

REPUBLIC OF KENYA



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



THE NATIONAL ASSEMBLY

12<sup>TH</sup> PARLIAMENT – SECOND SESSION - 2018

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL  
RESOURCES

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

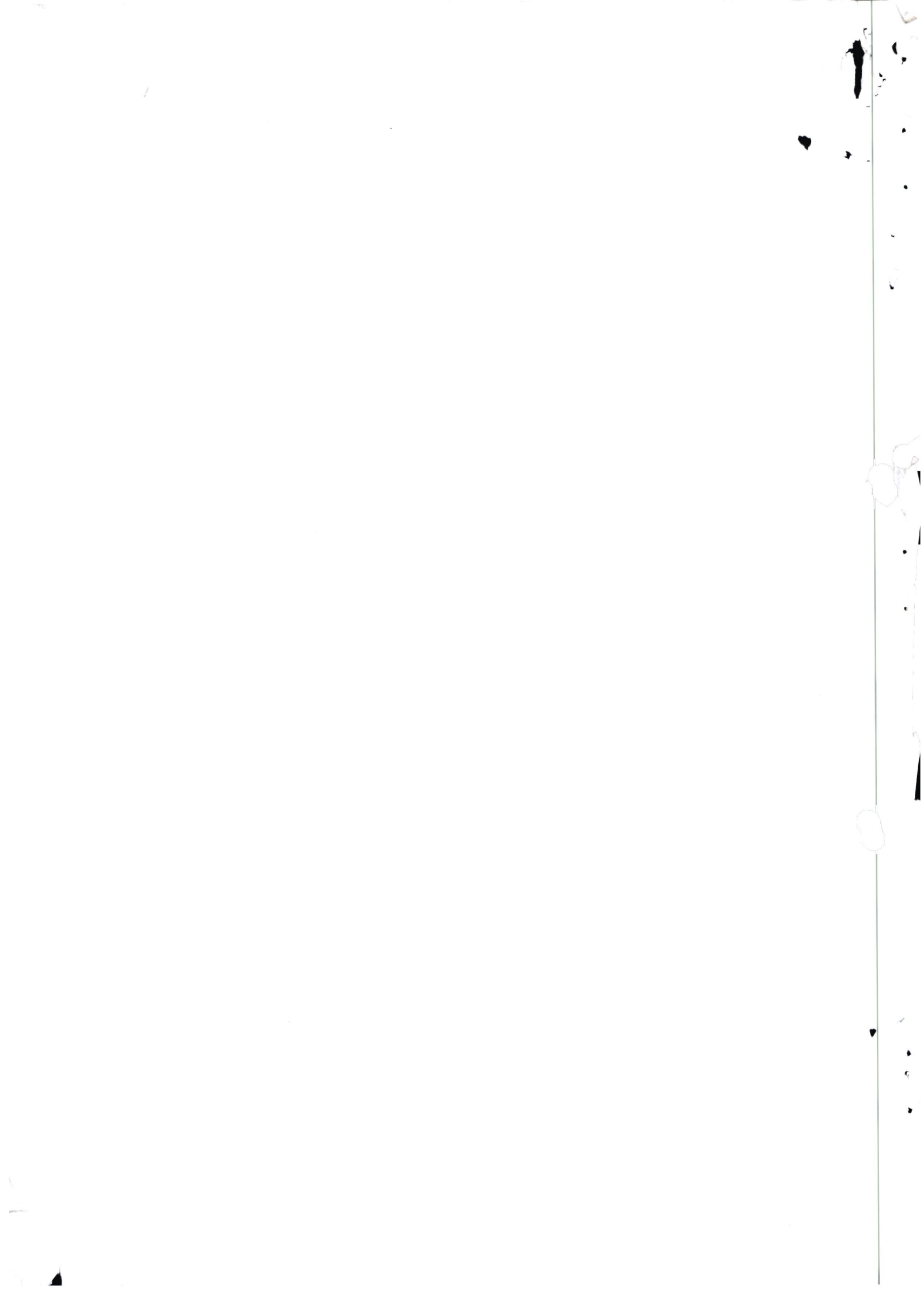
DIRECTORATE OF COMMITTEE SERVICES,  
CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

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



## **FOREWORD**

Logging in Kenya is an unmitigated disaster in both public and community forests as well as in the farmlands. This is 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 have been experiencing drying of rivers, lowering of water tables and drying of wells.

