

# The forest act

Life



**INTRODUCTION** the term forest is defined as an area of land with at least ten per cent (10%) of tree crown cover, naturally grown or planted and/or fifty per cent (50%) or more shrub and tree regeneration cover and includes all forest reserves of whatever kind declared or gazetted under this Act and all plantations. The Forest Ordinance of 1959, is the law which governs the Forest Law of 2002, having the objective to effect governmental control for economic gain rather than sustainable development, as the concept of environment is not been taken seriously.

**HISTORICAL BACKGROUND OF FORESTS IN TANZANIA** Historically the forest act can be traced back as far as 1819 to 1919 whereby the state controlled forest estate was initially established under German colonial administration who were the first colonialist in Tanzania. The German's administrator used different methods and tactics in preserving the forest such as forcing the residences near forest or in the forest places to evacuated those places immediately and there were no remedies present for those who violated the decree intentionally.

In 1921 after the Second World War Tanganyika was placed to the British Administration. The English supervision presented the Forest Ordinance which was based on that used in adjacent Kenya colony which placed restriction on access to and use of forest products. The spirit of the British colonialists to protect the forest and its resources were also seen in the Land Ordinance whereby it introduced protected areas; forests areas being part and parcel.

Soon after independence, forests in Tanzania have been managed and controlled by the Forest and Beekeeping Division under the Ministry of <https://assignbuster.com/the-forest-act/>

Natural Resources and Tourism. This management has been characterized by extensive state control which does not involve the local community forests. The forest management was due to forest degradation and deforestation through illegal activities and increase of human pressure on natural resources. In Tanzania a vast forest area existed for instance in the 1990's, the forested areas were ranging from 41-42 percent.

It was observed that most of the forested areas were cleared for agricultural, overgrazing, wildfires, charcoal burning and overexploitation activities. During 1961-1997 it was discovered that over 10 million hectares of forest had been lost therefore in order to prevent this loss the Ministry of Natural Resources and Tourism made an effort and concentrated on active participation of the local community and stake holders. In 1990 the Forest Policy came into existence by virtue of the Forest and Beekeeping Division.

Currently the Forest sector in Tanzania is controlled by three parallel structures which includes The Ministry of Natural Resources and Tourism, The Regional Secretariat and the Local Authority. NATIONAL FOREST POLICY, 1998 The Forest Policy (NFP) of 1998 in Tanzania was the result of reviewing its Forest Policy of 1953. Generally, the objective of this policy was to enhance the contribution of Forest sector to the sustainable development in Tanzania and conservation and management of her natural resources for the benefit of the present and the future generation.

This means that forests have to be managed in terms of socio-economic, ecological and cultural sustainability and with the principle of multifunctionality and equitable benefit and responsibility sharing. Also the Forest Policy also recognizes the role of the private sector in management of forest

resources and the policy responsibility of managing forest resources will be left in the hands of specialized agencies and the private sector, central government responsibility will be managed.

The Policy promotes tools to implement different communities based management regimes, ranking from Joint Forest Management to community management (Community Based Forest Management, Village Forest Reserve). The objectives related to forest policy OTo ensure sustainable development and equitable use of resources for meeting the basic needs of present and future generation without degrading the environment or risking health or safety. OTo prevent and control degradation of land, water, vegetation and air which constitute our life support systems.

OTo conserve and enhance our natural and man-made heritage, including the biological diversity of the unique ecosystem of Tanzania. OTo improve the condition and productivity of the degraded areas including rural and urban settlement in order that all Tanzanians may live in safe, healthy, productive and aesthetical pleasing surroundings. OTo raise public awareness and understanding of the essential linkages between environment and to promote individual and community participation in environmental action.

OTo promote international cooperation on the environment agenda, and expand our participation and contribution to relevant bilateral, sub-regional, regional and global organizations and programs, including implementation of conventions. OTHER OBJECTIVES The National forest policy is based on macro-economic, environment framework and social framework. In microeconomic framework has the objective, which lifts the national

economy and facilitate wholesome growth, the policy has stated the following objectives: O To combat poverty and deprivation in order to improve people's path.

