



FOREST LAW ENFORCEMENT AND GOVERNANCE IN KENYA

A paper prepared for the East African Community-led regional process in the framework of the Ministerial Declaration, Yaoundé, Cameroon, October 16, 2003 on the Africa Forest Law Enforcement and Governance (AFLEG)

A study jointly prepared by the Kenya Forest Service (KFS) of the Ministry of Environment and Natural Resources;

Study conducted by Winston Mathu under the supervision of the AAS/AFORNET and supported by the Government of Finland, World Bank and World Conservation Union (IUCN)

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FOREST LAW ENFORCEMENT AND GOVERNANCE IN KENYA- Background

On 16 October 2003, the representatives of the Governments from Africa, countries from other continents, and European Commission, meeting in Yaounde, Cameroon, made a Ministerial Declaration on Africa Forest Law Enforcement and Governance (AFLEG). Under the declaration, the countries reaffirmed their resolve and intention to, *inter alia*, work together to strengthen the institutional reforms already started in the forest sector by African countries, notably good governance programmes and strengthening of the technical capacity of the forest sector. The Ministerial declaration laid a road map for improved governance of forests in Africa, which now needs to be implemented nationally and regionally.

The signing of the East African Community Protocol¹ on Environment and Natural Resource Management by the three countries on 3rd April 2006 by the three E.A countries constitutes the first important step towards operationalizing the Yaounde Ministerial statement. The protocol states that the Partner States shall co-operate in all activities relating to development, conservation, sustainable management and utilization of all types of forests, trees, and trade in forest products throughout the Community.

As a follow-up to this, the East African Community, with support from the African Academy of Sciences (AAS) and the African Forest Research Network (AFORNET), are organizing a high-level consultative forum on FLEG in East Africa. This forum will be expected to come up with a series of practical action points and recommendations to be implemented in the coming years, culminating in a strategic framework for future consultations, collaboration and synergy among the partner states.

This report is one of the preliminary analytical studies on the status of FLEG in Kenya. It is basically a desk study, based on the many reports and review documents prepared in the last six years during which the draft forest policy and the Forests Act (2005) were under preparation. The study also benefited from discussions on specific issues with the Kenya Forest Service senior staff and selected stakeholders.

In this paper:

Forest governance refer to the process of formulation, articulation, administration and implementation of policies, legislation, regulations, guidelines and norms relating to ownership, access, control, rights and responsibilities and practices for sustainable management of forests at local or national levels. Key principles guiding good governance of forests should include: Equity and justice; Empowerment; Accountability; Transparency; Subsidiarity; Sustainability.

Forest law enforcement refers to the various measures undertaken to ensure compliance with formal rules and regulations that are put in place to promote sustainable management of forests. The measures include prevention, detection and suppression.

¹ See Annex 1-Article 11 of the EAC Protocol on Environment and Natural Resource Management



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List of acronyms

AG	Attorney General
ASALs	Arid and Semi Arid Lands
AU	African Union
CAP	Chapter
CCD	Convention to Combat Desertification
CBD	Convention on Biodiversity
CBO	Community Based Organizations
CITES	Convention on International Trade on Endangered Species
COMESA	Common Market for East and Southern Africa
CSO	Civil Society Organizations
DRSRS	Department for Resource Survey and Remote Sensing
EAC	East African Community
EALA	East African Legislative Assembly
ERS	Economic Recovery Strategy
ESDA	Energy for Sustainable Development Africa
EMCA	Environment Management and Coordination Act (1999)
ELCI	Environmental Liaison Center International
FA	Forestry Associations
FD	Forest Department
FLEG	Forest Law Enforcement and Governance
FG	Forest Guard
FIPU	Forest Inspection and Protection Unit
FR	Forest Reserve
FM & C	Forest Management and Conservation
GDP	Gross Domestic Product
IGAD	Inter-Governmental Authority on Development
IUCN	International Union of Conservation of Nature
ITTA	International Tropical Timber Association
KAFU	Kenya Association of Forest Users
KEFRI	Kenya Forest Research Institute
KFC	Kenya Forestry College
KFS	Kenya Forest Service
KWS	Kenya Wildlife Service
KFWG	Kenya Forest Working Group
KIFCON	Kenya Indigenous Forest Conservation Project
MEA	Multilateral Environmental Agreement
M&E	Monitoring and Evaluation
MENR	Ministry of Environment and Natural Resources
NARC	National Rainbow Coalition
NEMA	National Environment Management Authority
NEPAD	New Partnership for Africa Development
NGO	Non-Governmental Organizations
NMK	National Museum of Kenya
NP	National Park
NRM	Natural Resource Management
NTFP	Non- Timber Forest Products
NTZDC	Nyayo Tea zone Development Corporation
OP	Office of the President
PFM	Participatory Forest Management
UNFCCC	United Nations Framework Convention on Climate Change

EXECUTIVE SUMMARY

1. This is an analytical study of forest law enforcement and governance in Kenya, prepared as a contribution to an EAC Forest Law Enforcement and Governance initiative whose purpose is to promote regional cooperation and collaboration on the subject, and explore the way forward.

2. There is overwhelming consensus that within the last three decades, the level of illegal logging and other forest crimes were on the increase. Manifestations include:

- ❖ Illegal charcoal burning and transportation (estimated at 50%)
- ❖ Illegal harvesting of forest products, including logging and indiscriminate/uncontrolled selective cutting of rare tree species (estimated at 15%)
- ❖ Other crimes (e.g. Illegal harvesting of non-timber forest products (NTFP), illegal excision of forest land, illegal cultivation, poaching of game, setting forest fires)

There are scattered documented studies on these, but no authoritative assessments of the magnitude of the problem, nor on the impacts on the socio-economic, environmental and cultural development in the country. A monitoring system exists at local (District forest- monthly reports on offences) and national level (KFS annual reports); and information on FLEG related issues is available from many other sources (review reports of governmental task forces and research on specific FLEG issues by NGOs, research institutions and individual researchers). However, there is no regular analysis of this information, so that information on the magnitude, scope, trends over time and impacts of illegal activities in the forests is very limited.

3. The review identifies several underlying causes include :

- ❖ Inadequate and/or weak structural/institutional capacity for forest law enforcement and governance, associated with inadequate staff, low morale and poor equipment for forest guards, and inadequate training and knowledge on forest legislation on the part of prosecutors. This translates to poor enforcement of existing laws- which can be summed up as poor governance.
- ❖ Lack of participation of strategic stakeholders in the conservation and management of forests associated with restricted access to forest resources (for livelihoods) for communities adjacent to forests. Communities therefore felt no role or responsibility (ethical or institutional) in FLEG.
- ❖ Inadequate/outdated or weak forest policy and legal frameworks for forest law enforcement and governance: for example previous act did not permit PFM; there was little private sector involvement in forest management; no clear definition of roles and responsibilities of the various stakeholders in FLEG; overlapping responsibilities between agencies.
- ❖ Abuse of office, dereliction of duty and/or corruption- the political dimension associated with breakdown of law and order leading to excisions and uncontrolled exploitation of forests; and poor administration/application of existing forest policies and laws (e.g. in the allocation of forest land and logging licenses).

These contributed to misapplication and/or omissions in the application and enforcement of the forest laws and regulations while providing opportunities for neglect and abuse of the due process in forest law enforcement, leading to poor governance. Poverty and the high dependence on natural forests for livelihoods, often exacerbated by natural disasters particularly droughts, is also an important factors in pushing population to flaunt forest laws and regulations.

4. Since the coming into power of the NARC government in 2003, there is significant political will to address FLEG issues as demonstrated in the draft Constitution, the Economic Recovery Strategy and

Vision 2030. A draft forest policy (2006) is in place, and a new Forests Act (2005) came into effect in February 2007. Key provisions include: Establishment of semi-autonomous Kenya Forest Service; Broader mandate of the service to cover all forests; Increased role and responsibility for local communities and other stakeholders in management of forests; Promotion of commercial tree growing; Excision of gazetted forests require EIA and parliamentary approval; Management plans required for all major forest ecosystems; Creates a professional forestry society; Establishes a Forest Management and Conservation Fund.

5. Discussions with the KFS officials indicated high level of optimism and expectations from the new forest policy dispensation in improving FLEG. KFS is also aware of the many challenges that lie ahead, and in particular the implementation of the provisions of the act. The analysis under this review identified several issues and/or challenges:

Policy challenges:

- ❖ Development of subsidiary legislation as an imperative to the implementation of the new forest act.
- ❖ Harmonization of sectoral instruments and legislations with other key actors (Ministry of Water, KWS and others) in order to reduce conflicts/double gazettement..

Institutional issues:

- ❖ Limited Capacity for law enforcement and the need for training of forest guards, forest officers and other stakeholders on the provisions of the new act and associated legislations and guidelines:
- ❖ The sustainability of the Kenya Forest Service and the need to develop a strategy for “business enterprise” unit focusing on private/public partnerships.
- ❖ Link with research- forest health/tree improvement/forest products and the need to clarify issues relating to access and user rights of researchers to forest land for research.

Sustainable forest management challenges:

- ❖ Participatory Forest Management (PFM). The need for clear guidelines with definition of community forest associations’ responsibilities and contributions are central to its success. Need to build on experiences from within the region.
- ❖ The management of natural high forests and the challenge of availability of sufficient data and information to allow for the preparation of the requisite management plans in a timely manner.
- ❖ Forest plantations: need to update national inventories, particularly on forest areas, growth and yield as basis for determining allowable cut, clear modalities for executing the lease/contractual agreements; and piloting on alternative systems for plantation establishment.
- ❖ The dryland forests and the need to legalize and regulate the charcoal business as part of the strategy to raise royalties and promote efficiency in charcoal production.
- ❖ Farm and private forestry offering the greatest opportunity for getting Kenya closer to the international standard of 10% of forest cover: and therefore need for more incentives.

Informational challenges:

- ❖ Monitoring and tracking of illegal logging and other crimes and the need for a comprehensive one-time study to assess and analyze this information to provide a baseline and set up a system for regular monitoring and up-dating of this information.

Conceptual issues:

- ❖ “Sustainable forest management” and the need for criteria and indicators.
- ❖ Definition of “all types of forests”

Implementing international Agreements:

- ❖ Regional and International treaties, conventions and agreements with particular reference to the implementation of the AFLEG’s indicative actions under the Ministerial Declaration of Yaounde, Cameroon 2003

6. This review concluded that poverty and corruption have been the main drivers to illegal exploitation of forest resources; political will is in place (draft Constitution, the Economic Recovery Strategy and Vision 2030); significant steps already taken to address FLEG issues in terms of policy (draft policy/Forests Act 2005) and institutional (KFS) reforms; but that the main challenge is in the implementation. Based on these, this review recommends the following in context of EA FLEG:

National level

- ❖ **Subsidiary legislations:** KFS to identify priority subsidiary legislations and studies and intensify their preparation and/or implementation
- ❖ **Capacity for law enforcement and governance:** Strengthen capacity of KFS, decision makers, civil society organizations and community forest associations (through advocacy, training and awareness creation) for forest law enforcement and governance.
- ❖ **Monitoring and tracking of illegal logging and other forest crimes:** Strengthen the existing system: Undertake a comprehensive study to assess and analyze the existing information on the scope and extent of illegal logging and other forest crimes (including trend over time) to provide a baseline and develop a system for regular monitoring, tracking of trends in forest crimes (including prosecutions), and up-dating of this information.
- ❖ **KFS sustainability:** This is high priority for the “Business Enterprise Division” within KFS, but there is an urgent need for a strategy, one that will include innovative sources such as payment for environmental services, ecotourism and private/public partnerships.
- ❖ **Harmonization of legislation:** KFS undertakes a review to identify the key areas of conflict/overlap with other acts/legislations and initiate, involving NEMA, the consultations aimed at conflict resolution through the existing mechanisms (e.g. through the National Environment Council)
- ❖ **Link with research institutions:** Initiate consultations with concerned research institutions (e.g. KEFRI, Universities) to spell out collaboration and cooperation arrangements, leading to up-dating existing or new MOUs.

EAC level

- ❖ **Promote knowledge and common understanding on FLEG issues:** Collaborate on studies, reviews and/or joint activities to advance knowledge, techniques and approaches on FLEG (in particular trade and FFM), leading to the adoption of common policies, concepts and programming approaches that allow for comparative assessments, synergy and sharing of experiences.
- ❖ **Promote joint programming and collaboration on Transboundary FLEG related issues:** cooperate and collaborate in the management of trans-boundary forests ecosystems, cross border trade and other areas of common concern

Finally, policy making in itself will not change anything. There must be a will to implement²

² From Review of major issues –based on the outputs of stakeholder workshops held in July 2003 in context of the “Strategic Action Planning in the Kenya Forestry Sector”

1. SCOPE AND SCALE OF THE PROBLEM

Economic, environmental and social-cultural importance of forests in Kenya

1. Kenya's current human population is estimated at about 32 million³. This population continues to exert enormous pressure on the natural resources of the country in general and the forests in particular. Disagreements over the ownership, access to, governance and management of forest resources pose serious conflicts between government ministries, their agencies, the private sector and local communities as well as within communities over their use and control.

2. Forests in Kenya cover a total area of 37.6 million hectares out of which 2.1 million hectares are woodlands, 24.8 million are bushlands and 10.7 million are wooded grasslands⁴. Out of the total forest cover, only 1.7 million hectares are gazetted and managed by Kenya Forest Service (formerly Forest Department)⁵. A total of 9.4 million hectares of a variety of tree coverage exists on farmlands, settlements areas and urban centers.

Forest type	Estimated area in million Ha.
Natural/indigenous forests (gazetted)	1.2 million
Plantation forests ⁶ (gazetted)	165,00 ha. in 1988 160,000 ha. in 1995 120,000 ha. in 2002
Dryland forests/woodlands	Area unknown
Farmland forests and other landscapes	Area unknown

3. Forests rank high as one of the important national assets with significant economic, environmental, social and cultural values. Despite the proportionately small area compared to the overall country's surface area, forests will continue to play a significant role by providing a wide variety of resources for human development.

Before the ban in year 1999, it was estimated that the forestry sector contributed about Ksh. 320 million per year to Kenya's GDP or approximately 1% of the monetary economy and 13% of non-monetary economy. Direct use values in terms of timber, fuel wood and poles are estimated at Ksh. 3.64 billion.⁷

4. **Timber and fuelwood:** Of all the value derived from forests, timber and fuelwood are the most conspicuous due to the volumes involved and the central role they lay in overall national development.. Forests provide utility timber products, such as timber for the construction industry, transmission poles for the energy and communication sector, fuel wood for the tea industry and also for subsistence

³ This estimate is calculated from the figures of the 1999 census, that recorded 28.8 million people with an estimated annual growth rate of around 2.1%.

⁴ Kefri/FD Task force. 2002: Professional response to the ban on timber harvesting: impacts and implications.

⁵ Under the new KFS, the scope of forest management and extension goes beyond gazetted forest reserves.

⁶ Kefri/FD Task force. 2002 Professional response to the ban on timber harvesting: impacts and implications

⁷ World Bank (2000): Unpublished mission report. Third Forestry Project



utilization by the community as well as paper for the education and print media sectors. It is estimated that the per capita wood consumption is 1 cubic meters. Out of this, 80% is consumed as fuelwood.

The existing government forests remain the single most important source of timber to service both construction and the pulp and paper industry. This timber comes primarily from the area of 120,000 ha. The current growing stock is estimated at 41,640,000⁸ cubic meters.

Gazetted forests managed by KFS contributed 80% of timber, 93% of poles and posts and 25% of fuelwood requirement before the ban. Sale of these major forest products from gazetted forests generated about KSh. 320 million annually to the exchequer⁹. It is estimated that these figures dropped drastically after the ban, although there are no recent studies to support this.