The foregoing informed the decision of the Committee to raise the concern in its Sitting on 1<sup>st</sup> February, 2018. The Committee noted that there was an urgent need to address the logging menace in the country with special focus on the Mt. Kenya, The Aberdares and Mau Forests, being key water towers. The Committee then called for a total ban on timber harvesting and proposed the prioritization of tree farming until challenges on timber harvesting were addressed and the Kenya Forest Service, the entity tasked with forest management and conservation, reformed.

However, soon after, the Executive, through the Deputy President's office, imposed a 90-day moratorium on timber harvesting and formed a taskforce to look into the issue of forest conservation and management in the country effective from 24<sup>th</sup> February, 2018. The move was welcomed by the Committee.

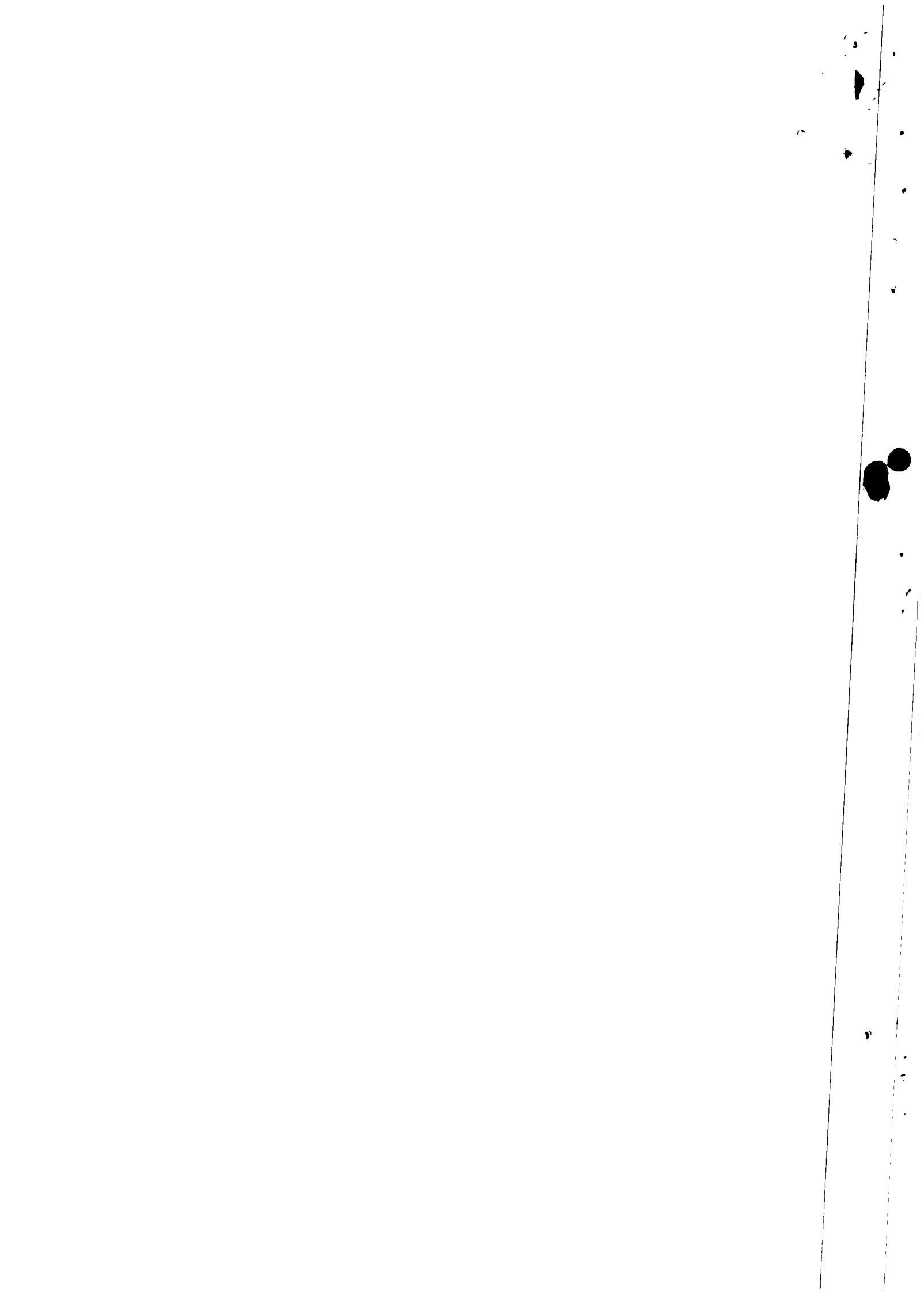
The Committee, on its own motion, then set out to inquire into the matter by scheduling visits to the Mau Forest Complex and the Aberdare Forest from 15<sup>th</sup> to 18<sup>th</sup> March, 2018 to assess the logging menace in those regions. It also met stakeholders in the sector, specifically the Timber Manufacturers Association, the Community Forest Associations, the Ministry of Environment and Forestry and the Management and Board of the Kenya Forest Service. This was in an effort to get to the root of the woes afflicting the management and conservation of forests in the country.