O To ensure macro-economic stability. O To create an enabling environment for a strong private sector. O To reduce government involvement in direct productive activities. O To improve efficiency in the use of public resources.

FOREST ACT, 2002 The objectives of the Forest Act, 2002 as analyzed under the provision of Part II of the Act are: O To promote, to enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of natural resources for the benefit of present and future generations.

O To encourage and facilitate the active participation of the citizen in the sustainable planning, management, use and conservation of forest resources through the development of individual and community rights, whether derived from customary law or under this Act, to use and manage forest resources; O To ensure ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility; O To delegate responsibility for management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies; O To ensure the sustainable supply of forest products and services by maintaining sufficient forest area under efficient, effective and economical management; O To enhance the quality and improve the marketability of forest products and regulate their export; O To promote coordination and cooperation between the forest sector and other agencies and bodies in the public and private sectors in respect of the management of the natural resources of

Tanzania; OTo facilitate greater public awareness of the cultural, economic and social benefits for conserving and increasing sustainable forest cover by developing programmes in training, research and public education; OTo enable Tanzania to pay, fully in contributing towards and benefiting from international efforts and measures to protect and enhance global biodiversity.

The Act enables the State to fulfill its obligation to meet the standards determined by international instruments to enhance and protect global biodiversity. Section 5 provides for ministerial responsibility and function of the director, where as Section 6 provides for the appointment and function of the officer. ADMINISTRATION AND INSTITUTIONAL MECHANISM OF THE FOREST ACT, 2002. THE INSTITUTIONS MECHANISM ESTABLISHED UNDER THE FOREST ACT, there are three major institutions created by the Forest Act, which are, the forestry advisory committee, Community forest management group for managing forest reserves, and Tanzania forest fund. NATIONAL FORESTRY ADVISORY COMMITTEE

This is a committee established under Section 10 of the Act, and the minister appoints the committee members, who function to advise the minister on; OMatters relating to issuance of concession and conditions as provided for under Section 20(11) of this Act; OMatters relating to declaration of a forest reserve as provided under Section 23(6) of this Act; OMatters relating to the management of forest reserve as provided under Section 27(5) of this Act; review of the forest policy; and OAny other matter, which the Minister may specify. COMMUNITY FOREST MANAGEMENT GROUPS Community Forest management group may be formed by any group of persons who are

members of a village living in or near to a forest or group of persons who are managing a forest or part thereof or who are desirous of managing a forest reserve or part thereof. TANZANIA FOREST FUND

This is another institution established under the Act, which deals with financial matter, in which the funds and its resources consist of fee payable, royalty payable, grants donations and bequests, any sum realizes by the sale of forest produce and income generated by any project financed by the fund, and such funds are managed by forest fund trustee appointed by the minister. The object and purpose of the fund is to meet the objectives of the Act as analyzed in the provision of Section 3. ADMINISTRATION MECHANISMS Part III of the Forest Act provides for administrative and institutional mechanisms. To start with administration, the Act provides that there is a Minister responsible for forest matters and that the Minister is responsible for policy formulation and for ensuring execution by official in the ministry such functions connected with the implementation of this Act.

Apart from that, there is a Director of the forestry who is appointed by the President and bears the function of advising the government on all matters of management of the forests. On top of that the Director is required and empowered by the Act to make a determination affecting or likely to affect the rights of any individuals and give reasons for the decisions. There are other Appointed Officers who have the duty to ensure the efficient, effective and economical management and supervisions of forests as directed by the Act. These officers appointed by the Director include, licensing and registration officers, enforcement officers, inspectors and all of them are

answerable to the director. Furthermore, there exists a Local Authority and Forest Management Authority.

Power to designate any person to be an Authorized Officer has been vested to the Director and he also has power to delegate to such public officers, a local authority officer to perform any work imposed on him by the Act.

