AUGUST 2013

KENYA FORESTS WORKING GROUP

POLICY BRIEF NO.6

ON-GOING REVIEW OF FOREST SECTOR MANAGEMENT: OPPORTUNITIES FOR IMPROVED GOVERNANCE

This policy brief targets decision makers including senators, parliamentarians, governors, field practitioners among other stakeholders concerned with enhancing sustainable forest management (SFM) and conservation in Kenya.

REVIEW PROCESS

WHAT HAS BEEN ACHIEVED

The Forests Act (FA) 2005 is currently under review to conform to new devolved governance structure. This provides an opportunity for formulation of a framework that will turn around conservation and management of Kenya's forests ecosystem and governance of the sector. The review responds to demands of the Constitution of Kenya 2010 and realities within the forest sector. The review has also been informed by the experiences of the FA 2005 since its implementation in 2007, such as lack of comprehensive frameworks for Forest Management Agreements (FMA), benefit sharing mechanisms and challenges in the implementation of forest management plans, among other issues. As part of this process, a consultative process spearheaded by the then Ministry of Forestry and Wildlife was initiated in early 2012, resulting in the 1st National Forest Management draft bill. This bill was reviewed at institutional level active participation from Kenya Forest Service (KFS), and Kenya Forestry Research Institute (KEFRI). The draft was further enriched with input from civil society organizations under the coordination of the National Alliance of Community Forest Associations (NACOFA) and the Kenya Forests Working Group (KFWG). A publicity awareness campaign aimed at informing the general public of the process and contents of the draft bill for informed participation is currently underway. Through support from GEF/SGP, KFWG has published a simplified Swahili version of the draft bill aimed at enhancing informed local communities participation in the process.

WHAT IS AHEAD- ROAD MAP

It is anticipated that a national stakeholders validation workshop will be held to review and enrich the current draft forest bill. This will be followed by an interrogation of stakeholder input by a team of experts facilitated by the Ministry of Environment, Water and Natural Resources. In

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addition, it is envisaged that further public consultations will be held at national level and comments incorporated into the draft bill before onward submission to the Attorney General (AG), Constitution Implementation Commission (CIC), and finally tabled in Parliament. The Ministry of Environment, Water and Natural Resources is working closely with partners within the sector to fast track the process.

KEY ISSUES AND PRIORITIES FOR THE FOREST SECTOR

The forest bill proposes a forestry management governance system that is split between the national government, which manages public forests through KFS, and county governments, which manage community forests and implement national policies on forests and forest resources both on community and private land respectively.

The National Forest and Management bill 2013 has been informed by several sectoral and inter-sectoral issues that affect the forest sector in the country. Key among them is the ongoing rehabilitation of degraded forest land such as the Mau ecosystem. Other issues include challenges of invasive tree species, pests and diseases whose geographical scope has been further compounded by effects arising from climate change among others.

THRUST OF THE DRAFT FOREST BILL - NEW ELEMENTS

MANAGEMENT AND ADMINISTRATION

Forest management: The bill introduces devolution in forestry management in line with the new Constitution. It provides for devolution by creating county forest conservation committees and county forest officers who shall be responsible for forestry management at county level. For ease of management, the bill also categorizes forests into 3 parts; public, community and private. Public forests are to be managed as per approved management plans arrived at with community participation through Community Forest Associations (CFAs). Community forests are to be managed through their respective county governments while private forests are to be managed by the owners with supervision from county forest conservation committees.

ADMINISTRATION OFFICE OF REGULATOR, CODE OF PRACTICE:

To enhance the oversight role in implementation of the Forests Act, the bill proposes establishment of the Office of the Regulator within the Department of Environment and Natural Resources. Its specific roles include verifying the compliance of the Service, county governments and private forest owners in relation to the conservation and management of forests and forest resources. In addition, it proposes establishment of a Forest Code of practice under Article 8 (1). The code of Forest Practice will define principles and practices, as well as set standards for the sustainable use of forests and forest resources. The code of forest practice and guidelines shall be the standards for the management of all forests in the country. The National Forest Management Guidelines shall form part of the documents necessary for the approval of licenses under this Act. This will facilitate creating mechanism for monitoring forests. The bill also creates the positions of forest inspectors to be appointed by the cabinet secretary upon recommendation by the office of the regulator, whose function is independent of the national and county forest management authorities.