### **Committee Observations**

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

#### **a) Forest Degradation**

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.

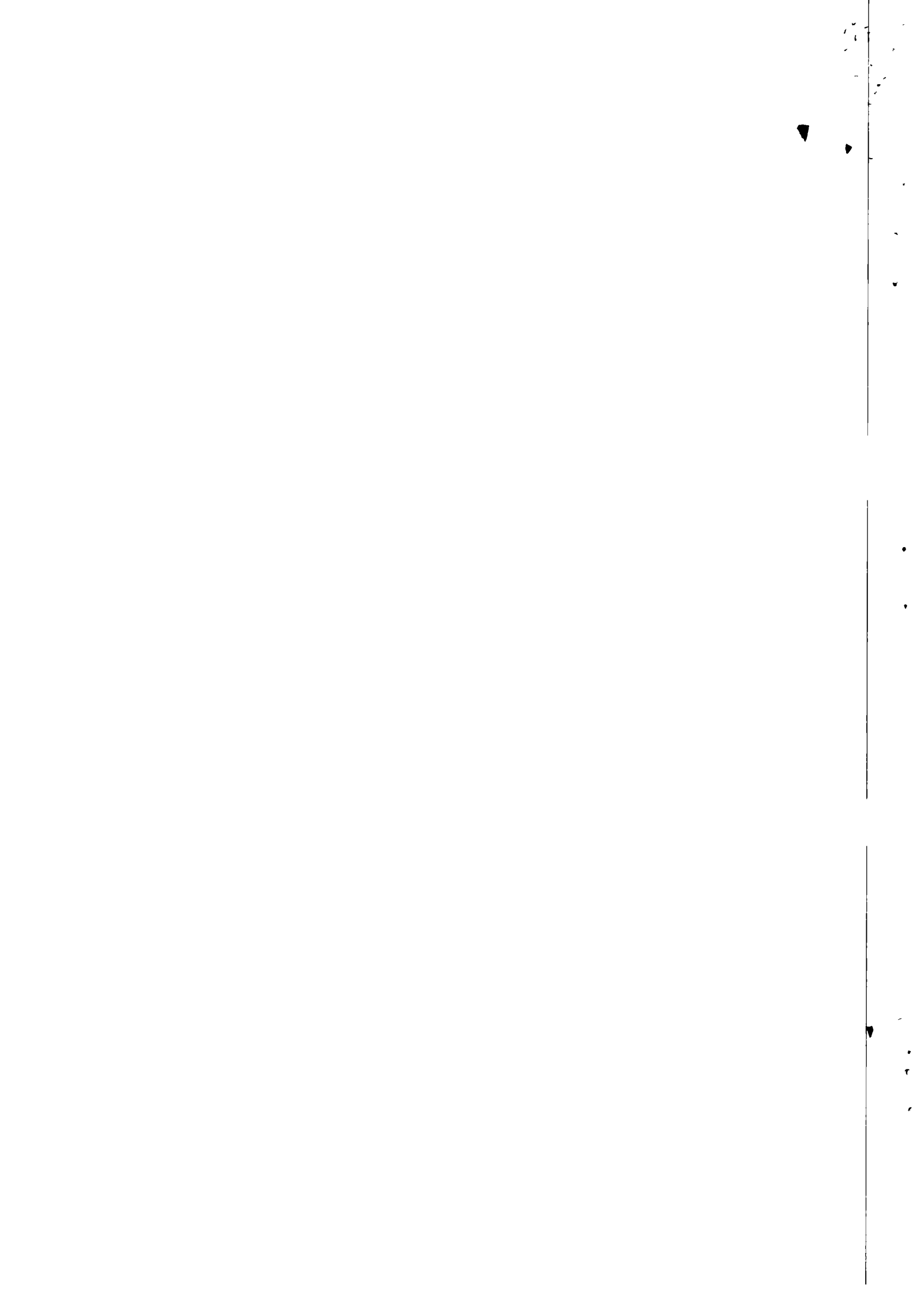