**CREATION OF FOREST RESERVE** The Act provides for the creation of forests reserves as analyzed under section 4, which include national forest reserves, local authority forest reserves, village forest and private forest. The Act goes further in providing for the guiding procedures in declaring an area to be a forest reserve under Section 23, and provision of compensation in case of claims arising out of an area, which is declared a forest reserve is provided under Section 24(1) **PERMITS AND LICENSES**

Under Part VI provides for specified activities to be carried in national or local authority forest reserve subject to conditions as prescribed in the permit, which is sought in respect of Section 50, and grant of permit, variation and modification of the same is provided for under Section 53, Section(s) 54 and 55, provide for Surrender of permit and Revocation or suspension of the permit. **ENVIRONMENTAL PRINCIPLES UNDER THE FOREST ACT** **GENERAL PRINCIPLES** **O**Right to information, meaning that the director and all officers are required to ensure that members of the public are equally and adequately given information and guidance in connection to implementation of this Act **O**Right to appeal, any individual aggrieved by a decision under this Act has a right to appeal in the High court **SPECIFIC PRINCIPLES**

**O**Principle of local level governance, meaning that the right and duties of which villagers have to respect village land reserves and function of local  
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authority in respect of village land forest reserve OPrinciple of prevention action, restriction on boundary vegetation, inspection of forest produce by experts, prohibition of marking by unknown persons, prohibition of export of forest produce without certification OPrinciple of restrictive measures, the Act provides for the restriction in the creation of new rights for forest reserves, were as subsection 5 of section 25, an investigation process can be allowed to enquire in a matter that has been reported to the minister or chief executive officer.

OPrinciple of sustainable development, which ensures the ecosystem stability through conservation of the forest biodiversity, water catchments and soil fertility and facilitating public awareness so as to increase sustainable forest cover by developing training programmes and education, as well as sustainability in connection to harvest of forest products. OPrinciple of inter-generational equity, the Act encourages and facilitate active participation of the citizens in the sustainable planning of the environment and forest reserves through community out reach OThe Act further looks at the concept of Environmental Impact Assessment, and the provision binds both the public and private local authorities . OFFENCES AND PENALTIES The Act also provides for various offences and penalties in general. These offences have been provided for under part XI, Section 84-100.

Section 84 generally provides offense relating to forest reserve which includes entrance into the forest reserve, performing any act contrary to section 26, obstruct roads path or water course, damage forest reserve, grazing of livestock shall be guilt of an offence upon conviction liable to a

fine not less than thirty thousands (Tshs) and not exceeding one million or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. Section 85 offences relating trees not in forest reserve. A person may be held liable for the following action felling trees, cuts trees, loops damage, remove or sell any reserved tree or any party thereof unreserved land shall be guilty of an offence and upon conviction shall be liable to a fine of not less than fifty thousands (Tshs) or imprisonment not exceeding one year or to both such fine and imprisonment.

Section 86 relating to wild plants, any person without lawfully authority picks pluck takes sample any part or any way or by any way interferes with or willfully and intentionally poison damage or destroy in any way wild plants or expose for sell or purchase export or attempt to expose shall be guilt of an offence and upon conviction shall be liable to a fine not less than two hundred thousand (Tshs) and not exceeding one million shilling or to imprisonment for a term not less than six months and not exceeding two years or to both. Section 90 provides for counterfeiting and similar offences, any person who counterfeiting alters obliterates or defaces any stamp mark, sign, license permit, certificate authority or receipt used or issued under this act shall be guilty of an offence and upon conviction shall be liable to a fine not less than one million shilling and not exceeding three million or to imprisonment for not less one year and not exceeding two years or both. Section 91 on offences in connection with fires.

Any person who without lawful authority lights or assists in lighting or uses rekindles or adds fuels or any fire or causes any of theses to fake place leaves an attended fires before such fire is thoroughly extinguished or fails

to comply with lawfully order issued to him under and in connection with any of the provisions of part 9 of this act shall be guilty of an offence and upon conviction shall be liable to fine not less than fifty thousands(Tshs) or not exceeding one million or to imprisonment not exceeding one year or both. Where any person is convicted of an offence against this act the Court may in addition to any other penalty provided for in this Act order cancellation of the permit for period that a forest reserve manager may see fit and upon damage of forest produce will pay compensation for the same subject to ten times the amount of royalties or fees which had the action constituting the offence. STRENGTHS OF THE FOREST ACT

The Act links the central government and the local community in the whole process of preservation and protection of the forest resources in order to ensure national development and this is done through public participation in decision making in forest management as portrayed under Section 42 through the Participatory Forest Management(PFM) and the Community Base Forest Management(CBFM) which involves village and local people of forest protection. also, the Act provides for Private forests in which individuals who are the holders of the right of occupancy enter into covenants on land that without previous consent of the Director. The Act also establish the administration and institutional machinery in order to protect forest resources.

Also it provides for Minister responsible for forest and Director of Forest Officers who are appointees of the Director and Forest Advisory Committee and the National Plants Protection Advisory Committee. The Act provides for participation of local communities in the management of their lands and,

their rights on natural resources are clearly recognized as per Section 14, 32 and 40 of the Forest Act No. 14, 2002 which provides for village land forest management plans and rights and duties of villages in respect of village land forest reserve. never the less, the Act provides for trade on forest produce through establishing procedures necessary to conduct forests trade and forest produce.

This led to ensure sustainable trade of forest produce and forest conservation and a person need to have trade permit and license of conducting trade as stipulated under the Act. Moreover, the establishment of the Tanzania Forest Fund. The fund contributes towards on the conservation of the forest resources and the main purpose is to promote awareness and to ensure development and sustainable use of forest resources through public education and training and to promote the community forestry in the whole process of development through making grants and providing advice and assistance to group of persons. WEAKNESSES OF THE ACT There are some conflicts between the Forest Act and the Village Land Act regarding the procedures for the establishment of Village Forest Reserve.

Section 32(2) and 33 of the Village Land Act provide for procedures such as application to the village council, signed by the party applying for the derivative right or his duly appointed agent or representative; accompanied by simple plan showing the location and boundaries of the land and any other information which may be prescribed or which may be required by the village council, accompanied by any fees which may be prescribed; notified to the members of the village by any means of publicity which will bring the matter to their attention; whereas the Forest Act provide for concepts like

private forests which includes forestry dedication covenants, application for concession, use of land as private forest land and concession. Also concepts such as forest reserves other than village and community forest reserve, village land forest reserves and community forest reserves which all provide for various procedures for each where in village land act it provides for the general procedures.

Section 98 Of the Act provide that no matter or thing done by any authorized officer to perform any function under the Act, shall, if done in good faith in execution or purported execution of his function under this Act, render him personally liable for the matter or thing concerned. This means that the act did not provide protection to an individual member of the society rather it's only the official who is protected. Also same section of the same act provide that any person is liable for any offence against the act but do not provide the meaning of any person and that makes authorities to become people who will be liable for any offence which will have unnecessary immunity. The director of the forestry has been vested with so much power which can make him abuse the power.

Section 5(2) to (4) provide that director of the forest is appointed by the president whom will become an officer of public service, the director is to advise the government on all matters of management of forests and also to give reason to the person who is affected by the decisions of the director. Then if the director is the one to advice the government on matters relating to the forest then can give decisions which will be more favorable to the authorities and desire of the government regardless of what is really needed in forest development. The Forest Act empowered only the high court to

have jurisdiction over the matters pertaining forest protection. With the high court having the powers itself then there are some situations which people who are affected by the acts done to the forest fail to submit their complaints to the court since they have no access to it. In Tanzania most regions have only one court; for instance in Iringa all districts like Mafinga and Mufindi depend on the high court which is at Iringa municipal; With this regard then access to justice fails. CONCLUSION AND RECOMMENDATIONS it is our recommendation that the law relating to protection of the forest be modified so as to fit with the current society where deforestation of the lands is of great extent all over the world and Tanzania in particular by imposing heavier punishment to those who harm the forests for the benefit of the current and coming generation.