Governments should allocate significantly more resources to managing the forest sector as well as more investment in the regulatory system through reform and capacity building.
- ▶ Harmonisation of conflicting policies and laws and streamlining of mandates between lead agencies that may have functions related to or affected by commercial forestry activities should be done. This will enhance collaboration that will limit inter-agency and inter-sectoral conflicts and reduce barriers in commercial forestry activities.
- ▶ Governments should aim to achieve mixed concession systems that include both private concessions and community concessions.
- ▶ Enhance certification

Conclusion

- ▶ To promote willingness to invest in a long term venture such as commercial forestry, there is need for; secure land tenure, respect for private ownership, reliable economic guidelines and standards, transparent governance, effective measures for tackling corruption, and efficient conflict resolution mechanisms.

Thank YOU

- ▶ Contact
- ▶ jokagombe@kefri.org

The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

**Thank you
+
Clarifications,
suggestions and Q & A**