#### **b) Strategic Forest Management**

- (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.

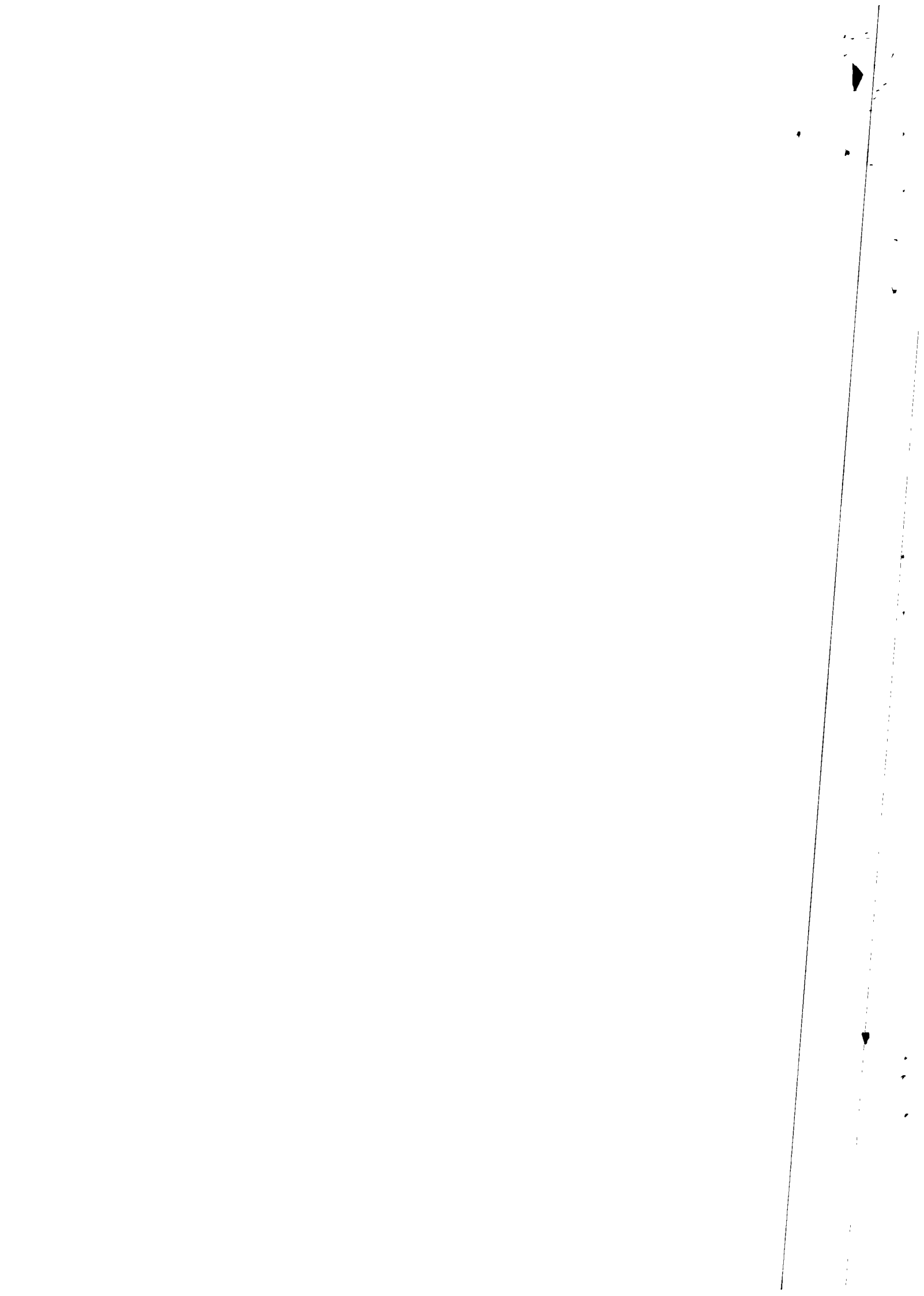
#### **d) Community Forest Association**



- (i) The Community Forest Association consisting of people living around the forest played a key role in forest conservation and management. However, despite many dedicated years of service and hard labour in forest conservation, they reaped very little from their efforts. With these challenges, some CFAs tended to collude with the forest rangers in forest destruction.
- (ii) The Plantation Establishment Livelihood Improvement Schemes (PELIS) was a good practice in forest management and conservation; however, its abuse was observed as the community living around the forests complained of conflict of interest by the forest rangers who either undertook to practice farming at the expense of guarding forest or sublet the parcels of land. Equally, it was noted that some Community Forest Association members were also colluding with the forest officers in forest destruction.

**e) Kenya Forest Service**

- (i) Kenya Forest Service received inadequate funding which resulted in inefficiencies in its operations and inadequate human and equipment capacity in forest management and conservation efforts.
- (ii) KFS had introduced an elaborate procedure in material allocation through felling plans which was done at the local level and approved at the Head Office. However, there were allegations of corruption involving some of its officers and saw millers which brought about complaints from the stakeholders.
- (iii) On issues of good governance, the Chairman of Kenya Forest Service Board of Directors was noted to have acted in contravention of law and guiding principles such as Mwangozo Code of Governance for State Corporations. For instance, the Board Chairperson suspended KFS officers without regard to the KFS Human Resource 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 Mwangozo Code of Governance for State Corporations before the affected senior officers were sent on compulsory leave.
- (iv) Additionally, the Chairperson of the KFS Board while in office and knowingly in contravention of the law and the Mwangozo 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.



(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**



## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates, pursuant to the *Standing Order 216 (5)*, are as follows:

- a) **To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;**
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- g) To examine treaties, agreements and conventions;
- h) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- j) To examine any questions raised by Members on a matter within its mandate.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

### 1.2 Oversight

In executing its mandate, the Committee oversees the following State Departments, namely:

- The State Department for Water Services;
- The State Department of Environment and Climate Change;



- The State Department for Natural Resources Management; and
- 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



cleared land with indigenous trees. Subsequently, the Executive should create new natural forest boundaries with Nyayo Tea Zones in order to create buffer zones.

- (ii) The Executive should provide incentives, enabling policies and other relevant interventions to private commercial forest plantation in order to increase the forest cover and to promote timber industry.
- (iii) KEFRI and KFS should be adequately funded and supported to develop high quality indigenous and exotic tree seedlings and nurseries in order to restore government forest land and to promote private commercial plantation.

#### **b) Forest Degradation**

Punitive penalties should be entrenched in law to curb forest destruction and illegal logging. The Forest Conservation and Management Act (No. 34 of 2016) should be amended to provide for punitive penal provisions.

#### **c) Strategic Forest Management**

- (i) Kenya should take advantage and claim carbon credits to help in her efforts at forest and general ecosystem conservation. The Ministry of Environment and Forestry should create awareness on carbon credit to enable Kenyans to embrace the programme.
- (ii) Tree seedlings should be made readily available to citizens especially through empowerment of the youth and women in collaboration with KEFRI and KFS. The youth and women are encouraged to join cooperative movements in order to access cheaper seedlings due to economies of scale.
- (iii) There should be an inter-ministerial collaboration amongst the Ministries of Environment and Forestry, Petroleum and Mining, and Water and Sanitation, Tourism and Wildlife in coming up with an all-encompassing strategy on conservation and management of forest, water and other natural resources in the country. Their operation should be coordinated from the Office of the President.
- (iv) 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.
- (v) 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.
- (vi) 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.

- (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**

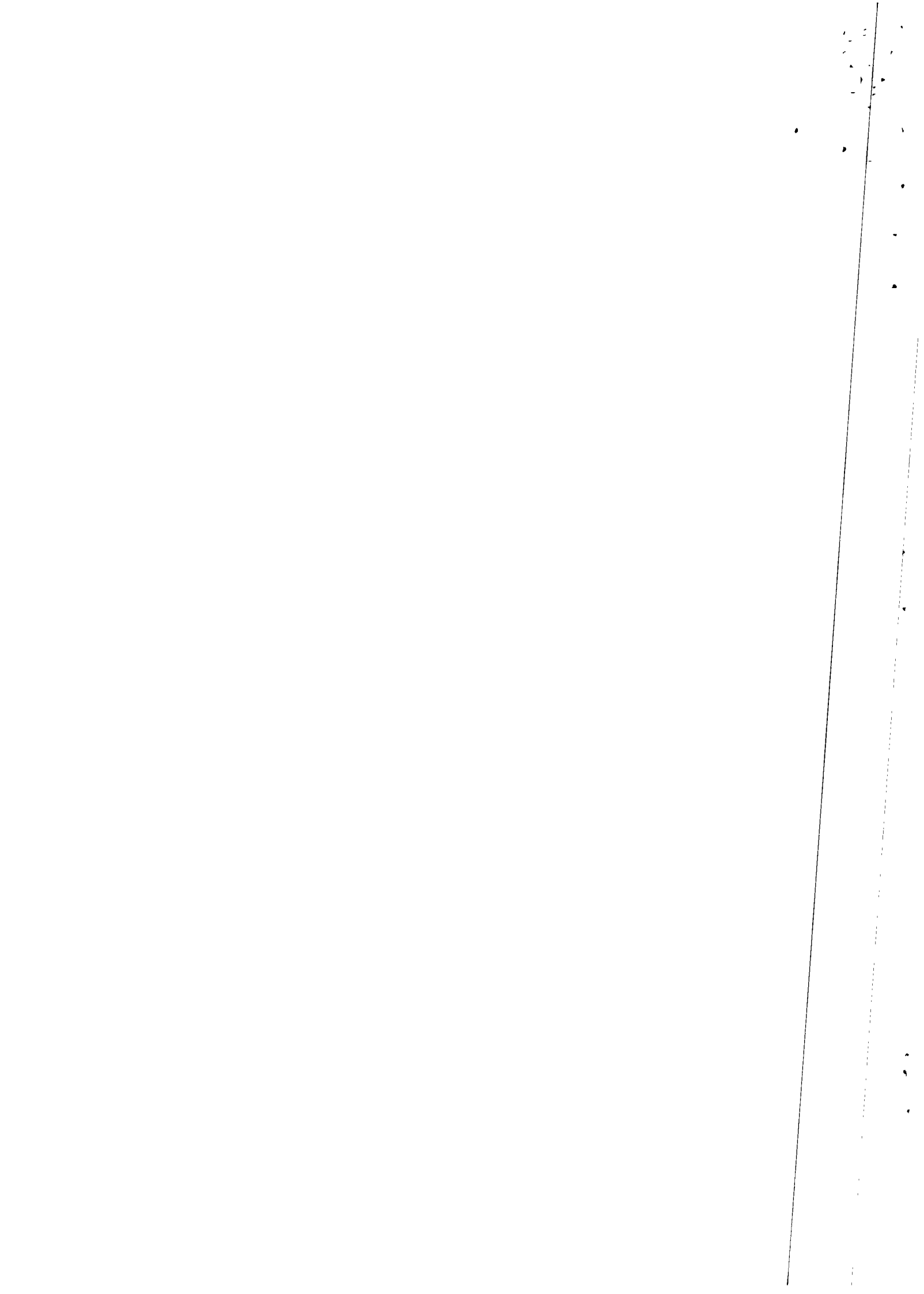
- (i) The Ministry of Environment should carry out an audit of the saw millers and further assessment on how to reduce them in order to ease pressure exerted on the forest.
- (ii) KFS should put up systems in which the saw millers would be required to have corporate social responsibility programmes in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



(ii) The Ministry of Environment should ensure that KFS is adequately funded to implement its activities.

(iii) 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.

(iv) 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.

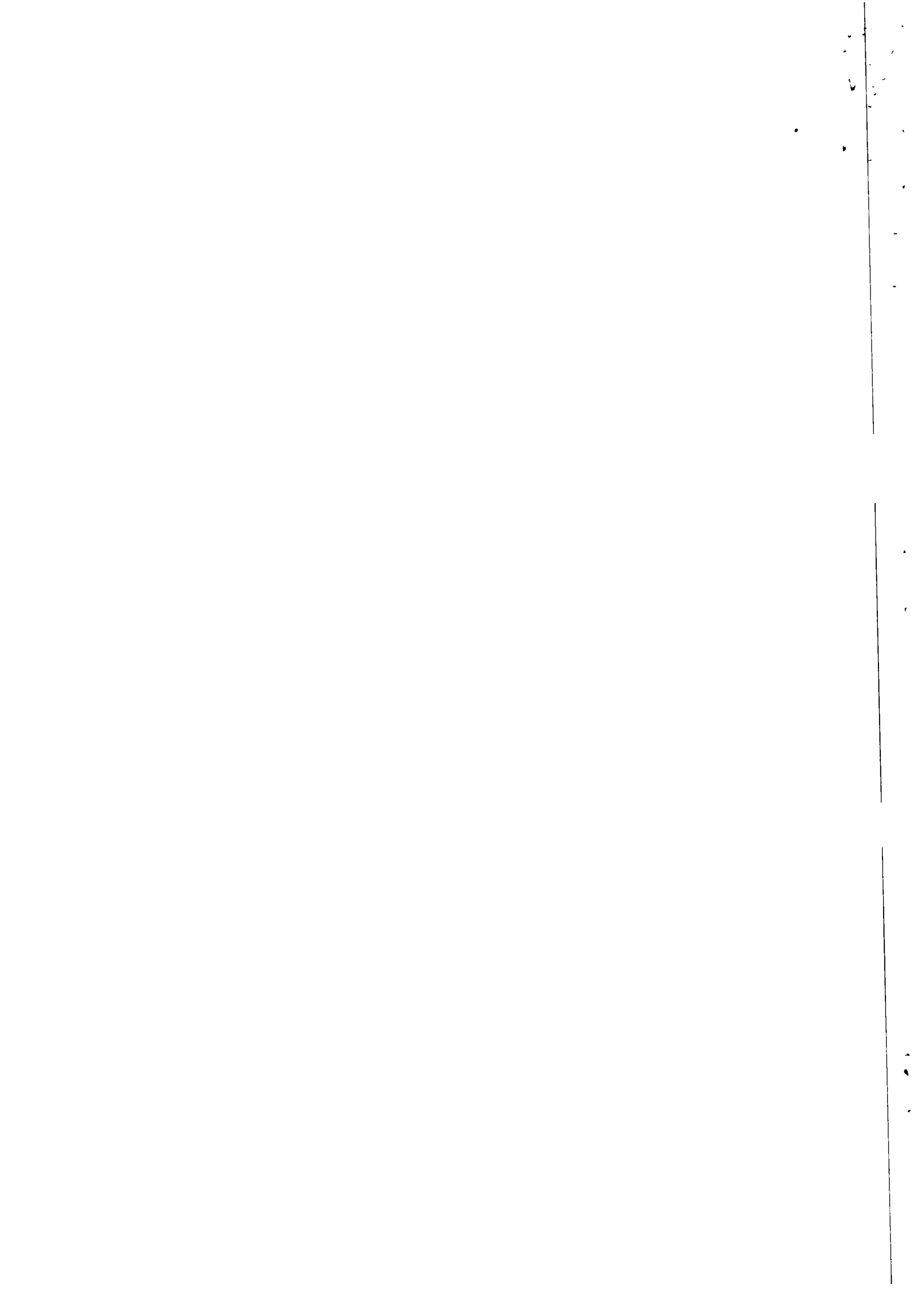
**g) Conflict in mandate**

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



## 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,



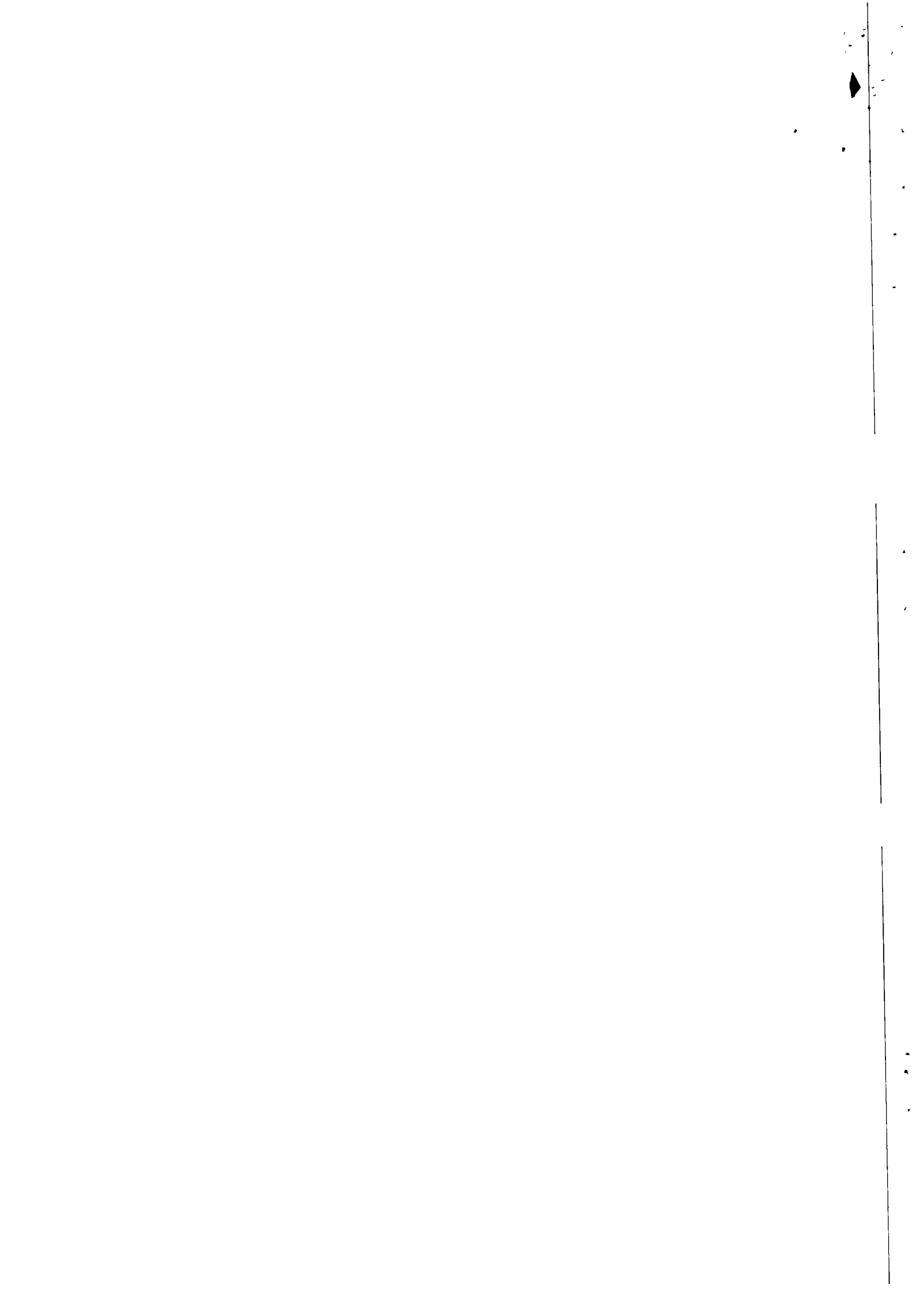
most parts of the country were experiencing drying of rivers, lowering of water tables and drying of wells.

6. The foregoing informed the decision of the Committee to raise the concern in its Sitting on 1<sup>st</sup> February, 2018. The Committee noted that there was an urgent need to address the logging menace in the country with special focus on the Mt. