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SCHEDULE

THE KITUI COUNTY CHARCOAL BILL, 2014

A Bill for,

AN ACT of the Kitui County Assembly to establish the County Environmental Committee to ensure enhanced and effective forest conservation, protection and sustainable charcoal production in the provision of economic, social and environmental goods and services; and for connected purposes.

ENACTED by the County Assembly of Kitui, as follows—

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PART 1— PRELIMINARY

Short title and commencement **1.** This Act may be cited as the Kitui County Charcoal Act, 2013 and shall come into operation upon publication in the Kitui County Gazette or The Kenya Gazette.

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

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

“Environmental Impact Assessment” shall have the meaning assigned to it under the Environmental Management and Coordination Act(EMCA1999);

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

“County environmental committee” Refers to a committee established under this Act, by the County Government to advise the ministry on all matters relating to the management and conservation of county forests;

“Forest officer” includes the Director, a forester, a disciplined officer of the service, or an honorary forester;

“Forest owner” means;

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

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

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

“County forest” means;

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(a) Any forest situated on trust land which has been set aside by the county Government pursuant to the provisions of the Trust Land Act;

(b) Any arboretum, recreational park or mini forest created under section 30 of the forest Act.

(c) Any forest established as county forest in accordance with the provisions of section 24 of the forest Act.

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

“Protected tree” means any tree or tree species which have been declared under section 34 of the forest Act to be protected.

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

“Woodlands” means an open stand of trees less than 10 meters tall, which has come about by natural regeneration.

“Woodlots” means an open stand of trees less than 10 meters tall, which has come about by human planting.

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

“Enforcement Team” mean all law enforcers as defined by this act.

Application

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

Objects and purposes.

4. The objectives of this Act are to—

a) Contribute to poverty reduction, employment creation and improved livelihoods through sustainable use, conservation and management of forests and trees.

b) Contribute to sustainable land use through soil, water and biodiversity conservation, and tree planting through the sustainable management of forests and trees.

c) Promote the participation of the communities, private sector and other stakeholders in forest management to conserve water catchment areas, create

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employment, reduce poverty and ensure sustainability of the forest sector.

d) Promote dry land forestry to produce wood fuel, charcoal and non-wood forest products.

e) Promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches and technologies and;

f) Promote forest research, training and education to ensure sustainable charcoal production.

g) Promote adaptation and mitigation efforts in Climate Change.

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PART II— ADMINISTRATION

- Establishment of the County Environmental Committee
5. There is established the County Environmental Committee.
- The County Executive Committee Member for Environment, Energy and Minerals Investment Development will establish through appointment the members of this committee while ensuring gender representation.
- Composition of the County Environmental Committee
6. The County Environmental Committee shall comprise—
- (a) The Chief Officer, County Ministry of Environment, Energy and Minerals Investment Development, who will be the Chair of the County Environmental Committee;
 - (b) Director of Environment, Energy and minerals investment development;
 - (c) Representative of NEMA;
 - (d) Kenya Wildlife Service Representative;
 - (e) Representative from the Ministry of Energy;
 - (f) A civil society Organization member dealing with climate change;
 - (g) Representative of the Kenya Forest Service; and
 - (h) Three community representatives.
 - (i) A representative of Private Sector.
- Functions of the committee
7. The functions of the County Environmental Committee shall be to—
- a) Vet and approve applications recommended by the Chief Officer Environment, Energy and Minerals Investment Development from Charcoal Producer Association's, Transporters and individual farmers for the purpose of regulation;
 - b) Review and recommend licensing of Charcoal Producer Association's;
 - c) Review of Charcoal Producer Associations restoration plans; and
 - d) Monitoring of tree planting events by the Charcoal Producer Associations
- Powers of the County
8. The Committee shall have all the powers necessary for the performance of its functions under this Act and, in particular but without prejudice to the

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Environmental
Committee

generality of the foregoing, the committee shall have power to—

- a) Approve and ratify all policies and restoration plans of the Charcoal Producer Associations;
- b) Revoke or suspend a license issued under this Act; and
- c) Partner with other organizations with similar functions to its' own whether within the county or otherwise.

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PART III—COMMUNITY PARTICIPATION

Charcoal
Producer
Associations
Roles of a
Charcoal
Producer
Association

- 9.** All commercial charcoal producers are required to organize themselves and form Charcoal Producer Associations.
- 10.** The roles of a Charcoal Producer Association are—
- a) Facilitate sustainable production of charcoal by members;
 - b) Ensure that members implement the restoration and conservation plans;
 - c) Develop and implement a code of conduct for its members for self-regulation; and
 - d) Assist the county Government and the Kenya Forest Service (KFS) in enforcing the provision of this Act relating to sustainable` charcoal production, transportation and marketing.

Charcoal
Producer
Association
Formation and
Licensing

- 11.** 1) The charcoal producer association formation shall include—
- a) List all members and their addresses;
 - b) Prepare their constitution and rules;
 - c) Register as an association with the registrar of societies and compliance to all statutory requirements;
 - d) List operational areas of the group and their scope of work ;
 - e) List the group’s record of activities relating to charcoal production and transportation;
 - f) Give information relating to land ownership;
 - g) Give a record of the present activities on the land;
 - h) Provide list of intended technology to be used in charcoal production;
 - i) Provide information on the quantity of charcoal they produces;
 - j) Provide information of charcoal collection points in their area of application.
 - k) label their charcoal and any other value addition strategies
 - l) Forward the application to the Chairperson of the County Environmental

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Committee for review.

2) A Charcoal Producer Association that meets all the requirements provided under section 11 shall be issued with a license.

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PART IV—ENFORCEMENT

Enforcement
Team

- 12.** For the purposes of this Act, the Enforcement team shall comprise but not limited to—
- a) Officers of the National Police Service;
 - b) Officers of the Kenya Forest service;
 - c) Officers of the Kenya Wildlife Service;
 - d) Officers of the County enforcement department;
 - e) County Village ,Ward and Sub county administrators;
 - f) Authorized Community policing members; and
 - g) Any other persons as the County Government may deem necessary for carrying out enforcement activities within the County.

Powers Of The
Enforcement
Team

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

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been committed, together with any tools, equipment's, vessels, vehicles or livestock used in the commission of the offence.

e) Confiscate any equipment or receptacle placed without authority in a County forest.

Offences and
Penalty

14. Any person who, without lawful authority—;

a) Marks any forest produce, or affixes upon any forest produce, a mark ordinarily used by a forest officer to indicate that the forest produce is the property of the County Government, or that it may or has been lawfully cut or removed;

b) Alters, obliterates, removes or defaces any stamp, mark, sign, license, permit or other document lawfully issued under authority of this Act, or removes or destroys any part or a tree bearing the stamp or other mark used by any forest officer;

c) Covers any tree stump in any County forest or any County alienated land with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;

d) Wears any uniform or part of a uniform, or any badge or other mark issued under the regulations of the disciplined forces, or who in any other way holds himself out to an employee of a disciplined force; or

e) Counterfeits or issues without lawful authority any license or document purporting it to be a license or document issued under this Act or any rules made hereunder,

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

Other Offences **15.** 1) Any person who—

a) Commits a breach of, or fails to comply with the provisions of this Act;

b) Commits a breach of, or fails to comply with any of, the terms or conditions of a license issued to him under this Act;

c) Fails to comply with a lawful requirement or demand made or given by

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a law enforcement officer;

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

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

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

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

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

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

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

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

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

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

Use Of
Firearms

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

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

a) In the course of law enforcement against—

i) Any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody.

ii) Any person who, by force, attempts to prevent the lawful arrest of himself or any other person

iii) Any person who, by force, removes or attempts to remove any other person from lawful custody.

Notwithstanding the foregoing, an officer of the County Enforcement

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department shall not resort to the use of firearms under paragraph (a)(i), (ii) and (iii) unless—

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

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PART V—MISCELLANEOUS

Compensation
For Loss Or
Damages

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

a) that such person pay to the forest owner, by way of compensation, a sum equal to the determined value of the forest produce so damaged, injured or removed and where the value cannot be estimated, ten thousand shillings for each offence;

b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;

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

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

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

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

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Rules

- 18.** 1) The County Executive Committee Member for Environment, Energy and Minerals investment Development may, or on the recommendation of the County cabinet make rules for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.
- 2) Without prejudice to the generality of the foregoing, rules may be made under this section for—
- a) Controlling the harvesting, collection, sale of and disposal of forest produce;
 - b) Prescribing and reviewing the amount of fees payable under this Act generally or in particular cases;
 - c) The circumstances in which licenses, permits, leases, and other agreement may be applied for, and the manner in which a person to whom a license is granted may exercise a right or privilege conferred upon him/her by the license;
 - d) Regulating the felling, working and removal of forest produce in areas where trees may be felled or removed;
 - e) Providing for compulsory use of property marks by the County Government and owners of private forests for the purpose of identification;
 - f) Regulating the establishment of charcoal based industries;
 - g) Providing for measures that enhance community participation in the conservation and management of forest at the local level; and
 - h) Regulating the production, transportation and marketing of charcoal.

Memorandum of
objects and
reasons

The Principal object of this Bill is to establish the County Environmental Committee to ensure enhanced and effective forest conservation, protection and sustainable charcoal production in the provision of economic, social and environmental goods and services and contribute towards the overall growth of the Kitui County Economy. This Bill seeks to give effect to section 10 of the Fourth Schedule to the Constitution of Kenya, 2010.

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STANISLOUS M. MULONGO,

Chairman,

Environment, Energy, Mining, Natural Resources and Tourism Committee.