Forest administration: Under forest management, the composition of the KFS board as currently proposed excludes key sector players among them; the Kenya Wildlife Service (KWS) which focuses on wildlife management in both indigenous and plantation forests as well as community land and the Water Resources Management Authority (WRMA) that is concerned with water catchment management.

Pests and diseases: Equally in need of consideration is the proposed control of pests and diseases under Article 71 (a) of the bill, which does not provide for a process that should be followed in case of clearing of infested forests. The bill should have provision for consultation with the regulator or research institution like KEFRI for informed decision making on management of infestations in a forest ecosystem.

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FOREST COVER INCREASE AND NEW FRONTIERS

Forest cover increase: The bill takes cognisance of the constitutional endeavour to increase the country forest cover to 10%. As the government encourages increase in on-farm tree cover of 10%, it is noted that farmers have in the past not got maximum return on their investment in tree planting due to imperfect markets for tree products. For example, there is low tree compensation under compulsory acquisition, which has served as disincentive to tree farmers. Thus, there is need to provide guidelines for proper compensation during compulsory acquisition since the current rate is not commensurate with tree market value, hence defeating the forest cover incentive.

The bill introduces an apprenticeship and vocational training programme to address the issue of few value addition technologies for tree products In order to fast track forestry programmes and create incentives, the bill establishes a regulated system of trade in forest produce, which includes chain of custody. Another new frontier in the review is the intention to align the FA 2005 with other emerging issues such as climate change adaptation and mitigation, carbon credits and markets, payments for ecosystem services and green economy. In this regards, the bill introduces carbon trading systems, permanent sink and payment for ecosystem services as additional incentives for forest conservation. Other incentives include forestry awards and prizes and proposals for tax and fiscal incentives. The bill also provides for an increased forest and tree cover incentives regime through establishment of a facility to administer forest support programmes; the National Community Forestry Support Program and the National Reforestation Program.

Dryland forestry - Paradigm shift: Forest sector interventions in the past have focused on high potential humid areas though more focus should shift to dryland areas. Being a water scarce country, the need to conserve water towers like Mau, Mt Kenya, Aberdare, Cherengani and Mt Elgon remains critical. This may require a revision of forest definition to include 75% rangeland currently not classified as forests. In this regard, there is need to provide guidelines for extraction and utilization of produce from dryland forests under Article 39.

Such guidelines should cover resins, frankincense, myrrh and Hagar, which are in high demand in developed countries for processing of drugs, cosmetics and various soft drinks. Currently Sudan, Chad and Nigeria control 96%, of Gum Arabic exports, which are mainly consumed in Europe and USA. The current bill does not address dryland forests as a deliberate effort to shift from humid water towers to the country extensive dryland areas. This capture is also ignored in Part I- Preliminary Article 2.

Deterrents: Deterrents for ensuring compliance to the Act (section Xv) are punitive enough given proposed high fines for offences such as setting fires, illegal charcoal burning and unlawful operation of wood processing plants. The following table provides a comparison with current fines.

Offence	Fine (Ksh) and or term of imprisonment	
	Draft Forest Bill 2012	Forests Act 2005
Setting fires	500,000 - 12 months	200,000 - 1 year
Illegal charcoal production	50,000 - 12 months	50,000 – 6 months
Unlawful operation of wood processing plants	1,000,000 - 12 months	500,000 - 3 years

While Article 74 focuses on incentives for increasing forest cover and Article 98 provides for prohibited activities, there is need to add restoration orders and involvement of ecosystem experts in such determination.

MANAGEMENT PLANS

Ecosystem plan: Towards adoption of an ecosystem based approach to forest management, the draft bill (Article 9 (1) makes it mandatory for ecosystem management plans to be developed to guide forest management. The bill however makes preparation of the ecosystem plans a collaborative issue with no specific responsible lead agency. Kenya Forest Service should take lead in this regard as the forest ecosystem manager.

Participatory Management plan: Under Article 27 (1), the bill provides for an approval process of PFMPs, but fails to provide guidance on who between county government and KFS signs. To avoid conflicts, there is need to specify the role of KFS and county governments. Otherwise the lack of guidance is likely to stall public participation through engagement of CFAs.

Access to information: Article 24 of the draft bill provides for the right, and process of accessing information from the service, where one is required to make a written request to the service.

CITIZEN PARTICIPATION FACILITATION

Omissions-Community participation: Great effort has gone into formulating the forest management and governance bill. However, there still exist areas of focus that require consideration for inclusion under the new bill:

- While FA 2005 (Article 47 (1) had provision for CFA engagement with investment partners through approval of the KFS board in forest activities like eco-tourism, this provision is omitted in the bill. This needs to be captured under Article 29 (1) where functions of CFAs are mentioned.
- Engagement of various stakeholders is bound to generate conflict and the new bill should provide for conflict resolution mechanisms, especially at County Forest Conservation committee (CFCC).

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- While CFCCs are concerned with forest management at County level (section 42 (1) and are supposed to meet at least quarterly, there is no mention of who facilitates the funding of these meetings, a major challenge under FA 2005.
- Article 39 provides for financial and technical assistance from the National Community Forest Program (NCFP) for management of community forests, but under Article 25 on management of public forests does not make such proviso. This creates disparity among CFAs in community and public forests. While both CFAs benefit from apportionment of county forest allocations, CFAs under community forest have an edge by virtue of access to NCFP.

Funding CFA – PFMP activities: While Article 27 (1) provides for the approval of Participatory Forest Management Plans (PFMPs), one of the major bottlenecks under FA 2005 was that once the PFMP was approved, CFAs had no access to resources for proposed activities. Under the Water Act 2000, Water Resource User Associations (WRUAs) are able to access funds for implementation of sub-catchment plans. It would be of great help to CFAs if there were a provision in the new bill for them to access funds for CFA activities, separate from the KFS operation budget. Some of the often-proposed activities by CFAs touch on livelihoods, which would greatly help in controlling illegal activities.

Concessions: Article 54 provides guidelines on allocation of concessions and makes it mandatory to have Parliamentary approval for forest concessions on public land exceeding five thousand hectares. This a good safeguard for public assets.

Benefit sharing: The forests bill provides for a comprehensive benefit sharing mechanism between communities, county governments and the national government. This is in response to the Constitution 2010 which requires public participation in decision making at all levels, and provides for equity in benefit sharing arising from natural resources. Article 69 (1) and (2) clearly spells out that the people of Kenya should benefit equitably from the sustainable exploitation, utilization and management of natural resources and at the same time, work to conserve and protect these resources. As such, the forests bill proposes a system for the provision of incentives and for recognizing communities' user rights and other stakeholder rights. The bill also provides for a public revenue sharing scheme for revenues generated from forest fees and licenses between communities, national and county governments, thereby addressing the inequity in benefit sharing from natural resources. For example, Article 69 of the forest bill proposes distribution of 30% rental and stumpage fee, with CFAs getting 20% of the 30%. However, there is need to specify the use of the 20% allocated to CFAs. Are these funds for administration or for CFA projects? In addition, there is need to expand the revenue sources as they are not restricted to rental and stumpage, but should include all revenue generated from products and services.

OLD TO NEW TIMELINE

Transition: Finally the bill should provide for a clear transitional pathway and timelines. For example, Article 110 provides for revision of PFMPs but does not provide the duration for completion of the process, meaning there is likelihood of a timeless process. This timeline should also be provided for FMAs adjustment under the reviewed legislations.

Kenya Forests Working Group (KFWG)
P.O.Box 20110-00200 Nairobi, Kenya
Cell. +254 (0) 726 816 000 | email.info@kenyaforests.org
www.kenyaforests.org