

REPUBLIC OF KENYA



*Paper Laid by
Chairperson of the
Environment & Natural
Resources Committee
on 3rd May, 2018.
Jf.*

THE NATIONAL ASSEMBLY

03 MAY 2018

12TH PARLIAMENT - SECOND SESSION - 2018

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES

REPORT ON THE INQUIRY INTO FOREST RESOURCES MANAGEMENT
AND LOGGING ACTIVITIES IN KENYA

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

MAY, 2018

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LIST OF ABBREVIATION

AGPO	Access to Government Procurement Opportunities
CFAs	Community Forest Associations
FMA	Forest Management Agreements
KEFRI	Kenya Forest Research Institute
KFS -	Kenya Forest Service
KTDA	Kenya Tea Development Authority
PELIS	Plantation Establishment Livelihood Improvement Schemes
SPFM	Sustainable Private Forest Management
TIPs	Transition Implementation Plans
TMA	Timber Manufacturers Association

felling and replanting cycles were not properly coordinated resulting into huge backlog and empty forest spaces.

b) Strategic Forest Management

- (i) It was noted that the country lacked a master plan of its natural resources and therefore causing improper and uncoordinated planning for the available resources. This resulted into over-exploitation of the available resources thereby causing major conflict. For instance, the saw millers complained of imbalances in allocation of the available resources in the sector.
- (ii) It was observed that Kenya had not taken advantage of claiming carbon credits to help in her efforts in conservation of forest and general ecosystem. Additionally, it was noted that there was lack of awareness of carbon credit programs among Kenyans.
- (iii) Availability of seedlings was noted to be a major challenge in forest conservation. It was observed that seedling nurseries would be more valuable to youth and women group if there was proper collaboration between KEFRI and KFS. Additionally, cooperative movements for the youth and the women groups would provide the strategic intervention in providing seedlings.
- (iv) It was observed that Karura Forest served as a recreational area earning revenue for the Kenya Forest Service. Similarly, as a way of promoting conservation in other conservancies, branding of recreational areas would be key in management and conservation of forests.

c) Saw Millers

- (i) It was observed that the Timber Manufacturers Association had 898 members. However, there were other independent members and large scale members who were not part of the association. The Committee was concerned with the huge number of saw millers and the pressure they exerted on forest resources.
- (ii) Although the saw millers were engaged in legal timber trade, it was observed that there were allegations of corruption in the allocation of forest materials between themselves and officers at the Head Office. This was said to disadvantage the small scale saw millers.
- (iii) The saw millers were also accused of exploiting the resources that had been looked after for so many years by the communities living around the forest with little or no benefits at all trickling down to the locals. Although the TMA were not duty-bound in conservation matters, it was observed that they needed to give back to the conservation efforts.

d) Community Forest Association

- (v) The Committee observed that there were various allegations leveled against the KFS Board. Some Members of the Board appeared before the Committee while others did not.

f) Suspension of senior managers of KFS

The suspension of KFS senior managers was done illegally and unprocedurally by the Chairman of KFS Board. Even with the purported suspension, the managers were not accorded an opportunity to be heard.

g) Conflict of Mandate

It was observed that the Kenya Forest Service, the Kenya Wildlife Service and the Kenya Water Tower Agency had their shared mandate in the forest resulting in conflict of function among the three agencies.

h) Commercial plantation

- (i) It was observed that countries like Uganda, Vietnam, Colombia and Uruguay had embraced private commercial plantations with proper enabling environment and good policies which increased the forest cover in those countries and attracted investments in the industry.
- (ii) It was also observed that one of the contributing factors to forest degradation has been abuse of commercial plantation under the KFS. There was need therefore to borrow from the best practices in other jurisdictions towards conserving the environment.

THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND
NATURAL RESOURCES

- The State Department of Mining

1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

1. **The Hon. Kareke Mbiuki, M.P.** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.** **Vice Chairperson**
3. The Hon. Benjamin Jomo Washiali, M.P.
4. The Hon. David Kangogo Bowen, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Ali Wario Guyo, M.P.
7. The Hon. Beatrice Cheron Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P.
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. Peter Kimari Kihara, M.P.
11. The Hon. Benjamin Dalu Tayari, MP.
12. The Hon. Charles Ong'ondo Were, M.P.
13. The Hon. Nasri Sahal Ibrahim, M.P.
14. The Hon. Rossa Buyu. M.P.
15. The Hon. Said Hiribae, M.P.
16. The Hon. Hassan Oda Hulufu, M.P.
17. The Hon. Amin Deddy Mohamed Ali, M.P.
18. The Hon. Rehema Hassan, M.P.
19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

COMMITTEE SECRETARIAT

- | | |
|-----------------------------|------------------------------------|
| 1. Ms. Esther Nginyo | - Third Clerk Assistant/Lead Clerk |
| 2. Mr. Dennis Mogare Ogechi | - Third Clerk Assistant |
| 3. Mr. Salem Lorot | - Legal Counsel II |
| 4. Ms. Winnie Kulei | - Research officer III |
| 5. Ms. Yunis Amran | - Fiscal Analyst III |

1.4 Committee Recommendations

The Committee recommends that:

a) Commercial plantation

- (i) The Executive withdraws from commercial plantations and gradually converts the 134,000 hectares of commercial plantation into natural forest by restoring the

products since there is no competition in those areas in agriculture and human habitation.

- (vii) The Ministry of Environment should spearhead regular tree planting exercise in collaboration with all government ministries, departments, agencies, disciplined forces donors and other stakeholders across the country.

d) Saw Millers

- (i) The Ministry of Environment should carry out an audit of the saw millers and further assessment on how to reduce them in order to ease pressure exerted on the forest.
- (ii) KFS should put up systems in which the saw millers would be required to have corporate social responsibility programmes in order to give back to the community in which they operate.

e) Community Forest Association

- (i) The participatory forest management policy developed by the KFS should be fully implemented. The policy is to ensure that Community Forest Associations benefit from the forests since they host and protect them.
- (ii) CFAs should conduct regular elections to replace their officials to curb situations where some CFA officials collude with forest rangers or condone malpractices.
- (iii) KFS should implement the PELIS program in consultation with the Community Forest Associations to avoid conflict with the community.
- (iv) KFS should streamline the operations of the PELIS system to curb the abuse of forest by rangers. Equally, riparian areas should be out of bounds for the PELIS system.
- (v) Kenya Forest Service should recruit forest rangers to ensure there are adequate numbers to effectively manage and conserve the country's forest resources. The recruitment should prioritize communities living around forests.
- (vi) KFS should transfer forest guards who have stayed in one area for more than 2 years. This would curb the habit of the rangers abandoning their core business of forest conservation and management and resorting to farming under the PELIS system and other malpractices in collusion with cartels in the sector.

f) Kenya Forest Service

- (i) KFS should streamline the allocation of forest materials through a bottom-up approach in order to mitigate the alleged corruption associated with the allocations done at the KFS head office.

2.0 BACKGROUND INFORMATION

1. The importance of forest to Kenya had been realized by the colonial government as early as 1900s. In 1902 the first forest Department was set up with the arrival of Mr. C. F. Elliot who became the first conservator of forests. By 1908, most of the major forest blocks as we know them today had been reserved as forest area through gazettelement. It was however not until 1957 that the first comprehensive forest policy was drawn up. The policy mainly outlined the protection of the forest estate and the sustainable exploitation of forests. It also covered afforestation and the conservation of forests in “African areas” and the proper management of privately owned forests for public amenity, recreation and as a habitat for wildlife.
2. However, with the growth of the population and therefore diminishing settlement land, the forest policy was revised with a few modifications in 1968. Chief among the modifications was the introduction of the ‘*shamba*’ system which was meant to help in reforestation and boost forest management. The system was also meant to allow communities bordering the forests access the much needed cultivation land. Other major modifications included the designation of local authority forest and the promotion of research and education in forestry apart from the provision of adequate funds for the implementation of the policy.
3. In the late 20th century however, forestry was characterized mismanagement through illegal allocation of forest lands and political interference in the management of forest affairs. This situation promoted industry stakeholders to prepare the Kenya Forest Master Plan (KEMP of 1994). A new forest dispensation centred on community involvement, conservation and protection, decentralization and cost benefit sharing was introduced.
4. Kenya’s forest cover is currently at 7.2% with a target of attaining 10% covering by 2022. However, rampant deforestation, degradation and infringement of water towers and other catchment areas together with unmitigated human activities including wanton timber harvesting have continued to threaten and undermine Kenya’s capability to secure livelihoods for its population. Consequently, the effects of climate change have become a serious reality not only in Kenya, but also across the globe and have continued to wreak havoc to human, animals and nature.
5. Logging in Kenya is an unmitigated disaster in both public and community forests as well as in the farmlands. This has been attributed to inadequate capacity of the Kenya Forest Service (KFS) to enforce licensing conditions as well as abuse of license conditions by the Saw Millers and other licensees. In particular there has been illegal logging, charcoal burning, illegal grazing, settlement encroachment and mismanagement of plantation forests and the Shamba system. As a result, most parts of the country were experiencing drying of rivers, lowering of water tables and drying of wells.

2.2 LEGAL FRAMEWORK

2.2.1 The Forest Conservation and Management Act (No. 34 of 2016)

9. Currently, Forest conservation and management in Kenya is governed by the Forest Conservation and Management Act (No. 34 of 2016) and the Forest (Charcoal) Rules, 2009. The following are the key provisions of the Act:
 1. Section 56 (2) (b) of the Forest Conservation and Management Act (No. 34 of 2016) (“the Act”) authorizes the Kenya Forest Service (KFS) to issue a timber licence.
 2. Among other functions, the KFS receives and considers applications for licenses or permits in relation to forest resources or management of forests or any other relevant matter in accordance with the Act (Section 8(c), Forest Conservation and Management Act).
 3. Section 57 (1) of the Act provides that a person shall not be eligible to apply for an authorisation unless that person—
 - a) possesses the capacity to enter into binding agreements with the Service;
 - b) has the technical and financial capacity to undertake the forestry activities for which the authorisation is sought; and
 - c) in the case of a foreign investor, has complied with all the laws for the time being in force relating to investment by foreigners.
 4. Further, section 57 (2) of the Act elaborates what subsection (1) provides for. Thus, capacity to enter into binding agreements includes competence to enter into contracts; technical capacity includes the competence to undertake forestry activities, as demonstrated by employment of technical staff, access to equipment, satisfactory past performance and a record of statutory and regulatory compliance; and financial capacity includes solvency and ability to conform to good business practices as demonstrated by the applicant's financial statements for the past three years, where applicable, and tax compliance certificates.
 5. Finally, under section 57(3), the KFS is required to comply with the relevant public procurement and asset disposal laws, and any other relevant written law when issuing authorization in the form of a timber licence.
 6. Section 60 of the Act prohibits import, export, re-export or introduction of any forest products into or from Kenya without a permit issued by the KFS. The Cabinet Secretary is empowered by notice in the Gazette to publish rules regulating the export and import of forest products. Also, under section 61, the Cabinet Secretary may declare any forest produce that may not be exported or imported. The penalty for contravening section 61 is a fine not

- Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the forest produce shall be forfeited to the owner.
- The court may in addition to any other ruling order
 - i) 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
 - ii) 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
 - iii) the vessels, vehicles, tools or implements used in the commission of the offence be forfeited to the Service:
 - Where a person is convicted of an offence of occupying or cultivating land in a forest area without a licence, the court may, in addition to any other penalty imposed under the Act, order such person to remove any buildings, enclosures, huts or crops within a period to be specified in the order.
 - Failure to comply with the order will result in the buildings, enclosures, huts or crops being considered the property of the KFS, the County Department responsible for forestry or the private forest owner, as the case may be. The KFS, County Department responsible for forestry or the private forest owner may dispose of the property.

2.2.2 The Forest (Charcoal) Rules, 2009

13. The Forest (Charcoal) Rules, 2009 relate to forestry and sustainable charcoal production, transportation and marketing.
14. The Rules/Regulations establish a licensing subcommittee for every forest conservation committee whose functions are to consider and recommend applications for the issuance of charcoal producers' licence, among others. (Regulation 6).

3.0 INQUIRY INTO FOREST RESOURCES MANAGEMENT AND LOGGING ACTIVITIES IN KENYA

18. The Committee held meetings with the Kenya Forest Service Management, the Ministry of Environment and Forestry, the County Governments of Nakuru and Nyandarua, stakeholders in the sector, specifically: the Timber Manufacturers Association, the Community Forest Associations, and the former Board of the Kenya Forest Service. Their oral and written submissions are recorded hereunder.
19. The Committee also visited counties hosting two major water towers in the country i.e. the Nakuru and Nyandarua counties where The Mau Forest Complex and The Aberdare Forest are largely located. This was done from 15th to 18th March, 2018.

3.1 KFS Management

20. The Chief Conservator of Forests, Kenya Forest Service Mr. Emilio Mugo appeared before the Committee 24th February, 2018 and informed it that:
 1. The total budget for Kenya Forest Service was Kshs. 6.79 billion out of which Kshs. 5.14 billion was for recurrent expenditure while Kshs. 1.66 billion was for development expenditure.
 2. The Kenya Forest Service managed a total of 2.4 million Ha of gazetted forests distributed mainly in high potential areas. 2.2 m Ha (94%) of the gazetted forest was intact Natural Forest for conservation and provisions of environmental goods and services. However, only 135,871 Ha (6%) of gazetted forests had been zoned for plantation development. The purpose for this was to meet the Country's demand of timber and timber products which at the time stood at more than 41 million cubic meters against a supply of about 31 million cubic meters.
 3. Logging was only allowed in forest plantations through thinning and harvesting, as per the approved management and felling plans (technical plans prepared) drawn on sustainable basis. The trees earmarked for harvesting as indicated in the felling plans were sold to only licensed operators who only removed the allocated materials upon full payment of equivalent revenue.
 4. Despite media reports of illegal logging in gazetted forests, some cases legally authorized had been mistaken as destruction or illegal harvesting of trees.

iii) In achieving the above targets the government's target included:-

- Rehabilitation of 1.4 million hectares of degraded natural forests to enhance their capacity for water and biodiversity conservation.
- Restoration process was also linked directly to the global and national climate change goals, the Constitutional aspiration to maintain at least 10% forest cover
- In support of the landscape restoration efforts in the country:- options had been identified together with priority landscapes within the country for restoration, mapping had been completed, analysis of restoration potentials had been completed at the national and county level and an initial review of policies and regulatory frameworks relevant to landscape restoration had been done.

10. Programmes and projects planned for implementation over the next five year period by the Kenya Forest Service include:

- Natural Forest Conservation where over 500,000 ha of degraded forest would be rehabilitated, 5,000 ha would be cleared of invasive species and gazetement of 200,000 ha of land for forest establishment;
- Establishment of industrial Forest Plantation through restocking of 30,000 ha;
- Farm and dry land forest conservation and management where 380,000 ha of forest would be planted on farm and community land;
- Forest protection and security where 2.4 million ha of forest would be protected from illegal activities;
- Creating capacity on County Governments and other stakeholders in forest conservation and management.

11. Challenges faced by Kenya Forest service included: Late and inadequate disbursement of allocated funds which was a big challenge considering the activities planned by the service were seasonal and if funds were not disbursed for example during planting season, then targets would be missed, inadequate staff due to retirement and natural attrition, unfavorable dry weather conditions, population pressure on forest through encroachment, illegal removal of products and services and infrastructural development pressure

11. There was a gap in the management of the lakes and therefore there was a need to manage the lakes in the country under one entity which would take responsibility for the safety, exploitation and conservation of the lakes' ecosystems.

3.3 Aerial Inspection Visit to the Mau Forest Complex

22. The Committee conducted an aerial inspection of the Mau Forest Complex Friday 16th March, 2018 and made the following observations:

1. In Kuresoi North Constituency, there was a cut line that demarcated the forest from the human settlement. The cut line was marked by Nyayo Tea Zones. This enhanced the conservation of the forest.
2. The water levels in the rivers flowing through the forest were low despite the fact that it was then a rainy season.
3. There were gaps of bare land in the forest implying a need for replanting of the areas where either there were no trees or trees had been felled.
4. There were huge settlement areas and farmland near the forest especially around Likia, Mau Narok and Olposimoru areas. There was need to encourage the residents to plant trees around the farms in these areas.
5. There was progress in the construction of the Itare Dam though at the time, no work was going on due to the moratorium.
6. In areas where there was no settlement, the forest cover was good and the water levels in the rivers were reasonably high.
7. There was need to encourage extensive tree planting exercise in the tea farms near the forest area.

3.4 Submissions by the Governor, Nyandarua County, H.E Francis Kimemia

23. The Governor, Nyandarua County, H.E Francis Kimemia submitted to the Committee on Friday 16th March, 2018 that:

1. The forest cover in Nyandarua County was at 22% and the county was targeting to plant two million trees per year to maintain and increase the cover.
2. There was an urgent need to make seedlings readily available especially through empowerment of the youth to provide them. This would not only conserve the environment but also eradicate unemployment among the youth. The county was engaging the youth in coming up with co-operatives, in collaboration with KEFRI, to establish tree nurseries.

in the county was 48,588 ha distributed in five forest stations which were located on the western side namely: South Kinangop, Geta, and Ndaragwa. Olbolossat Forest Station is detached from the rest and is surrounded by settlements. The stations are gazetted representing 14.97% of the total land cover of Nyandarua County.

3. Other forests were found on farmlands and private farms, distributed in five sub counties that is Ndaragwa with 84,700 ha, Oljoroorok 3,8299 ha, Olkalou 59,220 ha, Kipipiri 54,380 ha, Kinangop District 82,340 ha, totaling to 318,939 ha.

4. There were three major forestry programmes:

i) Plantation and Enterprise

This was meant to increase industrial forest plantations in the forest stations mainly through plantation establishment and livelihood improvement scheme (PELIS) programme. Through this programme farmers who were Community Forest Association (CFA) members, were allocated plots through balloting where they cultivate crops while tending trees for approximately three years. The programme objective was to improve community livelihoods while increasing the forest plantations. It is also the main revenue earner for Kenya Forest Service.

ii) Natural Forests Management and Conservation.

This program was carried out in the natural forest comprising indigenous forests, bush land and bamboo forest. KFS collaborated with key stakeholders such as the CFAs, NGO's KWS and others in undertaking the activities. For instance WWF facilitated the development of participatory Forest Management plans (PFMP) for South Kinangop, North Kinagop and Geta Forest Stations; trains and sensitizes community in participatory forest management, carries out rehabilitation activities within the Naivasha catchment. Currently, WWF plans to plant 1,000 ha 600 ha being in Nyandarua County in collaboration with the community.

iii) Farm and Dry Land Forestry

The key responsibility of this programme was to promote the development of tree and forest resources outside gazetted forest areas. Under the current constitutional dispensation, the program has 21 functions which have been devolved to the county government with technical support from the Kenya Forest Service (KFS).

A total of seven sub-counties Small Scale Tree Growers SHG had been registered by the sub-county social development office. The association was being supported by sustainable private forest management (SPFM) project, a German funded project.

xi) Occurrences of forest fire.

3.6 Submissions by the Chairman, Timber Manufacturers Association, Mr. B. Kimani

25. The Chairman, Timber Manufacturers Association, Mr. B. Kimani appeared before the Committee on Saturday 17th March, 2018 and informed it that:

1. Timber Manufacturers Association comprised of private entities situated across the country who were licensed saw millers' by Kenya Forest Service. The organization was founded in 1982 and had a national membership of 862 timber manufacturers and its membership was AGPO (Access to Government Procurement Opportunities) compliant.
2. The association comprised of youth, women and persons with disabilities and its membership was categorized into three based on the size of their enterprises that is small, medium and large. The operations of the membership were strictly based in commercial forest plantation and the main species for the commercial plantations which included pine, cypress and blue gum. Out of the government area of 2,666,000 ha, commercial plantations occupied only 135,000 ha, which was 6% of the total forest. Further, commercial harvesting was not done at one go. At any one time, TMA operated in about 5.185% of the 6% plantation forest per year.
3. Effects of the 90 day moratorium on forest activities included:
 - i) Timber had become an illegal commodity. No movement permits were being issued.
 - ii) There was an eminent risk of food insecurity as farmers were unable to clear the farms off felled trees to enable replanting through PELIS;
 - iii) Processed timber at yards and sawmills all over the country could not be transported leading to stalling of construction projects and hike in timber prices;
 - iv) The industry was to lose millions of shillings on trees that had already been harvested but were still lying in the forests due to decomposition and risk of poaching.
 - v) Loss of jobs: over one million Kenyans employed directly or indirectly in the timber industry and massive were being laid off. Job losses would lead to insecurity as employees are from local communities and lack of their livelihood would have negative consequences.

- iv) To be allowed access to allocated trees that were still standing and had either been fully for or partially paid for.
7. On Destruction, Degradation and Encroachment of Public and Community Forests, Water Towers and Other Catchment Areas he proposed:
 - i) Better policing/protection of indigenous forests with clear responsibility on who is liable.
 - ii) Severely limit and control water intakes upstream to ensure smooth flow of water.
 - iii) Ban the flow of domestic livestock into forest areas (both indigenous and plantation forests) Let grass be cut by locals and ferried out of the forest for fodder.
 8. On the capacity of the Kenya Forest Service and other agencies involved in the Management of Forests to Enforce Compliance with Forest Laws and Regulations he proposed:
 - i) TMA should be allowed and strengthened to self-regulate so as to enable it to weed out any malpractice within its ranks.
 - ii) Forest stations should be better resourced in terms of staffing and equipment to enable more effective policing.
 - iii) Use of aerial surveillance to detect and deter illegal logging.
 9. On the procedures, qualification and conditions for licensing of saw millers it was proposed that:
 - i) A certificate of clearance from TMA should be a prerequisite for license issuance. This would enable the industry to self-regulate.
 - ii) Complete ban on circular bench saws and tractor saws. Carbide circular saws should be allowed but not as the primary processing equipment.
 10. On the effectiveness of the monitoring and verification procedures to ensure compliance with license conditions he proposed that:
 - i) TMA should be encouraged to self-regulate.
 - ii) As a means of self-regulation, TMA should be able to recommend suspension and/or cancellation of a sawmiller's license to KFS due to provable malpractice.
 - iii) Before KFS cancels or suspends a sawmiller's license, TMA should be consulted.
 11. On short-term, medium-term and long term interventions to ensure sustainable management, restoration and protection of forests and water catchment areas he proposed that:
 - i) Short Term
 - a) Immediate replanting of any KFS shortfalls in state gazetted forests.

26. Mr. Walter Ogada, a representative of Timsales Limited appeared before the Committee on Saturday 17th March, 2018 and informed it that:

1. Timsales was a leading forest (wood based) industrial (manufacturing) complex situated at Elburgon in Nakuru County. The firm was established in 1932 and dealt in the manufacture of Plywood, Fiber boards, Flush doors and other doors, power transmission poles and other timber products used in the construction industry and housing sub-sectors.
2. The company employed about 2500 workers directly in Elburgon and 300 at its branches in Nairobi, Mombasa, Nakuru and Kisumu.
3. Timsales ran two million seedling seedlings capacity tree nursery at the company's private tree farm situated near Elburgon, where it used to source seedlings for the tree planting program support to KFS.
4. On the 90 day moratorium imposed by the government, he suggested the following way forward:
 - a) Allow the material felled and paid for in the KFS be collected.
 - b) Allow for operations to continue in the private owned farms.
 - c) Proper scrutiny of the licensing process to ensure that all licensees have proper and modern equipment for processing of wood to reduce wastage. Further, value addition of the products should be encouraged.
5. Kenya Forest Service was facing a challenge in replanting due to shortage of funds and manpower and thus Timsales proposed that:
 - a) Incentive to be given to the industries which replant in the forests, both natural and plantations to motivate the industry to increase the forest cover;
 - b) Implementation of concession of forest plantation in state forests for those industries or individuals who have the capability and resource to plant, nurture the plantations;
 - c) Stop all human settlement in the forests and put in place measures to stop illegal logging;
 - d) Stop illegal burning of trees for charcoal in the natural forests.

3.8 Submissions by Members of the Community Forest Associations (CFAS)

27. Members of various Community Forest Associations (CFAS) appeared before the Committee on Saturday 17th March, 2018 and informed the Committee that:

to repair the roads. There needs to have a regulation enforced by the KFS to compel them to repair damaged segments of the infrastructure they used.

10. There was need for regular transfers of forest rangers to avoid them being compromised by cartels due to familiarity which led them to preside over forest destruction instead of protection. Others were engaged in conflict of interest as they were competitors with CFAs in allocating themselves farming parcels under the PELIS system. Equally there was need to consider recruiting the guards from forest areas to ensure commitment to forest conservation.

3.9 Submissions by the Cabinet Secretary, Ministry of Environment and Forestry, Mr. Keriako Tobiko

28. The Cabinet Secretary, Ministry of Environment and Forestry appeared before the Committee on Thursday 29th March, 2018 and informed it that:

1. The Ministry of Environment and Forestry through the Kenya Forest Service managed a total 2.5million Hectares that is gazetted. This is in addition to the 1.7 million Hectares outside gazetted Forests (Community and Private Forests) giving a national total of 4.2 million Hectares which translates to 7.2% of the total land area of Kenya.
2. Forests provide food, firewood, water, timber, and other forest products and services that are critical to rural and urban Households. The role of forests in climate change mitigation and adaptation has equally gained significance, premised on the understanding that conservation of forests, rehabilitation of degraded areas, afforestation and reforestation activities confer effective climate change mitigation while strengthening community resilience to adapt to changing climate.
3. Public plantation forest areas occupy 135,871Ha and are distributed in 24 Counties across the country. These forests generate over KSHs 3 Billion annually to the exchequer in form of revenues and support the development of the wood-based industries.
4. One of the key strategies being used in Forest Plantation development was Shamba system which had been rebranded and renamed Plantation Establishment and Livelihood Improvement Scheme (PELIS). The Scheme allowed forest adjacent communities to grow food crops as Kenya Forest Service establishes forest plantations. There are 23,621Ha currently under PELIS providing food to 450,000 House Holds.
5. Logging in Kenya was in a deplorable condition in both public and community forests as well as in the farmlands. This was attributed

However, the Ministry had noted serious concerns and weaknesses in the plantation harvesting operations as well as major challenges facing the entire forest sector and had initiated drastic measures to address the shortcomings.

8. The specifics of the Moratorium were to halt logging and charcoal burning on both public and community forest lands. These operations had since been halted. The aim of the Moratorium was to allow enough time for the reassessment of the forest sector management and to come up with comprehensive recommendations on the reforms needed to enhance development of the sector in Kenya.
9. The following specific measures had been put in place towards resolving the logging issue:
 - i) Declaration and compliance with implementation of the 90-day Moratorium on logging and stoppage of charcoal burning on 25th February, 2018.
 - ii) Establishment and gazettement of a Taskforce to inquire into the forest sector management in Kenya.
 - iii) Operations plan by Kenya Forest Service through zonation of the Country into ten regions based on conservancies namely: Nairobi, Mau, North Rift, Eastern, Central Highlands, Coast, Western, Nyanza, Ewaso North and North Eastern to ensure close monitoring and supervision.
 - iv) The Ministry of Environment and Forestry launched tree planting program on 7th of March 2018 for the entire country with an aim to fast track the achievement of the constitutional target of 10% forest cover by 2022.
 - v) Kenya Forest Service Board effected far reaching administrative and disciplinary measures against suspected errant staff. So far, 26 forest officers were under a disciplinary process.
10. Challenges being faced on logging and charcoal burning issues included:
 - i) Inadequate forest protection and security staff (rangers). The gazetted forests area at the time in the Country was 2.5 million hectares manned by only 2,500 rangers. This translated to a low ratio of 1 ranger to 1000 hectares of forest land which is far below the international recommended ratio of 1:400. The same rangers were also manning community forests and also participate in other multi- agency assignments.
 - ii) Weak legislation. The Forests Conservation and Management Act, 2016 watered down penalties on forest offences as were previously spelt out in the defunct Forests Act, 2005.

- d) The Thogoto Forest was harvested in the 1960s but was not replanted until 2017.
- e) The Kibiko Forest was a plantation forest that was harvested in 2017 as per the harvest program at KFS.
- f) There was no Plantation Establishment Livelihood Improvement Scheme (PELIS) being implemented in the Oloolua and Kibiko Forests.
- g) After the tour, a discourteous press statement by the Cabinet Secretary was made at the Wilson airport, in his presence.
- h) After the tour and back in his office in Karura, he could not reach his deputy, Ms. Monica Kalenda, the Chairperson of the KFS Board, Mr. Peter Kinyua and the KFS Commandant Mr. Alex Lemarkoko.
- i) However, he got a call from the Chairperson asking him to step aside to pave way for investigations. On asking about a formal suspension letter, he was told to await consultations on the same before it was drafted.
- j) A special Board meeting was called on 13th March, 2018 to ratify the decisions already made without regard to due procedure. There was no notice issued for the meeting hence the meeting itself was not procedural.
- k) Other officers were either suspended or given 90-day compulsory leave, through letters signed by the KFS Board Chairperson, with no specifics on the issues/ allegations against them. This was not in tandem with the KFS human resource manual and the State Corporations Act, (Cap. 446) and the Forest Conservation and Management Act, 2016.

2. Mr. Patrick Nyaga, Senior Manager, Finance and Administration

- a) He was sent on compulsory leave commencing on 26th February, 2018 to pave way for investigations into allegations of non-facilitation of field operations especially with regard to vehicle maintenance and fueling.
- b) His letter was signed by the Chairman, KFS Board.
- c) He alleged that the letter was a culmination of a personal feud with the Chairman of the KFS Board.

3. Mr. Dedan Nderitu Gatiki, Assistant Chief Conservator of Forests, North Rift

- a) He was interdicted for gross misconduct through a letter dated 14th March, 2018.
- b) The interdiction was on account of allowing a debt of Ksh. 40,500,000 to accrue in Elgeyo Marakwet County without taking any action.

- d) He was accused of not allocating plantations procedurally yet such allocations were done before his tenure at the station. He had been stationed in the areas for 6 months only.
- e) The drying up of rivers in the region could be attributed to many other factors especially diversion of water into water supply systems and irrigation activities.

3.10 Submissions by Capt. John Miriti, Board Member, KFS

- 30. Capt. John Miriti, Board Member, KFS (Chairperson, Human Resource Committee) appeared before the Committee on 12th April, 2018 and informed it that:
 - 1. By profession, he was a retired Kenya air force pilot.
 - 2. He was the then Chairperson of the Human Resources Committee of the KFS Board.
 - 3. Most of the suspended officers had worked or were working in the Mt. Kenya region or its environs. It was alleged that their suspension was due to conflict of interest between the KFS and two NGOs namely; Mt. Kenya Trust and Rhino Ark Charitable Trust.
 - 4. The then Chairperson of the KFS Board was a close friend of Christian Lambrecht, Executive Director, Rhino Ark Charitable Trust.
 - 5. The then Chairperson of the KFS Board was also a director at the Rhino Ark Charitable Trust.
 - 6. He was not aware of the genesis of the suspensions despite being the then Chairperson of the Human Resources Committee of the KFS board.
 - 7. Mt. Kenya Trust was against the local communities benefiting from forest resources and was therefore against KFS employees implementing the PELIS system among other activities beneficial to locals in line with the Forest Conservation and Management Act, 2016.
 - 8. The KFS did not condone forest degradation and this was evident in the fact that action had been taken against Community Forest Association (CFAs) that had violated their terms of engagement with the KFS.
 - 9. The board performed its duties diligently as reflected in its high rankings in a report by the State Corporations Advisory Committee. Equally the Chief Conservator of Forests was ranked highly by the board and recommended him for reappointment for a second term. There were however allegations of subversion of the minutes of the KFS Board recommending his reappointment.
 - 10. The Board had resolved that none of its members should do business with the KFS yet the then Chairperson, Mr. Peter Kinyua was running

- e) The Human Resources Committee of the Board then conducted visits to Mt. Kenya, Eastern, Mau and the North Rift to investigate issues of illegal logging and possible involvement of KFS staff.
 - f) The Human Resources Committee then prepared reports which were, however, not exhaustively discussed by the full board since its term terminated on 31st March, 2018.
 - g) The suspensions/interdictions effected on 12th March 2018 were purely based on the personal decisions of the then board Chairperson, Mr. Peter Kinyua and were never endorsed by the full board of the KFS.
 - h) The suspensions/interdictions were largely reactionary as they were motivated by the need of the board to be seen to act in the heat of the moratorium on logging activities and the appointment of a new Cabinet Secretary for Environment and Forestry.
 - i) None of the affected officers had “show cause” letters from the KFS management hence the suspensions were merely meant to facilitate investigations.
4. The harvesting of trees across the country was in tandem with the felling plan and therefore procedural. The said felling plan was approved by the KFS board. However, delayed rains in the country focused the country on logging activities which were blamed for the shortages in rainfall.

3.12 Submission by Gatsby Africa

32. Mr. Jack Steege from Gatsby Africa appeared before the Committee on 20th April, 2018 and informed it that:

- 1. Gatsby Africa was a private trust set up by David Sainsbury in 1967, operating in East Africa since 1985. Its aim is to target competitive, inclusive, resilient growth of key sectors. They have programmes and institutions developed with industry players in Kenya (forestry), Rwanda (tea), Tanzania (cotton, textiles, forestry and tea).
- 2. Gatsby Africa was targeting competitive and inclusive growth of Kenyan forestry sector in the long term currently in design and entry phase. Gatsby has an MOU with the Ministry of Environment and Forestry. Its team is on full time basis applying different skills as per its engagement, offers advisory support through global industry professional and has multiple partnerships in timber value chains.

- c. **Lessons from Colombia:** Incentivizing commercial forestry was done through land use zoning and government incentives for investors. There was a growing wood supply shortage leading to deforestation of indigenous forests. To mitigate the situation, land use zoning by commercial species was introduced. Incentives for plantation establishment included Forest Incentive Certificate grants, plus tax exemptions for revenues from plantation forestry. There was tax exemption for importation of processing technologies as well as proactive courting of international forestry investor. As a result, Colombia became the best enabling environment for forestry investments in Latin America.
 - d. **Lessons from Vietnam:** The country reversed deforestation to become a multi-billion-dollar forestry industry in 15 – 20 years. The forest cover reduced from 43% to 27% between 1943 to 1990. As a result, Vietnam developed a national strategy for the sector. Land use reform and allocations provided the basis for sector growth. Targeted incentives helped build a vibrant smallholder and SME planting and processing sector. These included: low interest loans; secure land lease with reduced rent, targeted importation/development and deployment of improved germplasm. As a result, deforestation rate reversed plus 5% expansion of commercial forestry per year. The country also saw \$4.5 billion a year in exports. Also, \$ 1 billion worth of domestic wood products were realized. A 100,000 workers were employed full time per year in the sector and were paid USD 132 million. USD 320 million was paid to 250,000 rural households who grow 70% of the plantations and 1,500 run SME saw-mills.
7. In addressing Kenya's commercial forestry sector constraints, private commercial forestry must be a competitive investment opportunity across different areas for Kenya to meet its national targets. Competitiveness of commercial forestry varies significantly across growing regions and value chains respectively. Ensuring access to competitive value chains requires key principles to be met along the production cycle. However many commercial growers in Kenya have not followed these principles which has led to grower dissatisfaction when target markets can't be accessed.
8. Kenya Commercial Forestry Programme has interventions addressing constraints along the value chain which include: research and development in species or clonal testing, nursery services to improve quality and diversity of planting material, plantation establishment and management functions and services,

4.0 COMMITTEE OBSERVATIONS

Having reviewed the oral and written evidence submitted to it, the Committee observed the following:

a. Commercial Plantation

1. It was observed that countries like Uganda, Vietnam, Colombia and Uruguay had embraced private commercial plantations with proper enabling environment and good policies which increased the forest cover in those countries and attracted investments in the industry.
2. It was also observed that one of the contributing factors to forest degradation has been abuse of commercial plantation under the KFS. There was need therefore to borrow from the best practices in other jurisdictions towards conserving the environment.

b. Forest Degradation

3. There was a major forest degradation affecting both the indigenous and plantation forest. The effect of forest degradation was hugely felt at the local level. The degradation of the forest was mostly due to lack of proper and strategic forest management. Equally, tree felling and replanting cycles were not properly coordinated resulting into huge backlog and empty forest spaces.

c. Strategic Forest Management

4. It was noted that the country lacked a master plan of its natural resources and therefore causing improper and uncoordinated planning for the available resources. This resulted into over-exploitation of the available resources thereby causing major conflict. For instance, the saw millers complained of imbalances in allocation of the available resources in the sector.
5. It was observed that Kenya had not taken advantage of claiming carbon credits to help in her efforts in conservation of forest and general ecosystem. Additionally, it was noted that there was lack of awareness of carbon credit programs among Kenyans.
6. Availability of seedlings was noted to be a major challenge in forest conservation. It was observed that seedling nurseries would be more valuable to youth and women group if there was proper collaboration between KEFRI and KFS. Additionally, cooperative movements for the youth and the women groups would provide the strategic intervention in providing seedlings.
7. It was observed that Karura Forest served as a recreational area earning revenue for the Kenya Forest Service. Similarly, as a way of promoting conservation in other conservancies, branding of recreational areas would be key in management and conservation of forests.

d. Saw Millers

Manual, the State Corporations Act, (Cap. 446) and the Forest Conservation and Management Act, 2016. He was essentially performing the duties of the organization's management and KFS Board. He acted as though he was an executive Chairperson which he was not. The Chairperson of the Board unilaterally made decisions on behalf of the Board and did not afford an opportunity to be heard to those affected by the suspension. There was no formal Board meeting that was held as required by the law and the Mwongozo Code of Governance for State Corporations before the affected senior officers were sent on compulsory leave.

16. Additionally, the Chairperson of the KFS Board while in office and knowingly in contravention of the law and the Mwongozo Code of Governance for State Corporations exhibited conflict of interest in doing business with KFS. The Chairperson of the Board operated a private hotel at Karura Forest. There was an illegality in the collection of revenue at Karura Forest by the "Friends of Karura" instead of the KFS. This was in violation of the Public Finance Management Act, 2012.
17. The Committee observed that there were various allegations leveled against the KFS Board. Some Members of the Board appeared before the Committee while others did not.
18. The KFS lacked a board at the time of conclusion of this report, the former board's term having expired on 31st March, 2018. This had led to stagnation in terms of action on matters requiring the Board's attention at the KFS.

g. Suspension of senior managers of KFS

19. The suspension of KFS senior managers was done illegally and unprocedurally by the Chairman of KFS Board. Even with the purported suspension, the managers were not accorded an opportunity to be heard.

h. Conflict of Mandate

20. It was observed that the Kenya Forest Service, the Kenya Wildlife Service and the Kenya Water Tower Agency had their shared mandate in the forest resulting in conflict of function among the three agencies.

8. The Ministry of Environment and Forestry should develop capacity of KEFRI and KFS on matching of seedlings to specific regions. The ministry should also develop standards for the development of nurseries across the country.
9. The Ministry of Environment and Forestry is urged to come up with a master plan on environmental conservation spanning at least 25 years in collaboration with all stakeholders.
10. The Ministry of Environment and Forestry should focus on plantations in ASAL areas to grow tree cover in the country in order to increase the supply of forest products since there is no competition in those areas in agriculture and human habitation.
11. The Ministry of Environment should spearhead regular tree planting exercise in collaboration with all government ministries, departments, agencies, disciplined forces donors and other stakeholders across the country.

d. Saw Millers

12. The Ministry of Environment should carry out an audit of the saw millers and further assessment on how to reduce them in order to ease pressure exerted on the forest.
13. KFS should put up systems in which the saw millers would be required to have corporate social responsibility programmes in order to give back to the community in which they operate.

e. Community Forest Association

14. The KFS should fully implement the participatory forest management policy to ensure that Community Forest Associations benefit from the forests since they host and protect them.
15. CFAs should conduct regular elections to curb situations where some CFA officials collude with forest rangers or condone malpractices.
16. KFS should implement the PELIS program in consultation with the Community Forest Associations to avoid conflict with the community.
17. KFS should streamline the operations of the PELIS system to curb the abuse of forest by rangers. Equally, riparian areas should be out of bounds for the PELIS system.
18. Kenya Forest Service should recruit forest rangers to ensure there are adequate numbers to effectively manage and conserve the country's forest resources. The recruitment should prioritize communities living around forests.

19. KFS should transfer forest guards who have stayed in one area for more than 2 years. This would curb the habit of the rangers abandoning their core business of forest conservation and management and resorting to farming under the PELIS system and other malpractices in collusion with cartels in the sector.

f. Kenya Forest Service

20. KFS should streamline the allocation of forest materials through a bottom-up approach in order to mitigate the alleged corruption associated with the allocations done at the KFS head office.
21. The Ministry of Environment should ensure that KFS is adequately funded to implement its activities.
22. The Ethics and Anti-Corruption Commission should investigate the immediate former KFS Board Chairperson for possible conflict of interest and abuse of office contrary to section 101 of the Penal Code and Public Officer Ethics Act 2003. If found culpable, he should be barred from holding any public office.
23. The Committee finds the suspension of KFS senior managers to have been done illegally and unprocedurally by the Chairman of KFS Board. The Committee therefore recommends that the KFS senior managers be immediately reinstated and any fresh action be procedurally done.
24. The Cabinet Secretary, Ministry of Environment and Forestry should immediately reconstitute the KFS board, with utmost attention to integrity and independence of incoming board members, to replace the former board whose term expired on 31st march, 2018. This will ensure continuity and action on matters requiring the board's attention at KFS.

g. Conflict in mandate

25. The executive should streamline the functions of KWS, KFS and KWTA in order to mitigate the perceived conflict and enhance their effectiveness.

SIGNED: 

DR THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES

DATE: 02/05/2018