It is estimated that seventy percent of Kenyans use wood fuel either as firewood or charcoal for domestic use. 2.4 million tonnes of charcoal and 12.9 million tonnes of firewood worth 64 billion shillings are consumed annually. Tea, tobacco and fish processing companies annually consume an additional 20 million cubic meters of wood fuel worth 1.6 billion¹⁰

In addition, the value of the 24 million cubic meters of fuelwood materials that is sourced from farmlands is estimated at KSh. 4.8 billion, based on current rates.

Wood carving: Among the many handcraft activities, woodcarving and basketry form the most important component in Kenya. A study by Obunga (1998) indicated that the industry has about 80,000 wood carvers spread all over the country but mainly in Central, Eastern and Coast Provinces. Overall, the industry provides a means of livelihood to over 300,000 people (directly) in Kenya and was valued at over KSh. 100 million in 1995. Currently, the industry has a turn over of about KSh. 1.5 billion per year-linked to the very important tourism industry.

Basketry: In tea growing areas, bamboo is used for making tea-harvesting baskets. These baskets are disposed off after every three months. There are 360,000 small- scale tea farmers in the country who produce in excess of 170 million Kilograms of tea, which is about 60% of the total tea production. The total turn-over in the basketry industry to support small holder tea production is estimated at KSh. 324 million, assuming an average of two baskets per household. Large-scale tea producers consume a further KSh. 216 million worth of baskets giving a total turnover of KSh. 540 million within the tea sector.

Bamboo is also an important input in horticulture, being used by flower farmers to support the growing plant. Indigenous forests were the main source until the ban.

Non-wood forest products (NWFP): These are goods of biological origin other than wood, and include gums, resins, fodder, soil, murrum, asparagus fan, mushroom, honey, stones, fibre, water, medicinal herbs and fruits.

According to a survey on production and marketing of non-timber forest products in Kenya carried out by Vomigal Ltd. (KAFU, 2000), NWFPs play an important role in Kenya's economy, generating about KSh. 3.2 billion per year.

Forests also provide a wide variety of environmental goods and services:

⁸ Kefri/FD task force. 2002: Professional response to the ban on timber harvesting: impacts and implications

⁹ KFS internal document: The potential of the forest sector contribution to the national economy.

¹⁰ Avish, et al(2005): Economic Potential of Forests in Kenya. Forest Action Network. Report

- ❖ They are important in regulation of water supplies- with the nation’s “water towers”, the five main water catchment areas (Mt. Kenya, Mt. Elgon, Abadares, Cherangany and the Mau forest) making up the bulk of Kenya’s high forest.
- ❖ The hydro-electric power stations are located on catchments serviced by major forest areas of vital water catchment and along major rivers, which also provide water to support irrigation schemes that are important for agricultural sector development.
- ❖ They are also critical in conservation of biological diversity, carbon dioxide sequestration and are a major habitat for wildlife, which promotes tourism.

Scope and scale of problems in forest law enforcement and governance in KENYA

Despite their importance to the social and economic development of the nation, forest resources, over the last three decades, were faced with several threats, manifested mainly through increase in illegal activities from: illegal charcoal burning and logging, illegal harvesting of non-timber wood products and forest excisions. It is estimated,¹¹ based on annual reports that charcoal related offences (illegal burning, transportation) make up to 50%, illegal logging 15% and others illegal activities (35%). Other illegal activities include unlicensed grazing; illegal cultivation, forest fires, illegal hunting or collection of honey). There is agreement that there was an upward increase in illegal activities in the forests due to low staff morale, increased corruption and low number of forest guards partly occasioned by retrenchment arising from WB instigated structural adjustment policies.

Table 2 from the UNEP/KWS aerial survey report of the Aberdares shows the level of destruction that was going on in the forests. Such surveys carried on over time are needed to illustrate the trend. Among the human factors driving the destruction of forests are: poverty, unsustainable livelihoods and population pressure in the areas surrounding forest reserves. For example during the 1999-2000 drought, there was significant increase in the destruction of the forest as the communities used the forest as refuge grazing areas for their livestock, in disregard to existing forest rules and regulations (Ojwang *et al* 2006).

Table 2: Forest disturbances in Aberdare Forest Reserve¹²

<i>Type of destruction</i>	<i>Unit</i>	<i>Quantity</i>
Livestock grazing	Heads	18,497
Burnt forest areas	forest areas	21
Illegal cultivation	Fields	170
Charcoal burning	Kilns	14,499
Illegal logging	Tree	9,425

A recent study from satellite images indicates increasing destruction of indigenous forest. For example in the Mau Complex (Eastern Mau Forest Reserve, South West Mau Forest Reserve and Maasai Mau forest), 6,032 ha. were destroyed between 2000-2003, while 9,334 ha were destroyed between 2003-2005¹³.

Illegal charcoal burning and transportation: Charcoal burning is the main economic activity in woodlands and dryland forests. Production of charcoal from forest reserves is prohibited, but illegal charcoal burning continues (RELMA). About 90% of charcoal production comes from woodlands and ungazetted dryland forests; over 70% of urban and 50% of rural Kenyans cook on charcoal, yet the legal position of the business is a very grey area. It is technically legal to produce charcoal on private farms and to sell it. But the 1986 ban on felling indigenous trees rendered production and transport illegal. The

¹¹ According to Complaincer Office KFS, Mr. Anthony Maina
¹² The Unep/Kenya Wildlife Service area survey report, April 2003
¹³ KFWG memo to KFS Director, December 2006

estimate by the Ministry of Energy¹⁴ is that the charcoal business has an annual turnover of over 23 billion Shillings. The high demand for charcoal, and the livelihood connection are major drivers of the charcoal business, and making it illegal only goes to drive it underground, into the realm of illegal activities.

Illegal logging and exploitation of the forests products

The indiscriminate/uncontrolled selective cutting of rare tree species precipitated the 1986 Presidential ban on felling of indigenous trees, preventing any form of exploitative management of indigenous forests in forest reserves¹⁵. This resulted in unmanaged exploitation through illegal logging, pit-sawing and charcoal burning. For example even with the ban still on, a KWS study of 1999 indicated that over 6,700 Camphor (*Ocotea usambarensis*) trees had been destroyed in Mt. Kenya forest over a one year period.

Table 3 : Forest Cover Changes in the natural high forests between 2000 and 2003

Forest	Cleared area in ha.	Total Area (2000) in ha	Percentage change	Water Catchment
Mau	5318.4	271360.8	1.96	Mara
Mount Kenya (including Park)	6013.4	271399,5	2.22	Tana/Athi
Mount Elgon (including Park)	1874.4	102695.6	1.83	Ewaso Nyiro
Cherangani	174.3	97397.4	0.18	Ewaso Nyiro
Aberdare	Cloudy	243217.7	-	Athi

Source: UNEP/Kenya Wildlife Service Aerial Survey Report - 2002/3

As a result of continuing uncontrolled selective cutting of rare tree species, a new presidential ban on harvesting of E.A. sandalwood has been put in place (February 2007)- consistent with the Forests Act (2005) (clause 34). A metric tonne of this wood fetches about KSh. 500,000¹⁶. It is estimated that over 40 metric tonnes were being exported to Tanzania; and a further 40 tonnes through the port of Mombasa to India, Europe and South Africa. Main use is in the perfume industry.

“On 26th of May 2007, KWS rangers in Nakuru impounded 36-tonnes of sandalwood logs worth more than Sh. 20 million, and 10 sacks of ground sandalwood destined for export. This was the second haul of sandalwood to be impounded by police in Nakuru this month. Four suspects were arrested in connection with an earlier haul worth sh. 10 million. Sandalwood has medicinal use. It is also used in the manufacture of perfumes and in making carvings and beauty products. Sandalwood is listed by the International Union of Conservation of Nature (IUCN) among threatened species. Trade in the wood is illegal”¹⁷

The rampant illegal logging and exploitation of the forests products occasioned by breakdown in the control, policing and enforcement of rules and regulations relating to timber harvesting led to the November 1999 ban on all felling of timber in government forests. While this ban may have been justified, the attendant implications had severe consequences, among them: increase in timber prices (law

¹⁴ Ecoforum Volume 24,4 Quarterly publication of the Environment Liaison Centre International (ELCI)

¹⁵ KFWG 2000 Forest Status Report. The report notes that logging licenses have been issued for Mt. Elgon reserve despite the ban.

¹⁶ Personal communication, Hewson Kabugi, KWS Forest Conservation Coordinator.

¹⁷ From the Sunday Standard of 27 May 2007

of supply and demand), increased illegal felling of trees; loss of revenue; and increase in cross border trade particularly importation of timber from Congo, Tanzania and Uganda. This was on top of the backlog of areas due for felling, leading to increased risks from fires, pests and diseases. A review of the ban is urgently needed.

The excisions of forest land: The excision of forest land has a long history in Kenya, and clearly some of them may have been based on interest purely for public good (such as for settlement of landless and for public utilities such as schools and institutions). Concern however came in the late 1990s and early 2001 when several politically motivated excisions took place with no regards to EIA provided for in the EMCA. In 2001, a total of 67,000 ha were excised under unclear circumstances without following the legal procedures.¹⁸

One of the classic example of excisions without due diligence is that of the Nyayo Tea Zones. This is the largest alternative use of land within the forest estate undertaken in order to create the Nyayo Tea Development Corporation (NTDC). The purpose of establishing NTDC in 1986 (gazetted in 1988) was supposedly to promote conservation of the forest by establishing a buffer zone between agricultural land and the forest. Tea zones were created in the following areas: Mt Kenya, Mt. Elgon, West and East Mau., Trans Mara, Tinderet, North and South, Nandi, Kakamega, Kiptabus, Uplands, Kikuyu escarpment and the Aberdares. Officially, a “100m” strip from the forest boundary was nominally used as the guideline. In practice however, the width of the tea zone strip went up to 5 km in some places, and 25 km width has been reported in one area. By 1990 the total area cleared for tea planting was 11,000 ha¹⁹.

Table 4 :Summary of Forest Excisions in the Ndun’u Report

Category of Excision	Area in Ha
Excisions after Boundary plans, Gazette notices and legal notices	141,703.6
Excisions done by way of exchanges ²⁰	911.4
Excisions done before finalizing the degazettment process	76,612.2
Proposed Excisions that have been challenged in court	67,724.6
Excisions done to create Nyayo Tea Zones ²¹	11,000
Excisions from Ngong and Karura Forest	1,125.5
Total	299,077.5

The conversion of woodlands to arable land particularly in ASALs, due to land pressure . This continues to occur in spite of the fact that the low rainfall associated with ASALs makes crop farming a risky business and livelihoods extremely insecure. The issues here have to do with land tenure and land use policies, both of which are non-existent in Kenya ASAL regions.

Socio-economic and ecological impacts of illegal logging and timber trade

One of the effects of the ban on logging was to drive the price of construction timber very high as most of it had to be sourced from across the border. The following table shows the impact of timber prices before and after the ban²², which reflects the law of supply and demand at play. According to Kagombe *et. Al*, the average timber sales in Nairobi and its environs dropped from 63 tones in 1999 to 21 tonnes in 2005.

¹⁸ Strategic Action Planning in the Kenya Forestry Sector: UNDP/Forest Department: 2003

¹⁹ The Ndungu Report

²⁰ In some cases, high value biodiversity forest reserves were exchanged for non-productive areas.

²¹ Areas of tea zones not legally degazetted and therefore they are still part of the forest estate.

²² Kagombe J.K., Gitonga J., Gachanja M., Management, socioeconomic impacts and implications of the ban on timber harvesting

Table 5: Price of timber around Nairobi before and after the ban

Product	Before ban	1999	2000	2001	2002	2003	2004	2005
Cypress (Bft)	18.7	19.8	21.5	28.75	41	33	34	36
Pine (Bft)	13.75	16.5	16.75	23.5	40	28	29	32
Off-cuts (14 foot)	29.25	40	55	65	100	105	118	129
Poles		32	34	45		68	73	102
Tea pallets		230		480	650	655	675	680
Plywood		400			800			

Another important consequence of illegal logging of trees has been loss of revenue in terms of royalties; loss of livelihoods for the sawmilling/pit sawing industry and increased opportunity for corruption in view of the unclear procedures for certification of source. The magnitude of this loss in revenue has not been studied.

As a result of the ban, most sawmills and pit-sawyers ceased their operations or scaled down on staff. According to the Kenya Timber Manufacturers Association, between 30,000 and 150,000 people lost employment directly or indirectly as a result of the ban²³. A parallel effect was the mushrooming of many unlicensed small-scale mobile saw-benches and power saw operators and pit sawyers, relying mostly on timber from private farms and illegally accessed timber from forest reserves.

The 1999 ban on logging was only partial, affecting mainly the small firms while the large firms such as PanPaper and RaiPly continued to extract over 50% of their allowable cut, thus perpetuating discrimination in the application of the ban. The ban came through the provincial administration without guidelines, leaving room for subjective interpretation.

Another important consequence was to divert FD resources from other productive operations to protection and policing. Before the ban, saw millers served as part of the protection force²⁴, informing the FD of timber poachers. This ended with the ban. Without an increase in the number of forest guards, the increase in illegal logging inevitably increased.

It is important to point out that the ban had a positive effect in that it increased the demand for trees from farmlands, driving up the returns- an incentive to tree planting. There is no study yet to document the magnitude of this impact.

Finally, there is consensus that the charcoal business is one of the main drivers of land degradation through deforestation in arid and semi-arid areas. The uncontrolled destruction of forests through illegal logging, illegal cultivation and forest fire in high potential areas equally have devastating negative impacts on the environment through soil erosion, destruction of the habitat and biodiversity, and the reduction in forest cover leading to an increase in carbon dioxide and the greenhouse effect.

Cross-border related issues

Some of the forest ecosystems such as the Mt. Elgon spread across the border of Kenya and Uganda, both members of the EAC. The conservation and management of such ecosystems is a matter of joint consideration between the concerned states, calling for the setting up of programmes to facilitate such

²³ Quoted from the publication by Kagombe, Gitonga, and Gachanja.

²⁴ Note that the saw millers were in some instances part of the problem of illegal logging, by compromising the forest officers/guards.



activities. To date, only a handful of such programmes exist²⁵. The establishment of the EAC Protocol on Environment and Natural Resource Management by the three countries on 3rd April 2006 by the three E.A countries provided the framework for this.

There is vibrant trade in forest products across the Kenya border and with neighboring states. For example, it is known that part of the charcoal in the 23 billion charcoal trade is exported illegally to neighboring countries or to the Middle East. There is also heavy timber trade between Kenya and Tanzania, Uganda, DRC and Congo Brazzaville. This only increased following the ban on logging. The main impact is in loss of foreign exchange, and exposing the country to the risk of forest pests and diseases. The trade in forest products remains largely informal and unregulated.

The new “Seventh Wonder of the World”- the Great Wildebeest Migration, was declared in 2006. This takes place in the Trans Mara Game Reserve, an ecosystem that straddles both Kenya and Tanzania. There has been a major concern on the destruction of forests and woodlands in the Narok/Trans Mara districts which will raise law enforcement issues with cross-border implications. The local communities and County Councils have mandates over the management of most of the forests and woodlands in this ecosystem. The new Forests Act (2005) however gives the KFS the responsibility to ensure the preparation and implementation of management plans for the sustainable management of these resources.

²⁵ See under “Projects and special programmes” section

2. UNDERLYING CAUSES OF ILLEGAL LOGGING AND OTHER CRIMES

1. Illegal crimes and deforestation driven by poverty associated with demographic pressure:

Increasing human population/demographic dynamics: Population growth acts to increase overall direct pressures on land, timber and non-timber forest resources. In a country with an average human population increase of 2.1% per annum and higher, the demand for additional farmland for subsistence agriculture is increasing every year. Population growth, including in-migration, also contributes to expansion of urban settlements. Population increases are also linked to habitat degradation associated with increased demand for firewood, charcoal, timber, fuelwood, building materials and non-timber forest products.

Population increase has also been a powerful driver of excisions of gazetted forest land for settlement of landless groups who convert forests to alternative uses, particularly agriculture and urban settlements. The removal of land from forest use leads to increasing gap between supply and demand for forest goods and services (limited size of gazetted forest areas in relation to the increasing population). Under this pressure on the limited resource and from a largely poor population, the opportunity for encroachment, illegal poaching of timber and wildlife, illegal charcoal burning and other crimes increase dramatically. This situation is aggravated by the over reliance on gazetted forests as the primary source of industrial wood and fuelwood for energy. Poaching in the forests also lead to human/wildlife conflicts that contribute to impairment of law enforcement. (issue of jurisdiction, forest officers as temporary game wardens, poachers posing as legitimate forest workers/contractors)

2. Lack of the participation of strategic stakeholders in the conservation and management of forests:

Before the Forests Act (2005) came to force, the responsibility for conservation and management of forests, including protection and enforcement of regulations lay with the government through the KFS. As a result, rural populations living next to the forests and forest dwellers (Ndorobos) who felt they have a claim to ownership and rights to basic livelihoods choose to avail themselves to the forest goods and services, more often than not illegally to avoid paying the associated tariffs. This situation was further aggravated by lack of education and awareness among the public on their role, rights and responsibilities in the conservation and management of forests, including the need to protect the resource for the common good.

Within the ASALs, forests and woodlands/bushlands occur in small-scattered pockets of land generally with better soils and better supply of water. These generate a lot of conflict between different land users and interest groups, including agriculturalists, pastoralists, wildlife and urban settlements, a situation aggravated by the population factor and the out-migration to the marginal or semi-arid areas. Under such conflict situation, the role of forests and trees in food security, protection of the environment and watersheds, and the maintenance of agricultural productivity receive little attention. Uncontrolled tree cutting for poles, firewood and Charcoal (as a livelihood activity) is the first order of business leading to land degradation.

3. Inadequate and/or weak structural/institutional capacity for forest law enforcement and governance:

Over the last two or three decades, Kenya witnessed the responsibility for forest law enforcement and governance, including those touching on technical issues gradually being assumed by the provincial administration, so that the line of authority between the forestry administration and the later became

blurred. The situation was exacerbated by political interference in grading and promotion of staff such that some competent staff felt by-passed.

At the same time, the forest protection workforce, particularly the forest guards, was being weakened by retrenchment occasioned by the IMF conditionalities. For example a 2002 study of the department indicated that between 1992/93 and 2000/2001, the number of staff in forest stations dropped from 8,096 to 4,216²⁶, a 50% decrease. We can therefore project that the same proportion applies for the forest guard force.

The result from the above factors was low morale on the part of the forest department staff and the attendant ineffective planning/application of forest management practices; and the weakening of the forest inspection and protection function, thereby opening the floodgates for illegal activities in the forests.

4. Inadequate/outdated or weak forest policy and legal frameworks for forest law enforcement and governance.

The overlap of the many Acts touching on forestry (e.g. Water Act, the Wildlife Act, Agriculture Act,) that are not harmonized creates uncertainty and confusion as to who is responsible for enforcing what laws and where. A good example is the dual gazettement of parts of Mt. Kenya forest reserve, Kakamega forest, Shimba Hills. This creates confusion when it comes to such activities as fire fighting and patrolling and the question of overall accountability in law enforcement. Other weaknesses with the former forest policy and associated legislation include:

- ❖ Forestry legislation that did not adequately recognize or reflect the role/rights of the communities adjacent to or living in the forests
- ❖ Forest Act that gave little recognition of the potential of forestry practice beyond the borders of gazetted forests
- ❖ A forest policy that focused on government programmes and little attention to provision of financial and technical assistance to forestry programmes and activities outside of the forest reserves
- ❖ Forest regulations/directives that were not backed by implementation guidelines, leaving room for subjective interpretation. For example the presidential ban on logging was not followed up with written instructions/guidelines on its implementation.
- ❖ Forest policies and practices that paid little attention to the provisions of international norms relating to forestry.

Finally, there is the issue of corruption and outright criminal mentality which has been rife in Kenya, as in many other countries. Examples of this include unlawful marking of forest produce, irregular issuance of licenses, bribery to forego arrests/prosecution, use of bribery to gain harvesting rights, irregular issuance of forest land to repay political favors, favoritism in promotions, etc. This has been the most devastating threat to forest law enforcement and governance - an issue that is in decline since 2003 following the new political dispensation under the NARC government.

The above flaws/weaknesses provided loopholes in the administration of the policies and regulation, and at the same time created opportunities for neglect and abuse of the due process in governance of the forest resources and the enforcement of forest law, thereby facilitating illegal logging and other crimes.

²⁶ From a WB study of 2007, quoting a Forest Department study by Gibbon, H., Collaborative and participatory Forest Management in Kenya – current status and future potential, 2002.



3. EXISTING FOREST GOVERNANCE POLICIES AND INSTITUTIONAL ARRANGEMENTS

Historical perspective :

The evolution of forest policy dates back to the documented era of migration and settlement of various ethnic communities in Kenya. The process is exemplified by the observed historical and indigenous people's conservation practices, some of which are still practised to date. For example, the *Mijikendas* of Kenya's coastal region clearly zoned the forests into areas open for utilisation and those for preservation. The preserved zones, known as the Kayas, were only open for cultural and religious rites. These sacred Kayas still exist to date and some are now gazetted and managed under the Antiques and Monument Act Cap 215 of 1984 by National Museums of Kenya (NMK).

Kenya's first forest policy was formulated in 1957 and revised in 1968 (sessional paper no.1). This policy focused on conservation and management of forest resources on government land. One of its main weaknesses was that it did not adequately recognize or reflect the role, rights or responsibilities of communities adjacent to or living in the forests.

Review of National policies and legislations

Draft Forest Policy 2005: There is now a draft Forest Policy 2005 (the revised sessional Paper No. 9 of 2005) awaiting cabinet and parliamentary approval.

The new draft Forest Policy derives from, and is consistent with:

- ❖ The draft constitution and with particular reference to provisions on land tenure, protection of property and regulation of land use (chapter 11 (clause 235 of the draft constitution); and on participatory forest management (Chapter 12 (clause 239 of the draft constitution).
- ❖ The National Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC)²⁷.
- ❖ The Macro-economic framework (the Medium Term Expenditure Framework (MTEF) and public expenditure management reforms.
- ❖ The vision 2030 that borrows heavily from the ERSWEC

This draft policy is driven by three basic factors:

- ❖ Recognition and appreciation of the importance of forests to the national economy, through provision of invaluable goods and services: energy supply for domestic and industrial processes; provision of timber for construction; and trees for regulation of water flow. It is estimated that 80% of the population use biomass energy while urban development and hydro energy rely heavily on water.
- ❖ Need to address the key factors that undermine government's efforts in achieving sustainable development and management of forests: inadequate financial resources and the lack of an enabling policy and legislation; and the increasing population and poverty that continue to exert pressure on the country's forest resources. This pressure is witnessed in the current rampant illegal logging, illegal charcoal making and encroachment for agriculture and settlement.

²⁷ This strategy brought together priorities from PRSP and the 9th National Development Plan. It recognized environment as a crosscutting issue with opportunities for economic growth from the productive sectors.

- ❖ Recognition that Kenya is internationally considered to be a low forest cover country as it has less than 10% of its total land area classified as forest, and therefore need for the government to put in place measures to significantly increase the area under forest cover, with the aim of attaining at least 10% within the next decade. To attain this level of forest cover, the Government will promote farm forestry, intensify dryland forest management, involve the private sector in the management of industrial plantations and also promote community participation in forest management and conservation.

The key elements of the new policy are:

- ❖ A new forest legislation to implement the policy.
- ❖ Expanded mandate in the management of all types of forests.
- ❖ Involvement of forest adjacent communities and other stakeholders in forest management and conservation, and with respect of cultural heritage.
- ❖ Forest management planning will be guided by professionalism, be science based, and adopt an eco-system approach.
- ❖ Appropriate incentives will be provided to promote sustainable use and management of forest resources.
- ❖ On-going institutional transformation of the Forest Department into a corporate body- Kenya Forest Service.
- ❖ Recognition of the need for adequate financing to support the institutional reforms.

This policy will address local and global forestry issues and challenges to ensure fair contribution of the forestry sector in economic development. The policy recognizes the need for self-regulation by providing legal status to the Kenya Forest Association.

The implementation of this policy is expected to improve the social welfare of the Kenyan population without compromising environmental conservation.

The Forests Act (2005):

This new instrument supersedes the Forest Act- Cap 385 (revised in 1982 and 1992). It is anchored on the principles and the strategic goals in the draft Forest Policy; draws on lessons learned from implementation of the Forest Act Cap 385; and contributions from all key stakeholders including concerned Government ministries and institutions, local authorities, NGO's/CSO's and private sector and professional societies.

Strategic goals for the Forests Act (2005)

- ❖ Increasing forest and tree cover to meet growing local needs for wood energy, industrial wood and other forest products
- ❖ Conserving the remaining natural forests for the protection of water catchment, biodiversity, promotion of ecotourism and sustaining agricultural production
- ❖ Contributing to country's efforts to reduce poverty as contained in the 5-year Economic Recovery Strategy Paper and Vision 2030.
- ❖ Fulfilling national obligations under international environmental agreements related to forestry

Highlights include:

- ❖ Establishment of semi-autonomous Kenya Forest Service
- ❖ Broader mandate of the service to cover all forests
- ❖ Increased role and responsibility for local communities and other stakeholders in management of forests
- ❖ Promotion of commercial tree growing
- ❖ Excision of gazetted forests require EIA and parliamentary approval
- ❖ Management plans required for all major forest ecosystems
- ❖ Creates a professional forestry society
- ❖ Establishment of a Forest Management and Conservation Fund

Part V, clauses 50 to 58 are devoted to “enforcement of the act”. Highlights include:

- ❖ **Powers of officers:** Apart from state forests, the Act now allows for forest officers to make arrests in local authority forests and provisional forests. Compounding of offences by forest officers removed to minimize corruption.
- ❖ **Use of firearms:** The Act provides for the disciplined force of the service to access such firearms as may be necessary for the service to carry out its functions under the Act.
- ❖ **Prohibited activities in forests:** These are clearly defined, including illegal logging, removal, access to or use of forest resources including land, timber and non timber resources, except under a license or permit or management agreement issued or entered into under the Act.
- ❖ **Counterfeiting or unlawfully affixing marks:** A stiff penalty is set for counterfeiting or affixing a mark on any forest produce without lawful authority (a fine not less than two hundred thousand shillings or to imprisonment for a term not less than three years or to both).
- ❖ **Other offences:** Covers other offences that are contrary to the Act., including setting forest fires, illegal grazing, hunting, illegal entry and dumping of toxic substances, cultivation of illegal plants, etc. In particular, the Act makes it an offence to make or be in possession of charcoal in state, local authority, or provisional forest; or in private forest or farmlands without a license or permit of the owner as the case may be.
- ❖ **Prosecutorial powers:** The Act confers prosecution powers to forest officers above the rank of Sergeant Forest Guard under the Criminal Procedures Code (section 22 and 23) and section 20 of the Police Act.
- ❖ **Penalties:** Level of penalties raised (Compared to previous levels) to ensure deterrence. the Forests Act (2005) also states the minimum fines and imprisonment terms for forest offenders as opposed to former Act which set maximums, giving wide latitude of imposing low, non-deterrent sentences

The Forests Act (2005) takes cognizance of the principles embodied in, and embraces national commitments to the MDGs, Agenda 21 and other international and regional Environmental Agreements (CBD, UNCCD, UNFCCC, the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (and Chapters 11 of Agenda 21); and the Cameroon Ministerial Declaration (October 2003) on FLEG.

Other laws that influence conservation and management of forests:

In addition to the Forests Act (2005), Kenya has over 77 statutes that touch on forestry in one form or another. Key among these are the Draft Land/Land use Policy; Environmental Management and Coordination Act (EMCA) 1999; The Water Policy/Water Act of 1999; The Wildlife (Conservation and Management) Act (Cap 376); the and the Agriculture/National Food Policy – (Sessional Paper No. 2 of 1994); For further details, see Annex 1.

Regional and International conventions and agreements

Regional and international environmental laws govern matters of global or regional environmental concerns and rights and duties in trans-boundary matters. For purposes of this report, treaty/Convention/Agreement/Pact/Covenant are the same thing as they can be used to address issues and matters of mutual benefits between states as is the case with EAC. They help create rights, duties and obligations of states. Unless a country gives consent it is not bound by the treaty. States may also be bound by part of a treaty.

The Forests Act (2005) Article 61 recognizes Kenya's International obligation with respect to forests and provides for the Act to be carried out in accordance with any treaties, conventions or International Agreements concerning forests or forest resources to which Kenya is a party.

Regional agreements: Kenya is a member of several regional organizations like EAC, IGAD, COMESA, AU and NEPAD. In context of these, Kenya is a signatory or party to several agreements, either directly or indirectly relating to forests. Those relevant to FLEG include:

- ❖ **Ministerial Declaration on Africa Forest Law Enforcement and Governance (AFLEG)- Yaounde, Cameroon- October 2003.** Under the declaration, the countries reaffirmed their resolve and intention to, *inter alia*, work together to strengthen the institutional reforms already started in the forest sector by African countries, notably good governance programmes and strengthening of the technical capacity of the forest sector. Kenya has integrated most of the principles and governance issues stated in the declaration in its ongoing policy and legislation reform process. Kenya also has initiated projects/programmes whose implementation addresses the intentions of the declaration, e.g. the Integrated project for the conservation and management of the Mt. Elgon Ecosystem between Kenya and Uganda (see under Projects and programmes section).
- ❖ **East African Community Treaty-1999.** EAC is an intergovernmental organization with the mandate of promoting regional integration and development among member states (Kenya, Uganda and Tanzania). As per its development strategy, EAC charter (Chapters 19 and 20) states that for sustainable development to be achieved there is needed to manage our natural resources and also protect the environment. This includes management and conservation of forest resources; and harmonization of environmental policies.
- ❖ **East African Community Protocol²⁸ on Environment and Natural Resource Management- Article 11: Management of Forests and Trees.** This Protocol²⁹ was signed by the three countries on 3rd April 2006. Article 11 (1) of the protocol states that the Partner States shall co-operate in all activities relating to development, conservation, sustainable management and utilization of all types of forests, trees, and trade in forest products throughout the Community.

International conventions and agreements: Kenya is a signatory or party to several international agreements. Those relevant to FLEG include:

- ❖ The UN Convention to Combat Desertification (UNCCD): Signed on 24 June 1997.
- ❖ The convention on Biological Diversity (CBD): Signed on 26 July 1994.
- ❖ The UN Framework Convention on Climate Change (UNFCCC): Signed on 30th August 1994.
- ❖ The Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (and Chapters 11 of Agenda 21):

²⁸ See Annex 1-Article 11 of the EAC Protocol on Environment and Natural Resource Management

²⁹ See Annex 1-Article 11 of the EAC Protocol on Environment and Natural Resource Management



- ❖ International Trade Agreements such as CITES (Convention on international trade in endangered species of wild fauna and flora) and ITTA (International Tropical Timber Agreement):
- ❖ Others: These include: Ramsar convention –Convention on Wetlands of international importance especially as waterfowl habitat; African convention on the conservation of nature and natural resources; Convention concerning the protection of the World Cultural and Natural Heritage; Lusaka Agreement on illegal trade in wild fauna and flora.

For details on linkages of these to forests, see Annex 2.



Institutions responsible for forest law enforcement and governance

Role of the Government: The Forests Act (2005) Part V on “enforcement” confers the overall responsibility for governance and forest law enforcement to the **Kenya Forest Service (KFS)**, on behalf of the government. The act clearly defines the powers of the forest officer, the prohibited activities in the forest and the kind of penalties to be levied. The act also confers prosecutorial powers to forest officers for offences under the act.

Other government institutions with FLEG responsibilities include:

- ❖ **National Environmental Management Authority (NEMA)**- with mandate for Policy coordination and harmonization, EIA and compliance under the EMCA.- and resolution of intersectoral/cross-sectoral disputes through the Environmental Tribunal
- ❖ **Kenya Wildlife Services:** with mandate for enforcement of the rules and regulations governing the management of wildlife in parks and nature reserves that also contain forests (ref. CITES).
- ❖ **Ministry of Lands:** with the mandate over land and land use policy
- ❖ **Office of the Attorney General-** Registration of Community Forest Association
- ❖ **Forest Research institutions (KEFRI, Universities)** with mandates to research and piloting on issues that touch on FLEG.
- ❖ **The National Museum of Kenya**
- ❖ **Local Authorities:** With mandate over trust local authority forests under their jurisdiction
- ❖ **Commissioner of Police ;** With the mandate of law enforcement and prosecution
- ❖ **Ministry of Water-** with mandate for gazettement of water catchment.

The role of the civil society organizations (CSOs) in FLEG:

The (CSO’s) (including the media, the forest associations and NGOs such as the Green Belt Movement, the Kenya Forest Working Group, the Forest Action Network) have been playing a critical role in bringing issues relating to forests to the attention of the public and holding the government to account on these issues. For example their role in lobbying against the 2001 excisions was vital in exposing mismanagement and bad practice.

The Green Belt Movement in particular has been at the center of national debate on forest issues. Kenya Forest Working Group (KFWG) and the Forest Action Network (FAN) played an important role in the national forest policy and institutional reform process, and have been strong advocates of the PFM and FLEG, including through studies, assessments and community mobilization for the establishment of forestry associations for forest blocks threatened by bad governance or inadequate law enforcement.

The advocacy role will continue to be vital, and largely in the hands of the civil society organization. Their role in PFM, and the incentives provided for in the Forests Act (2005) will motivate them to be more aggressive in promoting forest protection and sustainable management of the forest. However, in view of their own interest, there will be need to hold them accountable in order to ensure they are advocating for the public good.

Professional associations: The Kenya Forestry Society is the only professional body recognized in the Forests Act (2005) and is a member of the Forest Board. In the past, this body has been largely passive in its response to issues affecting forests. Part of the reason is that most of its members were serving staff of the Forest Department and therefore compromised to express their views openly. However, with official

recognition in the Act, and many retired professional joining the Associations, and armed with professional knowledge on conservation and management issues, wider democratic space in the country the body is poised to play a more prominent role.

The International NGOs, including IUCN, WWF and the East African Wildlife Society (EAWS) have been championing the case for PFM and the need for conservation and sustainable management of forests for livelihoods and biodiversity conservation. In particular, IUCN has documented important experiences on PFM³⁰, while WWF and EAWS have been in the forefront in forest conservation policy advocacy.

Community based associations: The government's commitment to PFM has come about partly as a result of pressure from community based associations who, in the past, approached the former Kenya Forest Department with proposals to pilot and work with them towards their involvement in forest management. Examples include the Gong Forest Sanctuary Society; the Ngare Ndare Forest Trust; the Eburu Forest Conservation Network, Ngong hills forest association; and the Olobollosat community forest associations. These associations contribute significantly to forest law enforcement and are expected to be more effective under the new forest act which has empowered them through recognition and provision of legal status.

Specific measures and arrangements for forest law enforcement

KFS, in context of its mandates and responsibility under the Forests Act (2005) has initiated key measures and arrangements:

- ❖ **Institutional reforms** including the establishment of the Kenya Forestry Service with powers devolved to Forest Conservation Committees and Community Forest Associations.
- ❖ **Strategic Plan 2006-2011**: The KFS has prepared the Strategic Plan 2006-2011- the action plan for the implementation of the draft Forest Policy and the Forests Act (2005) over the next 5 years. The KFS plan provides a definitive indication of the government's determination to address the issue of institutional reforms needed for effective forest management and administration. It is guided by the Forests Act 2005 and the draft Forest Policy. It also builds on the commitments set out in the Vision 2030, National Economic Recovery Strategy for Wealth and Employment Creation (ERS), the National Development Plan, Millennium Development Goals (MDGs), Agenda 21 and other Multilateral Environment Agreements (MEAs).

Note: This Strategic Plan was developed before the Forest Board was in place. It is therefore likely to be revised and strengthened since it is a major reform strategy. This presents a window for addressing FLEG issues more boldly.

- ❖ **Strengthening of forest law enforcement within KFS.** The Strategic Plan established the **Security and Protection Programme** of the Section will be headed by a Senior Deputy Director of Forests; and with responsibility for intelligence services, law enforcement, forest fires and forest health. The Forests Act (2005) provides for higher penalties (compared to the Forest Act Cap 385) to deter those who engage in activities that are harmful to forests. KFS is in the process of setting up the Security

³⁰ See "Community Involvement in Forest Management in Eastern and Southern Africa- A Compendium of Resources for Practitioners" IUCN, 2004.

and Protection Programme, including the recruitment of staff, training of prosecutors and protection personnel and developing the necessary arrangements and procedures.

- ❖ **Strengthening of information on law enforcement within KFS, including monitoring and tracking of prosecutions.** The KFS already implements a monitoring system for offences and crimes in the forests, including tracking of cases being prosecuted in the courts. This information is available in the monthly and annual reports produced by the forest stations and which will in future be compiled at conservancy level. This will be available as part of the Forest Information System to be set up, linked also to the ICT unit at the ministry level for wider accessibility by all interested parties.
- ❖ Within KFS, research, liaison and conventions will be coordinated within the **Planning and Development Programme**

For further details on main FLEG functions and responsible units with KFS, see Annex 3.

5. ANALYSIS OF FOREST GOVERNANCE AND LAW ENFORCEMENT IN KENYA

(Issues, challenges and opportunities)

Four main forces have been driving the governance of natural resources process across in Kenya; 1) the rich cultural heritage of the local communities, including the Nchuri Ncheke of the Meru community, the Kaya traditions of the coast, and the Kikuyu/Kalenjin heritage and believes; 2) the decolonization and democratization movement since the 1950s; 3) the call for greater community participation and equity in natural resources for sustainable management that emanated from the 1992 Earth Summit in Rio-Brazil; and 4) the macro-economic and institutional reforms that have been on-going in the country in search for greater efficiency and accountability.

To date, Kenya can claim significant progress towards success in improved the frameworks for governance in the management of its forest resources, having undertaken key institutional, legal and policy reforms to create an enabling environment for sustainable forest management. However, we should note that policy and institutional reforms and programmes are a delicate and time consuming undertaking, and could be sensitive as they involve changes in structure (reorganization) and relationship with other institutions, as well as the careers of staff. These could easily be derailed by political interference. A case in point is the long period it has taken KWS to evolve since 1989. To date, reforms are still on-going in KWS. The lesson here is that the establishment of the KFS must be seen in context of the beginning of a reorganization process that could take years to achieve. In this regard, Government's commitment and political will remain paramount. In context of the ongoing reorganization process, we cannot as yet talk about what governance and law enforcement reform measures will or will not work. We can however already point to areas where special attention is needed in order to improve the prospects of success. Six issue areas are identified: *policy challenges, institutional issues, sustainable management challenges, informational challenges, conceptual challenges and International Agreements.*

Policy challenges

1. Development of subsidiary legislation: These include regulations, guidelines and procedures needed to operationalize the Act. A total of 19 pieces of legislation are planned³¹, of which three are already under preparation: one on PFM with support from the Commonwealth Secretariat; one on Private Sector involvement in forest management- with support from FAO; and one on charcoal regulation under preparation with support from UNDP.

The subsidiary legislation are necessary and needs to be put in place as soon as possible in order to realize the implementation of the provisions of the Forests Act (2005). Part VI Article 59(2) of the act identified 19 pieces of subsidiary legislation. The development of these subsidiary legislations and guidelines will require resources, not only to develop but also to inform the public and share with stakeholders in order to instill ownership.

One of the priority subsidiary legislation should be on fiscal policies and particularly tax regimes - one of the many opportunities available for promoting sustainable forest management.

The Environmental Management and Coordination Act (EMCA) 1999 states that fiscal incentives shall be used to promote good environmental practice.

³¹ According to Anthony Maina, KFS Acting Senior Forestry Officer, Security Division

The Forests Act (2005) has made a start in this direction by providing for exemption of land rates for portions of land under private forest. However, many more opportunities exist, e.g. the imposition of royalty on the raw materials for charcoal to curtail charcoal burning; reduction of tariffs and taxes on competing and environmentally preferable products such as Liquid Petroleum Gas (LPG) and kerosene to promote their adoption; Adjustment/lowering tariffs on imported wood and wood products in order to promote cross border trade and/or importation. There are pros and cons to any policy and thorough research and analysis will be needed to reach a consensus on the appropriate fiscal policies, depending on the intended outcome such as encourage afforestation/increasing wood supply; promoting sourcing from outside the country/region to reduce demand on domestic products.

An important consideration is the time-lag associated with the development of these subsidiary legislations. This is an enormous task and can be expected to take a long time, taking into account the actual time it takes to develop these through a consultative/participatory process, and the gazette process. This can be expedited by learning from experiences from other countries or regions with similar challenges.

2. Harmonization of sectoral instruments: As previously stated, the current legal framework for natural resource management in Kenya falls under 77 statutes³². The major ones relating to forest resources are the Forests Act 2005, EMCA (1999); The Trusts Land Act, CAP 288; The Wildlife Management and Conservation Act, CAP 376; and the Government Land Act CAP 288 among others. The EMCA (1999) is the primary legislation and umbrella statute under which the environment should be managed. However, there are still challenges harmonizing the implementation of the different laws that affect the forestry sector³³.

The conflict in the statutes affecting the forestry sector manifests itself in the many disputes arising from the use and utilization of the forest estate by the various users and agencies. For example the MOU between Wildlife and Forestry provided for joint law enforcement, but the implementation lacked coherence and disputes always arise over who is responsible for what action. The level of conflict can be expected to intensify, particularly with the Ministry of Water and KWS, as KFS takes a more aggressive approach to the management of indigenous high forests and the need to levy charges for environmental services.

Ideally, the National Environment Council and the Inter-ministerial Coordination Committees under the auspices of NEMA provide mechanisms for collaboration, harmonization and resolution of conflicts between agencies, but these mechanisms have not been effectively utilized. The new Forests Act (2005) offers an opportunity to review and streamline the collaboration and arrangements for law enforcement between the KFS and other institutions. In this regard, it has to be pro-active in identifying the issues and calling on NEMA to coordinate and facilitate conflict resolution.

Finally, the Environmental Impact Assessment (EIAs) are a key feature in the EMCA 1999 and these in theory cover forestry activities such as harvesting, application of shamba systems and any changes in land use. More clarity will be needed in the application of this requirement as it could prove a major bottleneck in the preparation of management plans.

³² Gatundu, C (2003). Policy and Legislative Framework for Community Based Natural Resource Management in Kenya. Some of these include Forests Act (2005), EMCA (1999), Wildlife Management and Conservation Act (CAP386), Trust Lands Act (CAP288)

³³ Although its relatively still early one is yet to see the same vigour that lobbied for the enactment of the new law manifest itself in the implementation

Institutional issues:

3. Capacity for law enforcement: With a new KFS, there is a lot of optimism that there will be greater morale as well as incentives to make for a more effective and committed service. On the surface, this may look like a done deal. Challenges however remain which may limit the degree to which this transformation is successful. To begin with, there is the challenge of institutional cultural change from the normal FD modus operandi to a business culture expected of the new outfit. Then there is the issue of absence of checks and balances, especially lack of participation by stakeholders; and the poor quality of information on performance through monitoring and evaluation.

With respect to forest law enforcement, the KFS is currently in the process of transforming the former Forest Guard system (said to have been plagued by low morale due to low wages and poor equipment) to a uniformed paramilitary force modeled after the KWS, that is also better trained and equipped (including firearms) for more effective policing³⁴. There are also plans to increase the forest guard force from the current 2,400 to 3,000. KFS will also undertake training of prosecutors from amongst the forest officers for purposes of prosecuting court cases. With respect to the number of forest guards, a case exists for an increase, given the fact that the current number is way below the establishment due to the retrenchment and the freeze on hiring. In the long run however, the issue of the number of forest guards will be less crucial as the PFM and the forest associations become more and more engaged in forest conservation and management activities.

The strengthening of the law enforcement will still face several challenges:

- ❖ Availability of funding for the forest guards (issue of numbers, higher salary, equipment and other logistics such as transportation). It is anticipated that there will be need to increase the number of FGs in view of the expanded mandate of the KFS- to cover all types of forests.
- ❖ Limited capacity for training of the forest guards and forest officers (as prosecutors) at the Kenya Forestry College. The issue here is also the time it takes to develop appropriate training modules, availability of qualified trainers and the adequacy of the facilities. In this respect, the administration Police College and KWS training staff and facilities would expedite the training.
- ❖ Other consideration: the heightened level of firearms control occasioned by increased insecurity in the country; and the whole question of gun control and accountability which may delay the realization of the force in the state envisaged.

The training of the forest guards and forest officers in law enforcement, including prosecutions is not a one time issue but part of a continuous process. It must be supported by policy makers, stakeholders and the public at large in order to attract the resources and collaboration needed for it to succeed. This calls for targeted public education and advocacy on forest policy and legislation.

4. The sustainability of the Kenya Forest Service. One of the challenges of being a corporate body is to demonstrate capacity to self-sustain. In this regard, KFS has to be more innovative in generating finances beyond the traditional sources such as the forest royalties. Opportunities could include:

- ❖ The Clean Development Mechanisms- a largely untapped source in Kenya as there are no criteria to assess the carbon sequestration capacity.
- ❖ Payment for environmental services, including tariffs on “catchment areas” to be paid by water companies/electricity generating companies

³⁴ According to Mr. D. K. Mbugwa, Acting Director, KFS.

- ❖ Ecotourism levies,
- ❖ Competitive and well researched/negotiated long-term leases of forest plantations

Beyond this, one other opportunity is to promote the establishment of private companies/enterprises to tap into commercial tree farming on private and trust lands for specialized forest products such as gums and resins, biofuels (jatropha curcas), and timber. The Forest Management and Conservation Fund could be used to help private entrepreneurs start up such enterprises. Besides generating income for KFS and employment, such enterprises would contribute greatly to the increase in forest cover in the country. KFS would promote such activities through feasibility studies, cost benefit analysis and environmental impact assessment, in addition to technical services and facilitating access to seed funding.

KFS, in context of the Strategic Plan 2006-2011 has put resource mobilization as a top priority and is in the process of establishing a “Business Enterprise Division” as a fully fledged programme headed by a Senior Deputy Director responsible for resource mobilization and the development of all public/private partnerships. The immediate challenge is the development of a strategy to guide this effort.

5. Link with forest research institutions : Research is a vital aspect in forest protection from forest pests and diseases. Research also contributes to informed decision making regarding policy on sustainable silvicultural systems (e.g. tree/tree seed improvement, issue of prosopis, merits/demerits of the Taungya system, etc.); and can contribute significantly to market research on forest products. The Director of KEFRI is a member of the Kenya Forest Service Board, and there is reference to research under the functions of the KFS. However, the Forest Strategy 2006-2011 and Forests Act (2005) is silent on the operational linkages between forest research/KEFRI and KFS. Key issue relate to the access and user rights of researchers to forest land for research that would guarantee that they implement their mandate for research in the forests and/or on forest products in harmony with the KFS strategy. These issues could be clarified in context of an MOU between KFS and concerned research institutions (e.g. KEFRI, Universities)

Sustainable Forest Management challenges

6. Participatory Forest Management (PFM). Experience is limited with PFM in dryland forests. IUCN cites a promising example from the Loruogum area of Turkana District where local people have restored 30,000 ha. of woodland. The key to success of the programme is the vital role that the forest plays in their livelihood. Other examples on PFM include the Integrated Natural Resources Management in Ukambani (INRMU) project³⁵ where the community-based forest management activity resulted in limited success due to limited capacity on the part of the communities, in terms of understanding the guidelines, and their role and responsibilities relative to those of the forest department staff. Draft guidelines on PFM are already in place in Kenya, but more needs to be done including validation, and development of specific tools for training and building capacity of local communities. Experiences on PFM also exist in EAC partner states, particularly Tanzania.

Part IV of the Forests Act (2005) provides the legal framework for community participation in the conservation and management of a state or local authority forest. The degree of participation however is limited to “permission to participate in the conservation and management of a state or local authority forest” following application to the Director of KFS (article 46(2)). No transfer of land ownership is implied under the Act, which ordinarily would be a major incentive, as it would allow for the associations to create and own forests of their own.

³⁵ Ministry of Environment and Natural Resources: INRMU Mid-term Review Mission Report, Nov. 2003

In general, the view is that by participating and receiving a share of the benefits from the forests, the communities will be motivated to protect the forests, leading to better management and lower costs for KFS. This view may be true, but the question is whether the incentives are strong enough to make a real impact, and how soon this impact could be realized. Experience from the pilot PFM project in Makueni (see case study) and from elsewhere³⁶ suggests that the process of mobilizing and constituting the Forest associations, training them and getting them fully engaged may take a long time. The implication here is that KFS should not count on the Forest Conservation Association for forest protection in the short term.

PFM must be handled strategically on a case by case basis, as it is sensitive and subject to political manipulation-in that it involves access to resources generally considered by many in the community as a free good. PFM also comes at a cost to the stakeholders. Clear guidelines with definition of responsibilities and contributions are therefore central to its success.

7. The management of natural high forests. The catchment function of forests is the most critical one for Kenya, through the five main “water towers. In spite of the 1986 Presidential ban on felling of indigenous trees, preventing any form of exploitative management of indigenous forests in reserves³⁷, the reduction in forest area through excisions, unmanaged exploitation through illegal logging, pit-sawing and charcoal burning and forest fires continued.

The Forests Act (2005) (clause 41(1) provided for the sustainable multipurpose management of these forests, including ‘sustainable production of wood and non-wood products’. This creates a window for subjective interpretation of what constitutes “sustainable production” and risk of abuse. This puts a lot of pressure on the KFS to ensure strict management and conformity with the management plans of the respective forest ecosystems (as per article 35 (1) of the act), which are expected to be conservation oriented. It also requires a more intensive enforcement of the forest law and regulations. The application of the Water act will be an important complement in this regard.

The main challenge for KFS will be to ensure that the management plans for the various ecosystems and forests are in place before the ban can be lifted. There is also the challenge of defining what will constitute “sustainable multipurpose management”. To borrow from UNCED, “forest resources and forest land shall be managed and used sustainably to fulfill social, economic, ecological, cultural and spiritual needs of the present and future generation”. In the case of the natural high forests, the focus will be on ecological functions while at the same time ensuring stewardship and use is consistent with maintenance of their regenerative capacity. The challenge therefore will be whether there is sufficient data and information to allow for the preparation of the requisite management plans in a timely manner.

8. Forest plantations: These are the main source of timber production for profit, including for the pulp and paper production industry in Kenya (the “Pan-Paper”). The area of plantations was estimated at 165,000 ha. in 1988, 160,000 in 1995 and 120,000 in 2002³⁸. Main causes of this declining trend in area are excisions; and the forest managers have not been able to ensure that replanting keeps pace with felling due to several factors: the abuse of the shamba system and subsequent stoppage, the mismanagement of the NRC system that replaced the shamba system, and shortfall in replanting after felling due to budgetary constraints. The Forests Act (2005) clause 37(1) provides for the management of these “on a sustainable

³⁶ Gibbon, H and Mbithi, D 2002 Collaborative and participatory forest management in Kenya- Commonwealth Secretariat

³⁷ KFWG 2000 Forest status report. The report notes that logging licenses have been issued for Mt. Elgon reserve despite the ban.

³⁸ Kefri/FD task force. 2002: Professional response to the ban on timber harvesting: impacts and implications

basis with the primary objective being the production of wood and other forest products and services for commercial purposes”.

A major departure from the business as usual in forest plantation management include the provision for public/private partnership in plantation management of state forests through a license, concession, contract or joint agreement (article 37(2)). The same arrangement holds for forest management of local authority forests (article 39(1)). This is expected to have a major impact in that private sector is widely held to be the most efficient manager when production and profit are the main objective.

The success of this policy will to a large extent depend on availability of up to date and accurate inventory data, particularly on forest areas, growth and yield and clearly defined modalities for executing the agreements.

9. The dryland forests: Woodlands and bushlands together cover about 46% of Kenya (IUCN, 2000), and occur almost exclusively in the arid and semi-arid lands, on private land and on trust lands. They are a major contributor to the livelihoods of local populations in form of charcoal burning and livestock grazing; and as habitat for dryland biodiversity, including wildlife (link to ecotourism). If sustainably managed, these could take significant pressure off the remaining high forests. Main threats to dryland forests include:

- ❖ Conversion of woodlands to arable land due to land pressure. This occurs in spite of the fact that the low rainfall associated with ASALS makes crop farming a risky business and livelihoods are extremely insecure. The issues here have to do with land tenure and land use policies, both of which are non-existent in Kenya ASAL regions.
- ❖ Charcoal burning: This is the main economic activity in dryland forests. Production of charcoal from forest reserves is prohibited, but illegal charcoal burning continues (RELMA). About 90% of charcoal production comes from ungazetted dryland forests; over 70% of urban and 50% of rural Kenyans cook on charcoal, yet the legality of the business is unclear. It is technically legal to produce charcoal on private farms and to sell it. But the 1986 ban on felling indigenous trees is seen to render production and transport illegal. The estimate by the Ministry of Energy³⁹ is that the charcoal business has a turnover of over 23 billion Shillings.

Hitherto, the dryland forests held in trust by the county councils were virtually unmanaged. The creation of Local Authority forests under article 24 (1) of the Forests Act (2005) provides for sustainable management of drylands forests for the provision of the various goods and services, including support of livelihood for the local community. This sets the stage and a framework to legalize and regulate the charcoal business. In the long run, this will translate to royalties for the local authorities, reduce illegal cutting of trees from dryland forest reserves, allow charcoal producers to organize themselves so that they can get a better price for their labour, enable and encourage the use of more efficient kilns; and help make tree farming competitive.

There is need for KFS to move quickly to legalize and regulate the charcoal business as part of the strategy to raise royalties, which is expected to also force producers to do business more efficiently, e.g. through improved kilns.

³⁹ Ecoforum Volume 24,4 Quarterly publication of the Environment Liaison Centre International (ELCI)

10. Farm and private forests: This is one of the priority areas for forest development, in view of the limited area of forest reserves and trust lands. The planting of trees on private land, particularly in the high potential areas, is one of the success stories in Kenya, including private tree nurseries and woodlots for commercial purposes- thanks to the Rural Forestry Extension Programme of the MENRW which existed since the late sixties. Unfortunately, there has not been systematic inventory of the private and farm forests in the country.

The Forests Act (2005) recognizes the importance of these and sets out important incentives that will encourage the growth of this sector. These include the provision of technical services, availability of loans (from the Forest Management and Conservation Fund) to undertake tree planting on private farms, and exemptions from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.

Farm and private forests constitutes the most important opportunity for moving Kenya from a low-forest cover country and to conform to the international standard of 10%. Towards this end, additional incentives should be instituted, including subsidies for the establishment of private forests, and adjustment of price of timber and seedlings from KFS forests so as not to undercut the prices charged by private forest/nursery owners.

Informational issues

12. Monitoring and tracking of illegal logging and other crimes: The review of literature and reports, as well as discussions with various stakeholders during this study indicated that a lot of scattered information and documented studies on forest law enforcement and offences do exist. For example a monitoring system exists at local level (District forest- monthly reports on offences); and at national level (KFS annual reports). However, the last synthesis of these reports to provide annual reports is about 5 years back⁴⁰, and there has been no effort to undertake systematic analysis to determine the magnitude of the problem or the trends over time. Other information does exist on the status of forest law enforcement and governance and related issues from different sources, including several reviews done in the course of the development forest policy; studies on specific FLEG related issues by NGOs and research institutions, particularly KEFRI and universities; and in programme documents and proposals undertaken in the last few years; and reports of national taskforces set up to review national issues relating directly or indirectly to forests (e.g. the Ndungu Report). Data on the status of forest cover and changes over time as a result of excisions can be obtained from land-use maps and aerial photographs/satellite images. What is needed is a comprehensive one-time study to assess and analyze this information to provide a baseline and set up a system for regular monitoring and up-dating of this information. One output from this study would be a proposed strategy for forest law enforcement for KFS- in context of the Strategic Plan 2006-2011.

13. Trade, Codes of Conduct and Certification: In order to ensure conformity, there is need to develop a system and mechanisms for monitoring, tracking and enforcement of forest laws and codes of conduct relating to trade in forest products, both at national and international levels. These are essential if Kenya and the EAC countries are to adopt a culture of ethical trading, and as a basis for monitoring and tracking illegal trade at both levels. Similarly, it is essential that a system for certification (in terms of source and quality) is in place, based on an internationally-agreed set of standards that are developed through an open and participatory process.

⁴⁰ According to Mr. Maina, Acting deputy director

Conceptual issues:

14. Need for a criteria and indicators for sustainable forest management. In order to effectively understand and interpret the provisions of the act, it will be necessary to clarify and agree on the meaning of certain basic terms that have direct implication on the practical application on the act; and in particular the Sustainable development of forests: There is still disagreement even at international level as to the meaning of this term. Kenya government and the EAC countries are committed to sustainable forest management, but there must be a common understanding of its meaning, and an objective means of assessing if this is actually happening. Towards this end, a criteria and indicators of what constitutes “sustainable forest management” is needed. Kenya could develop this alone, but collaboration at EAC level would be more cost effective, in addition to providing a basis for common approach to FLEG and other cross border issues.

15. Definition of “all types of forests” : Another important challenge for dryland forests relate to the definition of the forests for gazettement and management purposes. Most of the dryland forests existing on hill tops, on valley bottoms and riverine woodlands, and bushlands/scattered trees in savannahs, generally degraded and often ungazetted, undemarcated and merge gradually into grasslands. The challenge will be in delineating and demarcation of these forests for purposes of management plans as envisaged under the act, given the limited information and knowledge of the extent of the resources in terms of areas and quantities, limited capacity of the local authorities on forest management, the potential conflict of interest between resource/land uses (pastoralists, charcoal burners, wildlife), and the challenge of forming community forest associations among nomadic communities.

According to FAO, forests are defined as ecosystems with a minimum of 10% crown cover of trees and/or bamboos, generally associated with wild flora, fauna and natural soil conditions, and not subject to agricultural practices.

Regional and International agreements

16. Regional and International treaties, conventions and agreements: Kenya has given special significance to the conservation of its rich environment and biodiversity, including forests, in view of their national as well as global significance. Consequently, Kenya is signatory and/or party to several international and regional conventions, treaties and agreements relating to forestry, including the Ministerial Declaration on FLEG- Yaounde, Cameroon, the EAC Treaty and the EAC Protocol on environment and Natural Resources.

The international conventions, agreements and declarations create certain obligations with regard to regular monitoring and reporting by member governments, and in some cases preparation of national action plans and their implementation. The Forests Act (2005) (article 61) gives full recognition of Kenya’s international obligations and provides for the development and joint management of cross-border forests and forest produce (article 62).

Kenya is implementing the AFLEG’s indicative actions under the Ministerial Declaration- Yaounde, Cameroon 2003 and the EAC Protocol on environment and natural resources. A review of the these instruments indicates that Kenya has integrated the provisions and principles in these instruments in designing its forest policies and legislation, and has either implemented, or has included most of the AFLEG’s indicative actions (recommended in the Yaounde Ministerial Declaration) in the KFS’s

Strategic Plan 2006-2011. However, there are a few provisions in the EAC protocol that call for cooperation and collaboration with partner states, and therefore need joint action. These include:

- Article 11 (2)(a)- develop, publish, review and evaluate regularly the effectiveness of national forest policies, programmes and plans.
- Article 11 (3)- The partner states shall harmonize their national policies and laws and enforce programmes to promote sustainable forest management
- Article 11 (4)- The partner states shall adopt common national policies and programmes that allow local communities to effectively participate in forest management activities and to benefit from the forest resources.
- Article 11 (5)- The partner states shall cooperate and where necessary, enter into agreements or other arrangements, in the management of trans-boundary forests ecosystems and protected areas.

6. PROJECTS AND SPECIAL PROGRAMMES

Examples of on-going or planned forestry projects and programmes relevant to FLEG in Kenya:

1. **Strategic Environmental Assessment (SEA) of Kenya Forests Act (2005).** This is a WB supported programme which focuses on integrating environmental considerations on the new Kenya Forest Act (2005) and strengthening the processes for its implementation. It examines current risks confronting both woodlands and forest environments and the social well being of communities relying on these resources. Evidence gathered through research and extensive consultations with stakeholders is used to identify the scope for improving institutional structures and governance processes under the on-going forest reforms; notably those relating to the KFS and the participation of communities and the private sector in forest management. The SEA recommends ways of enhancing the opportunities for environmental and social gains which already form part of the overall goal of the Forest Act. A draft report is available but not yet released for citation.
2. **“Miti Mingi, Maisha Bora” Support to Forest Sector Reforms in Kenya:** This is an 18 month initial phase programme supported by the Government of Finland, expected to start in the 2nd quarter of 2007. The programme will focus on three key areas: efficient and adequately staffed KFS with a clear strategic plan, promoting community and private sector participation in forest management; well functioning and dynamic Forest Information System (FIS) in place, meeting the needs of the KFS and forest sector at large; and improved livelihoods and sustainability for ASAL populations through PFM, particularly for the vulnerable and marginalized.
3. **Enhanced Regulatory and Information Systems for Integrated Implementation of Rio Conventions:** This project was formulated in 2006 and has just been approved for implementation by the Government of Kenya through NEMA, with funding from GEF. The project objective is to enhance national capacity for the implementation of the Multilateral Environment Agreements by leveraging financial and technical resources to address country needs for capacity for monitoring and assessment of environmental impacts taking into consideration MEAs obligations; strengthening integrated information management and promoting synergy in the implementation of the MEAs. This project is of relevance to forest sector in view of the linkages between forests and the three RIO conventions.
4. **Forest recovery policy and strategies:** a UNDP supported project: Its objectives are: To ensure forest policy and Forest Bill are listed in parliamentary order paper; to contribute to forest sector reforms; to contribute to protection of selected forests; to strengthen institutional capacity for FLEG. This was a two year project @USD 130,000 per year, started 2004-2006.
5. **Reducing illegal logging in Kenya dryland forests and woodlands through improved governance:** UNDP supported project: Its objectives are: To determine the scale of illegal logging; To promote multiple use and alternative livelihoods; To build the capacity of local communities and government agencies; to create an enabling environment; and to provide innovative and practical systems for monitoring, tracking and certifying timber chain of custody. A 5 year project, started 2004 with a budget of Euros 1,663,372.
6. **National Forest Programme Facility:** FAO supported project: Objective is to develop participatory and collaborative forest management approaches in Kenya; and to strengthen institutional capacity for participatory resource implementation. This is part of 3 year programme that started 2004. 1st phase of US\$ 300,000.
7. **Advancing accountability in the implementation of forest policy and legislation:** A DFID supported project through KFWG and FAN. Objective are to ensure politicians and government officials are more accountable in FLEG; to enhance quality of evidence and effectiveness in prosecuting forest crimes; to ensure better understanding of roles; and to enhance the effectiveness and sustainability of FAN. A two year project starting 2004 with a budget of UK pounds 300,000.

8. **Forest range rehabilitation and environmental management strengthening (FORREMS):** This is a big project supported by USAID with several components, implemented through ICIPE. Relevant components include the piloting with PFM in the Mukogodo forest-2 year project, USD 500,000; Support to Forest Department for improvement of information system for decision making, development of the new forest act, and strengthening community management structures for PFM- 3 year project started 2003 with a budget of USD 690,000.
9. **The Good Woods Project:** This is a pilot project implemented by WWF with support from UNESCO to promote use of readily available/farm-produced tree species (Neem, mango, jacaranda) for wood carvings, and the development of criteria and standards for certification of wood products in terms of species and sources.

Some cross-border projects and programmes relevant to FLEG in Kenya:

1. The Integrated project for the conservation and management of the Mt. Elgon Ecosystem: Kenya and Uganda are implementing this project, funded by NORAD through IUCN, with the EAC Secretariat as the lead agency under the umbrella of the environment window. The local communities, KFS and KWS are **the main stakeholders on the Kenya side, using the PFM approach.**
2. **The Eastern Africa Coastal Forests Ecoregion (EACFE) Programme- Strategic Framework for Conservation, 2005-2025:** This programme brings together a wide range of stakeholders, including Kenya, Mozambique and Tanzania to establish a clear set of priorities, operating principles and strategies to achieve the goals of conservation, management and sustainable use of forests in the region. The programme is being implemented with support from international community through WWF.

The overall message from the above is that there are many on-going or planned projects and program that relate either directly or indirectly to FLEG, and as many players. The challenge for EA FLEG is to undertake a detailed analysis of the situation and consultations with the Ministry of Environment and Natural Resources to identify the critical areas of interventions, building on the on-going processes and ensuring synergy and complementarity.

7. CASE STUDIES

1. The Participatory Forest Management experiences: Integrated Natural Resources Management in Ukambani (INRMU) Project

Since 1997, the Government of Belgium supported the forestry sector to implement a District Forestry Development Programme (DFDP) in Semi-Arid areas- covering six divisions of Makeni. From 2002 until 2005, the project was extended under a new title- Integrated Natural Resources Management in Ukambani (INRMU). One of the main components of INRMU was to introduce community-based forest management (pilot PFM) using the draft Participatory and Collaborative forest guidelines that were in place.

The project objective was to build capacity of the local communities in the management of many existing forests on isolated hills in Ukambani. The methodology adopted included several steps:

- ❖ Mobilization of the communities living around the Hills involving information and training on forest conservation, and their roles, responsibility and rights conferred by the guidelines.
- ❖ Sensitizing and establishing Integrated Hill Conservation Committees (IHCCs)- which included the local representative of the Forest Department.
- ❖ Training IHCC on the guidelines and on the role they were expected to play in the management of hill forests.
- ❖ Development of integrated Community Action Plans (CAPs) covering the hill forest and surrounding areas. Activities outside the forest included agroforestry and other income generating activities, by individual farmers or IHCC.
- ❖ Implementation of the CAPs with support from the project, which included technical support, a subsidy in form of materials and a loan element provided by the project to either individual farmers or to IHCC. Half of the loan was to be repaid, to serve as a means of building ownership.

Lessons learned in this intervention included:

1. Capacity building for participatory forest management is a long term process and must take into account the literacy level of the target groups. Interview with IHCC members suggested that few were ready (after two years) to engage in any serious work relating to governance or management of the forests, due to limited understanding of the issues. The draft guidelines were still in English, a factor that need to be considered in training of forest conservation committees and community forest associations on forest legislation.
2. The PFM guidelines at that time were still in a draft form, and it was clear that the forest staff who were responsible for interpreting and communicating their meaning and implications to the IHCC had not mastered them fully. Clearly, this is the first handle to get over- ensuring that the KFS staffs internalize the legislation before they can go out to propagate. This is a process and time and resources must be set aside.
3. There was a clear distinction in terms of success in the implementation of the CAPs, between those of IHCC and individual farmers, with the former being more successful. This was a case of the individual farmers being better motivated- in view of the immediate benefit they received, compared to groups where benefits accruing to individuals are less obvious. This is an important consideration in motivating community forest associations- how to demonstrate benefits and how these reach the individual.

2. Monitoring and Tracking illegal logging and other forest crimes using aerial survey in Kenya: The Aerial survey of destruction of the destruction of Mt. Kenya, Imenti and Ngare Ndare Forest Reserves- KWS, February 1999.

Several tools and approaches are available for monitoring and tracking illegal logging and other crimes in the forests including satellite tracking, aerial surveys and ground tracking. This case study presents the results of a 1999 study of the destruction of Mt. Kenya, Imenti and Ngare Ndare Forest Reserves. The study was undertaken by KWS in collaboration with UNEP, and was driven largely by pressure from the NGO communities, including Kenya Forests Working Group, conservationists and community groups.

The methodology used was derived from the long experience gained in aerial game counts carried out by KWS and DRSRS, where the area being surveyed is overflown by an aircraft following set transects. The aircraft, using aerial photography equipment, records details of the forest condition at fixed intervals using Global Positioning System (GPS). This information is later downloaded into a Geographical Information system (GIS) database to form the baseline information to be interpreted and analyzed. Subsequent survey is expected to follow the same flight paths to provide a basis for tracking changes over time. This particular case study provided a baseline scenario on the status of the forests as at February 1999.

The results from this study provided a basis for important policy decisions concerning the protection and management of the specific forests, as well as concrete information for advocacy and awareness raising regarding the magnitude and scope of forest destruction. Highlights included:

- ❖ Illegal logging targeting rare species: over 6,700 Camphor (*Ocotea usambaresis*) trees destroyed in Mt. Kenya forest.
- ❖ Conflicts over due management between FD and KWS
- ❖ Over 75% of clearfelled plantation not replanted- exposing the land to soil erosion
- ❖ Extensive encroachment into the edges of indigenous forests for cultivating agricultural crops
- ❖ Extensive forest destruction from charcoal production in the upper Imenti forest
- ❖ Over 200 hectares of land cleared for marijuana (*bhanghi*) cultivation inside the forest
- ❖ Illegal logging of Cedar trees, livestock grazing and forest fires in Ngare Ndare forest

The results from this survey resulted in public outcry, particularly through the media, which prompted the forest department, with support from local administration, to mount a forest protection campaign including the burning of the *bhanghi* plantations and arrest of perpetrators.

3. Improvement of information education and communication in forest law enforcement⁴¹:

This programme was initiated by the KFS in 2004 in context of the Rapid Results Initiative (RRI) to address the issue of inadequate flow of information between Forest Field Staff, other stakeholders in forest management and the Forest Service Headquarters. Its objective is to increase the reporting of forest destruction incidences to KFS offices by 30% within 100days of continuous monitoring and reporting in selected forest reserves. The following Table indicates the number of reported incidences and the resulting improvement to date :

Station	2005/6	2006/7	Increase in No. 05/06 to 06/07	% increase
Kieni	134	259	125	48

⁴¹ Forest Protection Branch RRI report of 2007.

Geta	109	186	77	41
Gathiuru	98	115	17	15
Ngare Ndare	1	24	23	96
Ontulili	81	120	39	32
Chuka	36	50	14	28
Njukiini	4	30	26	87
Cheptais	25	40	15	38
Swam	4	10	6	60
A. Sokoke	70	57	-13	-23
Njilore	33	12	-21	-175
Gede	9	13	4	31
Rumuruti	28	45	17	38
TOTAL			329	34

Main forest incidences reported are charcoal burning, illegal timber harvesting, illegal grazing, cutting of poles and posts, forest fires and unauthorized removal of firewood. Although the number of incidences in each category differ from one station to another, charcoal burning predominate folloed by illegal timber harvesting.

The main impact of this programme has been a drastic increase in awareness and reporting of destruction of forests, resulting from the application of a clear and uniform procedure and tools for reporting on forest destruction, the involvement of local stakeholders, and the training/motivation of the Forest Protection Unit personnel. The main challenge is to follow up on this information, including using it to develop a strategy for law enforcement that includes the three key aspects: detection, protection and suppression.

8. MAIN CONCLUSIONS AND RECOMMENDATIONS

From this review and analysis, several conclusion and recommendations can be drawn that are of relevance to EA FLEG. These are summarized at two levels:

At national level

Poverty and poor governance (in its various manifestations) have been the principle drivers of illegal logging and other forest crimes. Over the last five years however, there has been significant political will and commitment to address FLEG issues, as depicted in the draft Constitution, The economic Recovery Strategy, Vision 2030 and Draft National Land Policy.

Kenya can claim significant progress towards success in improved frameworks for forest law enforcement and governance for the management of its forest resources. It has undertaken key institutional, legal and policy reforms to create an enabling environment for participatory forest management; a draft forest policy and a comprehensive Forests Act (2005) that are consistent with the principles embodied in regional and international agreements and conventions are in place; A Forest Board and a Kenya Forest Service has been established under the act. The challenge now is implementation. The following are the main conclusions and recommendations for the successful implementation of the above institutional and policy reforms:

1. Need for subsidiary legislation and other studies needed to operationalize the Forestry Act 2005.

The formulation of the subsidiary legislation is an urgent task for KFS. In addition, the draft WB study⁴² as well as this review has identified several other studies that are needed to generate information necessary for informed decision making.

Recommendation: KFS to identify priority subsidiary legislations and studies and prepare TORs for their preparation and/or implementation. Activities could include:

1. *Preparation and the validation of legislations, rules, regulations and guidelines needed to implement the new forest act (e.g. development of clear guidelines for the allocation and bidding processes for plantations, PFM guidelines, etc.)*
2. *Undertake a detailed analysis of the key legislations with greatest potential for conflict (e.g. water, wildlife and Agriculture) with a view to identify and harmonize and/or initiate consultations leading to resolution of the conflict/overlapping responsibilities through the existing mechanisms, e.g. the National Environment Council/Inter-ministerial coordinating Committees, MOUs.*
3. *Undertake consultations with KEFRI leading to an MOU which would clarify the access and user rights of forest areas for forest research and protection of research facilities within forest reserves. This could be done within the framework of the Strategic Plan 2006-2011, or as addendum/amendment to the Forests Act (2005).*
4. *Undertake a stake holder's consultation to develop a strategy for forest research in context of the Strategic Plan 2006-2011. Stakeholders could include KEFRI, ICRAF, Universities, KWS, NMK and NGOs.*

2. Need to strengthen national capacity for FLEG: One of the biggest challenges for KFS will be in training of law enforcement staff, particularly the forest guards, but also at officer level; as well as policy makers and stakeholders. Equally, the local communities and authorities need to be aware of the

⁴² Draft SEA of the Kenya Forest Act (2005) – January 2007

provisions in the new forest dispensation, particularly as regards their roles, responsibilities and the need to organize themselves for these. Another challenge to forest law enforcement and governance is that the scope and potential importance of forests contribution to poverty reduction strategies are not well known or appreciated by national planners and the public at large.⁴³

Recommendation: Strengthen national capacity (through advocacy, training and awareness creation) for forest law enforcement and governance: Activities could include:

1. Implement a series of training workshops on forest legislation for KFS staff, to inform and develop Action Plans.
2. Design and implement a programme on information, public education and advocacy relating to forest law enforcement and governance for policy makers. This is critical in the development and approval/gazettement of regulations and guidelines.
3. Building an effective framework for exchange and sharing of information at the national, sub regional and international level (website/blog to facilitate sharing of experiences).
4. Design and implement an awareness and capacity building programme for local communities in establishing and managing Community forest associations.

3. Monitoring and tracking of illegal logging and other forest crimes: This review indicated that a monitoring system for forest offences exists at local level (District forest- monthly reports on offences); and at national level (KFS annual reports). However there has been no systematic effort to analyze this information to determine the magnitude of the problem or the trends over time.

Recommendation:

1. *Undertake a comprehensive study to assess and analyze the existing information on the scope and extent of illegal logging and other forest crimes (including trend over time) to provide a baseline and develop a system for regular monitoring, tracking of trends in forest crimes (including prosecutions), and up-dating of this information.*
2. *Prepare a strategy for forest law enforcement in context of the Strategic Plan 2006-2011.*

4. Sustainability of KFS: One of the challenges of being a corporate body is to become self-sustaining, financially. In this regard, KFS has to be more innovative in generating finances beyond the traditional sources such as the forest royalties, including sourcing from private/public partnerships.

Recommendation:

- ❖ *Undertake a feasibility study for the establishment of private companies/enterprises to tap into commercial tree farming on leased private and/or trust lands for high value forest products such as gums and resins, biofuels (jatropha curcas), and timber. (KFS would promote such activities through feasibility studies, cost benefit analysis and environmental impact assessment, in addition to technical services and facilitating access to seed funding from the Forest Management and Conservation Fund. Besides generating income for KFS and employment creation, such an enterprise would contribute greatly to the increase in forest cover in the country- a win-win situation).*
- ❖ *Support the preparation of a strategy to guide the operations of the “Business Enterprises” Division, a strategy that will include innovative approaches such as payment for environmental services, ecotourism and private/public partnerships.*

⁴³ Proceedings of the Helsinki Workshop on potential contribution of forests to poverty eradication strategies (2002)

5. Harmonization of legislations affecting FLEG: The NEMA is the authority mandated to ensure coordination and harmonization of the many pieces of legislation that environmental management including forests. However, this has remained elusive. For example the MOU between Wildlife and Forestry provided for joint law enforcement, but the implementation lacked coherence and disputes always arise over who is responsible for what action.

Recommendation:

- ❖ *KFS undertakes a review to identify the key areas of conflict/overlap with other acts/legislations (e.g. in the management of the water towers- ministry of Water) and initiate, involving NEMA as appropriate, the consultative process leading to conflict resolution through the existing mechanisms (e.g. the National Environment Council).*

6. Arrangements for forest research: Research is a vital aspect in forest protection from forest pests and diseases. Research also contributes to informed decision making regarding policy on sustainable silvicultural systems (e.g. tree/tree seed improvement, issue of prosopis, merits/demerits of the Taungya system, etc.); and can contribute significantly to market research on forest products. Yet, there is no clarity on issues of access and user rights of researchers to forests/forest land for research purposes.

Recommendation:

- ❖ *Initiate consultations with concerned research institutions (e.g. KEFRI, Universities) to spell out collaboration and cooperation arrangements, leading to up-grading and/or preparation of new MOUs.*

At regional level

As noted from the review, some regional/bilateral activities and projects/programmes have been initiated, and the EAC protocol on environment and natural resources is in place. However, a more aggressive and proactive approach is needed, using the mechanism of the EAC environment window, in order to promote cooperation and collaboration in the implementation of the forest law enforcement and governance activities that contribute to cost effectiveness, efficiency and sustainable management of shared ecosystems.

7. Learning, documentation and sharing of knowledge: There is a need for learning, documentation and sharing of knowledge and experiences on Participatory Forest Management (PFM) in order to capitalize on lessons from partner states. For example there is overwhelming consensus that the role of the civil society is critical to ensuring good FLEG in the long run. To date, there is comparatively little experience in Kenya with Participatory Forest Management, an approach widely thought to promise effective and cheaper stewardship of the forest resource.

Similarly, there is need to have a common understanding on the various concepts and approaches (e.g. the definition of forests, sustainable forest management, integrated natural resource management, PFM, etc.); and a common criteria/standards for monitoring and assessment of compliance with forest laws and regulations, including certification in relation to cross-border trade.

Recommendation:

- ❖ *Undertake studies, reviews and/or joint activities to advance knowledge, techniques and approaches on FLEG issues such as trade and PFM. In particular:*

1. Undertake a regional comparative review of PFM- to document lessons and identify best practices and approaches.

2. Validate the approaches and experiences from the EAC partner states. Specifically, develop methodologies and undertake pilot trials in selected communities in order to build confidence.
3. Develop TOR and undertake a study to develop criteria and indicators of sustainable forest management. This should build on work done under the auspices of the CBD/UNCCD and UNFCCC Intergovernmental Panels on Science and technology, and build on work already started by the Good Woods Programme of the WWF.
4. Develop TOR and undertake an assessment of the extent of the illegal cross-border timber trade and recommend means of monitoring and tracking such trade using existing mechanisms and/or certification standards (ref. Good woods programme)

8. Implementation of regional/international agreements and conventions: Kenya has integrated most of the provisions and principles of regional/international agreements and conventions in designing its forest policies and legislation, and has either implemented, or has included most of the AFLEG's indicative actions in the KFS's Strategic Plan 2006-2011. However, this has not been by design but incidental. Joint programming and activities have also been limited despite the existence of the EAC "protocol on environment and natural resources" that call for cooperation and collaboration with partner states.

Recommendation:

❖ *Promote cooperation and collaboration in the management of trans-boundary forests ecosystems and other areas of common concern. Activities could include:*

1. Initiate bilateral/tripartite consultation to develop programmes/projects on management of selected transboundary forest resources.
2. Initiate bilateral/tripartite consultation to develop trade agreements for forest products between EAC partner states)
3. Establish an EAC regional forum on forests to promote collaborative management of shared ecosystems between Kenya, Uganda and Tanzania -to meet on regular basis through the East African Community- Environment window.
4. Undertake a comprehensive study on FLEG in the EAC countries to come up with a strategy and action plan in support of harmonized forest law enforcement within the region.

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ANNEXES

Annex 1: Other policies that influence conservation and management of forests:

In addition forest policies, Kenya has over 77 statutes that touch on forestry in one form or another. For further details, see Annex 1. The following are some of the key ones:

Environmental Management and Co-ordination Act (EMCA) 1999: The EMCA was enacted to provide a framework for integrating environmental considerations into the country's overall economic and social development; and for harmonising the over 77 statutes relating to environmental management. The implementation of this Act is guided by the principle of public participation in the development of policies, plans and processes for environmental management. It also recognises the cultural and social principles traditionally applied by communities in Kenya for the management of natural resources. This makes the act relevant in the management of forests especially, especially relating to PFM initiatives.

The Act provided for District Environmental Committees, (DECs) and Provincial Environmental Committees (PECs) whose composition include the private sector, local community representatives and *Departmental heads*; and have oversight regarding all environment issues including forestry at district and provincial level.

National Environment Action Plan (NEAP): This is a comprehensive strategic framework on the protection and management of the national environment and natural resources on a long-term basis. It was initiated way back in 1994 (revised every five years) and its biggest challenge by then was to interpret and incorporate the relevant provisions of Agenda 21 into the country's development plans. NEAP had several components, including forests with focus on conservation and sustainable management.

Land/Land use Policy (Draft): Kenya has a Draft National Land Policy (October 2006) that is still under discussion and is yet to be legally adopted. In context of forestry, there are three major issues that make this an urgent issue: the question of land tenure (ownership and access) and the implications it has on the way the communities react to tree planting and forest management programmes (re. PFM); the land reform issues with particular attention to forest excisions and forest land alienation for resettlement and alternative land uses; and the land use management issues, and the need for clear forest land use classification and planning for management purposes, e.g. for water catchment versus production forests.

Water Policy- Sessional Paper No.1 of 1999 and the Water Act 1999: Under this Act, Minister may declare an area to be a protected catchment area and order, require, regulate or prohibit certain forestry activities considered to be not in public interest. This Act is ideal for catchment protection and protection of water sources within the forests. Main challenge is coordination and harmonization, and the potential for conflict with the Forest Act.

The Water Act provides basis for reforms in the water sector to facilitate regulation. It establishes an overall regulatory Board, Regional/Area catchment based Water Services boards, and makes provision for establishing water companies; Water Users Associations and Water Providers.

The act allows for commercialization of water supply through private water companies. These companies will have to pay for the water they sell to the end user. This opens up the possibility of the inclusion of a conservation levy in the charge.

Wildlife (Conservation and Management) Act (Cap 376): This act relates primarily to forests in the national parks, National reserves and Sanctuaries. FD/KWS signed a Memorandum of Understanding (MoU) in 1991 for the management of selected forest reserves (e.g. Arabuko, Shimba hills). The National

Museum of Kenya (NMK) joined in 1996 to form a tripartite MoU that was to last for 25 years upto 2016. Even though MoU is not legally binding, the Director KWS can delegate to the Forest Officer powers to carry out duties in the selected forests, as pertains to the Act. KWS is the National Implementing Agency for CITES and RAMSAR Conventions.

The main link of this policy with Forests Act (2005) is in dual gazettement, creating potential conflict and the need for an MOU to facilitate joint management, given the human/wildlife conflict that has been difficult to resolve.

Agriculture/National Food Policy – (Sessional Paper No.2 of 1994): This Act promotes soil conservation and prevents the destruction of vegetation. It can help addresses the biggest threat to forest conservation i.e. short term shifting cultivation or the slash/burn agriculture, which is one of the main force behind forest degradation. The Ministry, over the last two years, has developed the Strategy for Revitalizing Agriculture (SRA), and a Policy on Agriculture Extension. These are significant policy frameworks that can be called upon to promote enforcement of the Forests Act (2005) in relation to soil conservation and food security.

National Energy Policy/Energy Act 2006:The policy ensures that the relevant ministries, NGOs and other organizations address environmental problems associated with the supply and use of energy (charcoal and fuel wood). The Act in particular supports the promotion and development of renewable sources of energy, especially through agroforestry; and the conservation of energy through appropriate technologies. The problem is in enforcement, since most rural and urban populations rely on fuel wood and charcoal for energy and livelihoods.

Antiques and Monument Act (Cap 215): This Act has been used for gazettement of protected areas or threatened heritage e.g. the Kaya forests at the coast have been protected under this act. Forest management decisions are made by the elders, while other management decisions are vested with the National Museum of Kenya (NMK). By utilizing their Acts and mandates, NMK, KFS and KWS have been able to pilot butterfly farming in the forests, e.g. Arabuko Sokoke through communities who are now obtaining meaningful incomes from forest reserves (from non-timber products). This is a major contribution to law enforcement through local community participation in benefit sharing.

Annex 2: International conventions and agreements: Linkages to forests

The UN Convention to Combat Desertification (UNCCD): Signed on 24 June 1997. Article 8(3)(b)(i) of the Regional Annex for Africa emphasizes the need to “ensure integrated and sustainable management of natural resources, including forests”. The concept of land degradation inherent in desertification includes deforestation. Indeed, deforestation contributes to desertification, given the hydrological, climate, and soil stabilization functions performed by intact forest ecosystems.

The convention on Biological Diversity (CBD): Signed on 26 July 1994. Though “forests” are not specifically referred to in this convention, they are part of the definition of the term “biological diversity” in that they are both a component of, and a habitat for, terrestrial biodiversity. A significant component of Kenya’s terrestrial biodiversity is found in forest ecosystems, including the mountain, savannah and mangrove forests. Thus the loss, fragmentation or degradation of forested lands is a major cause of the decline in ecosystem, species and genetic biodiversity

The UN Framework Convention on Climate Change (UNFCCC): Signed on 30th August 1994. Article 4(1)(c) calls for the promotion of “...practices and processes that control, reduce, or prevent anthropogenic emissions of ...green house gases...in all relevant sectors, including the energy, transport, industry, agriculture, **forestry**, and waste management sectors; and Article 4(1)(d) calls explicitly for the “enhancement, as appropriate, of sinks and reservoirs of...greenhouse gases...including biomass, **forests**, and oceans...”. There is growing scientific consensus that human activities, particularly the burning of fossil fuels to meet energy needs, is likely to lead to an unprecedented warming of the earth’s climate in the foreseeable future unless remedial action is taken. Forests are both important sinks of carbon dioxide and serve as reservoirs of carbon in the form of biomass. Loss of forest cover, thus increases the level of greenhouse gases in the atmosphere. Maintaining and/or increasing forest cover can help mitigate climate change, both by preventing emissions, and by sequestering the carbon content of standing forests.

The Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (and Chapters 11 of Agenda 21): With its origin in the UNCED (June 1992), the guiding objective of the Forest Principles is to “contribute to the management, conservation, and sustainable development of all types of forests and to provide for their multiple and complementary functions and uses.

The principles identifies for programme areas necessary for combating deforestation (see Chapter 11 of Agenda 21):

- Sustaining the multiple roles and functions of all types of forests
- Greening of degraded areas through forest rehabilitation, afforestation, reforestation
- Promoting efficient utilization and assessment to recover the full value of goods and services provided by forests
- Establishing and/or strengthening capacities for the planning, assessment and systematic observations of forests...”

In covering the above, the Forest Principles also call for **participation** of all stakeholders in decision making relating to forests ((Principles 1(d), 4(b)); the need to avoid **cross-sectoral impacts** on forest use (Principle 13(e); the need for **trade in forest products to be based on “non-discriminatory and multilaterally agreed rules and procedures...”** ((Principle 13(a)) and the need to make available new and additional financial resources to developing countries to undertake the actions necessary for sustainable forest use (Principle 10).

International Trade Agreements such as CITES (Convention on international trade in endangered species of wild fauna and flora) and ITTA (International Tropical Timber Agreement): CITES was negotiated to monitor and, when necessary, curtail international trade in those species of wild flora or fauna that were either in immediate or eventual danger of extinction due to a variety of factors, including international trade. For example, *Prunus Africana* (muyiri) is listed under CITES category III and its trade is thus regulated through a Permit system. Other threatened tree species could soon be upgraded to CITES.



ITTA is a commodity agreement designed to facilitate the tropical timber trade. It seeks, among others, to “provide a forum for consultations to promote non-discriminatory trade practices (Article 1(b)); and “to enhance the capacity of members to implement a strategy for achieving exports of tropical timber and timber products from sustainably managed sources by the year 2000” (Article 1(d).

Adherence to ITTA objective of “sustainable use” is critical to avoid over-use of the forest resource base where trade in forest products is a significant activity. Trade in forest products can also help to prevent the loss of existing forest cover to competing land uses. This can result if the value of the forest products being traded is accurately assessed to reflect the environmental costs and benefits of production; and if such value accrue to the rightful owners and users of the resource base.

CITES provides a window by which to monitor and control the trade in potentially endangered species of flora and fauna which enter the international market.

Others: These include:

- ❖ Ramsar convention –Convention on Wetlands of international importance especially as waterfowl habitat
- ❖ African convention on the conservation of nature and natural resources
- ❖ Convention concerning the protection of the World Cultural and Natural Heritage
- ❖ Lusaka Agreement on illegal trade in wild fauna and flora

Note, for example that Mt. Kenya forests have been listed as a World Heritage site through UNESCO (under the Convention on protection of world cultural and natural heritage). Mt. Kenya is also listed under the “Man and Biosphere” Reserve (UNESCO).



Annex 3: Main FLEG functions and responsible units within KFS

The Strategic Plan 2006-2011 sets out the KFS vision, mission, goals and objectives for the period 2006-2011 to ensure the effective operationalization of the provisions of the Forest Policy and the Forests Act (2005). These include the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socio-economic development of the country.

Form follows function. The following Table gives the FLEG related functions and the responsible functional level:

<i>FLEG related functions⁴⁴</i>	<i>Functional unit- Roles and, Responsibilities</i>
<p>Formulating and implementation of policies and guidelines regarding the management, conservation and utilisation of all types of forests in the country</p> <p>Promote national interests in relation to regional, sub-regional and international forest related conventions, principles, agreements and programmes</p> <p>Collection of all revenues and charges due to the Government in regard to forest resources, produce and services</p> <p>Promote the empowerment of associations and communities in the control and management of forests.</p>	<p>KFS- Forest Board (directorate of KFS): Responsible for overall forest policy, law enforcement and governance:</p> <ul style="list-style-type: none"> • Consider and recommend gazettement or excisions of forest land • Formulate policies, guidelines, rules and regulation • Approval of policies, guidelines, rules and regulation • Consider/approve all management agreements and licenses. • Establish and review of policies, and rules for marketing of and trade in forest produce • Coordinate, harmonize and promote implementation of regional, sub-regional and international forest-related conventions, principles, agreements and programmes (overlap with responsibility for NEMA)
<p>Protecting forests in Kenya in accordance with the provisions of the Forests Act;</p> <p>Enforcing the conditions and regulations pertaining to logging, charcoal making and other forest utilisation activities;</p>	<p>Senior Deputy Director- Security and Protection Programme. In charge of:-</p> <ul style="list-style-type: none"> • Intelligence services • Law enforcement • Forest fires • Forest health

⁴⁴ Functions as per the Forests Act (2005)/draft KFS Strategic Plan 2006-2011



<p>Enforcing the provisions of the Forests Act, 2005 and any forestry or land use rules and regulations made pursuant thereto or to any other written law;</p> <p>Monitor the implementation of the Forest Act and other forest regulations within the respective conservancies</p>	<p>Communities and Community Forest Associations Among the functions of the Community Forest Associations under the Forests Act (2005) is that of assisting the KFS in enforcing the provisions of the Forest Act and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce.</p> <p>Forest Conservation Committees & Division Conservation Committees: Ecoregional based committees with mandate to inform and advice the Forest Board on issues of conservation and utilization of forests within their respective areas.</p>
<p>Training on FLEG, including prosecutors from amongst the forest officers for purposes of prosecuting court cases</p>	<p>Kenya Forestry College</p> <ul style="list-style-type: none"> -Training of officers on FLEG. -In-service training on FLEG -Training of Forest Guards
<p>Promoting the empowerment of associations and communities in the control and management of forests;</p>	<ul style="list-style-type: none"> • Director of Forests - issuance of guidelines and permission to participate in the conservation and management of a state forest or local authority forest in accordance with the provisions of the Forest Act. • Private Forests and Extension Programme of the KFS. In charge of, among others: Farm Forestry training and extension, Communication, Urban forestry, Conservation and Management of dryland forests, Bio-energy.

Annex 4. Checklist of key information on illegal logging and forest governance

Statement	True/False	Comment
I. Rural Livelihoods and Subsistence		
Almost all (more than 80%) of rural people depend on fuel wood for energy needs	True	There is a sustainable supply of 15m metric tonnes leaving a deficit of 20m tonnes rising to 33m tonnes in 2030. ⁴⁵ 90% of rural households use firewood for cooking and heating, www.easda.co.ke (2005)Charcoal report) It is estimated that seventy percent of Kenyans use wood fuel either as firewood or charcoal. For domestic use, 2.4 million tonnes of charcoal and 12.9 million tonnes of firewood worth 64 billion shillings are consumed annually. Tea, tobacco and fish processing companies annually consume an additional 20 million cubic meters of wood fuel worth 1.6 billion ⁴⁶ http://www.fanworld.org
The majority (more than 50%) of rural people depend on fuel wood for energy needs	True	89% of rural hh use firewood,7% in urban with 741kg,and 691kg in rural and urban hh respectively. 82% and 34% of urban and rural hh respectively use charcoal.Per capita consumption is 152 kg and 156 respectively totalling 2.4 m tonnes worth Ksh 17.5b or 43% of petroleum products ⁴⁷
Rural people make extensive use of forests for NWFP's that contribute to their livelihood security.	True	Foodstuffs, fodder, gums and resins, Medicines, aloe.honey, may be the only sources of income during the dry season; the non-wood forest products of economic value include medicinal herbs, fodder, exudates, honey, beeswax, fibre and essential oils among others. ⁴⁸ Seventy percent (70%) of the production of non-wood forest products is from natural ecosystems. The trade in these products generates about Ksh. 3.2 billion to the economy ⁴⁹
There is no feasible alternative energy source	True	Connection fees to the electric grid expensive and tariffs high. Appliances for other

⁴⁵ MoE(2004):Sessional Paper No.4 on Energy

⁴⁶ Avishi, et al(2005).Economic Potential of Forests in Kenya. Forest Action Network. Report

⁴⁷ MoE (2004):Sessional Paper No.4 on Energy

⁴⁸ Forests, Woodlands (rangelands and tree lands) of Kenya are important repositories of biodiversity. Over 25,375 species exist, the total number of plant species reported is 6,817(excluding algae) of which 86% are flowering plants(KFMP 1992) Main Draft Report

⁴⁹ Avishi *et al* (Economic Potential of Forests in Kenya

available for the rural people who depend on fuel wood, especially the poor		renewable sources e.g solar panels and wind energy are beyond rich apart from maintenance problem
Almost all (more than (80%) of urban people depend on fuel wood (and/or charcoal) for energy needs	True	80% depend on charcoal for cooking. Annual charcoal consumption estimated at 2.4m tonnes at a cost of Ks20 per kg or \$.2 ⁵⁰
The majority (more than 50%) of urban people depend on fuel wood (and/or charcoal) for energy needs	True	The alternative sources available are mostly out of reach in terms of cost.
There is no feasible alternative energy source available for the urban people who depend on fuel wood (and/or charcoal), especially the poor	True	The blanket ban on charcoal at production level has not regulated the industry
Almost all (more than (80%) fuel wood (and charcoal) production and trade is done outside of the formal economy/ without legal authorisation	True	A national charcoal survey has been undertaken by the charcoal-working group (KCWG) and the report is available. There are over 200,000 charcoal (producers, dealers and vendors) www.esda.co.ke (Charcoal report)
The majority (more than 50%) of fuel wood (and charcoal) production and trade is done outside of the formal economy/ without legal authorisation	True	1.6m tonnes of charcoal consumed per year worthy Ksh32b=US\$0.4billion ⁵¹
The legally extractable supply of fuel wood (and charcoal) is sufficient to meet the subsistence needs of rural and urban populations.	False	Per capita wood consumption is approximately 1M ³ . On average, two sizable trees will yield a total biomass of 1M ³ (Charcoal). Supply from own farm 44% Private Land 38% Government or county council 5% (largely illegal). The figures for charcoal higher(Charcoal report) ⁵² www.esda.co.ke (Charcoal report)
Almost all (more than 80%) of wood used in local construction in the rural areas in harvested and transported without legal authorisation	True	The movement permit reaches a very small per (5%) the commercial transporters due to distance from the source and avoidance of fee ⁵³

⁵⁰ Ministry of Energy(2002)Study of Kenya's Energy Demand, Supply and Policy For Households, Small Scale Enterprises And Service Establishments

⁵¹ ESDA(2005).National Charcoal Survey: Exploring the Potential for a Sustainable Charcoal Industry in Kenya

⁵² There are Draft charcoal Production, transportation and marketing rules and regulations which are intended to regulate the charcoal produced from all types of forest including farms

⁵³ Lucy Muthoni-Timber dealer-Personal communication

Most (more than 50%) of wood used in local construction in the rural areas is harvested and transported without legal authorisation	Yes	Permit authorities are the district forest officers. There are about 200 of these (one per division) covering the whole country . Problem of accessibility and costs associated with obtaining the permit leads to illegal movement.
Forests provide important services such as for biodiversity, water conservation, and local climate influence which are decreasing due to illegal use and conversion	True	The Five water towers i.e. Cherangani, Mau complex, Elgon, Aberdares and Mt Kenya are direct and indirect livelihood guarantors to virtually all citizens of Kenya from agricultural activities, hydro electric power to the pastoralists . The main threat is encroachment (including excisions), logging, fires and grazing ⁵⁴

Statement	True/ false	Comment
<i>II. Commercial Timber Harvesting and Sale</i> ⁵⁵		
Awarding concessions/s elling timber ⁵⁶		
<p>Concessions are awarded/timber is sold predominantly through competitive bidding</p> <p>The new Forestry Act 2005 effectively lifts the ban. In principal therefore, the gazetment of the rules and regulations and development of work plan.</p> <p>Figures quoted above are pre-ban.</p>	False	<p>The new law has provisions for competitive bidding but is yet to be implemented. Some rules are being formulated to guide the process⁵⁷</p> <p>The new Forests Act (2005) technically lifts the ban. However, this must be interpreted through a formal statement (with Rules and guidelines) by the minister or the Forest Board to avoid confusion and contradictions (if interpretation is left to individual officers).</p> <p><i>Before the ban at its peak the sector contributed about Ksh. 7 billion to the economy and employed directly 50,000 and indirectly 300,000 people. The timber industry alone is estimated to have investments over Ksh. 44 billion. In addition Over 530,000 households living within a radius of five kilometres from the forest estates depend on forests for cultivation, grazing, fishing, fuel wood, honey, herbal medicine, water and other benefits.</i></p> <p><i>The sector contributes about Ksh. 320 million per year to Kenya's GDP or approximately 1%</i></p>

⁵⁴ Akotsi, F.N.A (2005) Changes in Forest Cover in Kenya's Five "Water Towers" 2003-2005. DRSS.KFWG.

⁵⁵ The draft (Participation in Sustainable Forest Management) Rules 2007 prepared through a consultative process that involved four regional and one national workshop after the enactment of the new law are explicit on forest management guidelines, private sector participation, types of permits, prequalification procedure, offering and advertisement, bidding procedures, contracts, joint management agreements, concessioning, forest management agreement, non-resident cultivation and general provisions and when gazetted will form part of subsidiary registration that the Minister is empowered to make into to implement the law.

Statement	True/ false	Comment
		<i>of the monetary economy and 13% of non- monetary economy. Direct use values in terms of timber, fuel wood and poles are estimated at Ksh. 3.64 billion.⁵⁸ Under the draft rules timber licence And joint management agreements e will be for 1 year (to be decided) are the, concessions for 30 years are the only contracts to be subjected to be subjected to auctions</i>
The public has notice and opportunity to bid before awards True under the new Forests Act (2005). Need to review to ensure consistency between the Act and the Public procurement and disposal Act.	False	When there was no ban allocation was done through licensing committees only representation from public servants
Several bids are presented as a rule in the bidding processes True under the new law	False	The ban is in place
Bids are made public after awards	False	Award letters were sent to the allottees before the ban
Award rules are publicly available	False	Was a shared secret among the clique of officers and licensees
Unsuccessful bidders and other interested parties may challenge awards	False	Unsuccessful allottees would lobby the officers up-the hierarchy and some decisions would be reversed
An independent internal government watchdog polices the process	False	The chain of command was the watchdog i.e. District, Province and National levels. Currently a 16 member board will oversee the functions of KFS ⁵⁹ .The Kenya Forests Working Group provides effective platform for GoK,NGO's and CBO's to share information and play a watchdog role infor@kenyaforests.org www.kenyaforests.org
Forest officials must disclose financial	False	But there is the wealth declaration forms and the ethics and economic crimes act

⁵⁷Draft Guidelines for Preparation of Forest Management Plans for Joint Management

⁵⁸ Forest Sector Report (2002). Forest sector recovery action plan: policy goals, strategies and resource mobilization (Unpublished report)

⁵⁹ Forests Act 2005,Sec (6-1)

Statement	True/ false	Comment
interests in the forest sector (own and those of family members/close relatives)		
<i>Timber harvesting and sales from valid concessions⁶⁰</i>		
Concession contracts, inventories and plans are publicly available	False	Provided under the new law
Rules regarding forest practices concerning concession areas are publicly available	False	Being developed under the framework of the new law ⁶¹
Citizens may bring lawsuits or file administrative complaints to enforce concession requirements	False	The new law provides for that ⁶²
<i>Timber harvesting and sales from private forests</i>		
Forest officials have a procedure for controlling in the field timber harvesting and sales from private forests	Yes	Under the movement permit –but the implementation is not efficient to lack of transport and staff
Rules regarding forest practices on private lands are publicly available and accessible to private forest owners	False	Not gazetted but the Forests Act 2005 has provisions .The same is contained in the draft Forestry Policy
Rules regarding to the use and access of, as well as the ability to benefit from many non-wood forest products (grazing, medicinal, fruits, gums, resins and nuts etc.) are unclear	false	Clear under the new and old laws ⁶³
<i>III. Timber Movement Control and Processing</i>		
Transport of timber		
Government officials have a procedure for controlling the transport of timber	True	Police check for permits from Forestry officials , but this is often abused.

⁶⁰ The Forests Act 2005 section 59(d),(m) and(p) empowers the Minister for Environment and Natural Resources on the recommendation of the KFS board to make any rules necessary to make the forest law effective

⁶¹ Forests Act 2005 Part IV Sec 46-49-Community Participation

⁶² Forests Act 2005 Part 111 Sec 40-Concession over state Forest

⁶³ Forests Act 2005 and Forest Act CAP 385

Statement	True/ false	Comment
Control posts are staffed by government officials on a regular basis	True	Combined with other policing duties. However, enforcement is not often effective.
Government officials have a procedure for verifying the origin of timber being transported	True	The revenue hammer or the certificate of origin in case of private forests
<i>Sales of confiscated timber</i>		
Records are kept on volumes and assortments of illegally procured or transported wood captured by officials	True	At all offices there is an entry ledger for confiscated timber which should be filled under supervision of a forest officer
Captured wood is sold in public auctions or through other kinds of public bidding	False	Sold at market prices
Records are kept on volumes confiscated and sold as well as on prices obtained	True	Kept but can be abused
Processing of forest products		
Law requires licensing or registration of commercial processing facilities	True	There are several licences including that of KFS that a processor has to keep
Government performs regular inspections of processors	Not on a regular basis	This only happens on suspicion of having handled illegal forest produce
Export or import of forest products		
Customs officials trained to recognize restricted/prohibited species	True	Not regular but is provided for, implementation is the problem
IV. Accountability of revenue collection from forest activities		
Forest revenue system (royalties, taxes etc.) establish a clear basis for monitoring revenue collection (volume or area based)	True	Auditing is provided usually for but not done systematically ⁶⁴
Records are kept on logging volumes and revenue collection by defined geographic areas	True	According to according to forest administrative districts ⁶⁵

⁶⁴ The Auditor and Controller General regularly audits public institutions and the Forests Act (2005) (PART II-16)

Statement	True/ false	Comment
Periodic audits are carried out to verify that revenue collected matches with logging volumes/ areas under production	True	Done but can be subject to abuse
V. Civil services, social, and institutional factors that influence illegal activity		
Forestry officials regularly trained to upgrade law enforcement skills	Yes	Yes, but there is no quality control through tests and examinations ⁶⁶ Formal training on the new Act and policies needed (tools and incentives needed)
Judges and prosecutors trained in forest sector issues	False	Provided for in the draft strategic plan; but has not taken place
Case-tracking system (or equivalent) as a means to monitor the disposition of forest crime cases	Yes	An internal KFS mechanism but not systematic ⁶⁷ (no guidelines)
Forest agency is subject to independent audits	True	Yes from the Government organs i.e. Controller and auditor General, Anticorruption agencies and efficiency monitoring agency among others
Civil service has ethical code-of-conduct (e.g. regarding acceptance of gifts and benefits)	True	Yes there is the Ethics and Economic Crimes Act, Code of regulations, Penal code among others
Ombudsman or other independent mechanism responds to public complaints	True	This is done by a vibrant critical media, CBO's and the lobby NGO's including the KFWG, Green belt movement among others and the Anticorruption commission. The KFWG an umbrella organization plays that role though without a locus standi framework.
The powers (including institutional size and spatial spread), and reporting mechanisms of those dealing with illegal	False	Every officer has a supervisor, and reporting lines are well defined in the structure of the KFS.

⁶⁵ As early as 1992 at the inception of KFMP studies showed that royalty rates from industrial plantations had the potential to make FD self sustaining but the collection fell short of projections by 50%. due to laxity in enforcing rules, poor inventory. The revenue collected was as follows 1988- Ksh 139m, 1989-Ksh 110m, 1990-Ksh 175m and 1991 – Ksh 160m

⁶⁶ The Forests Act 2005 and draft Forestry Policy 2005 provides for the establishment of a structured and disciplined force based on the KWS and other relevant experiences. Currently there are 2600 Forest Guards against a requirement of 5,000. The require training on the new law and reform emerging issue - Chief Inspector Mwandigha- Personal Communication

⁶⁷ Chief Inspector Mwandigha- Personal Communication



Statement	True/ false	Comment
FLEG activities are not clear		
Indicator/s used by the government to measure progress in controlling illegal logging and other forest crimes.	True	Monitoring by the supervisors and the Kenya Forest Working group and the civil society. Within KFS, Security section of the KFS
The role of local/traditional institutions (and culture) has a potentially important role to play in forest governance which needs to be recognized	True	Necessary to combine traditional forest governance practices and modern methods of forest management: e.g. Kaya Council of Elders in Arabuko Sokoke and the Ogiek in the Mau forest.

Annex 5. Persons met/contacted

Name of person	Institution	Contacts
D. K. Mbugwa	Acting Director, Kenya Forest Service	ccf@wananchi.com 020-3761487, 07 22-680223
Anthony Maina	Head of Forest Reforms Secretariat and Senior Conservator of Forests- Drylands - KFS	020-3761487, 0722806127
Mr. Maurice O. Mbegeza	Director, Compliance & Enforcement, NEMA	0721 361622; 0733 759744 comenforce@nema.go.ke
Paul Konuche	Director, KEFRI	0722- 763050
John Salehe	Programme Coordinator, WWF	020-387 7355 JSalehe@wwfearpo.org
Dr. Antti Erkkila	Counsellor (forests) Embassy of Finland	Antti.erkkila@formin.fi
Dr. Alice Kaudia	Regional Director, IUCN-EARO	Alice.kaudia@iucn.org
Dr. Iba Kone	Programme Coordinator AFORNET	ikone@afornet.org
Kapyas Wilson Kipkore	Deputy Executive Secretary, Lake Victoria Basin Commission- EAC	kwkipkore@eachq.org
Michael Gachanja	Coordinator, Kenya Forest Working Group	254-20-3874145
R. Magori	Forest Action Network	254-20-891907 rmagori@faworld.or.ke
Georgina Mbugua	Forest Action Network	254-20-891907
Mwandigha A. J.	Forester, Forest Protection Branch, KFS	254-20-3754904
Alex Lemakoko	Head, Forest Protection Branch	254-20-3754904
Samuel Muriithi	Senior Conservator of Forests, Dryland Forestry, KFS	254-20-3754904 smuriithi2000@yahoo.co.uk smuriithi@forestry.go.ke
Anthony Ochino	FAN coordinator Projects	aochino@fanworld.or.ke

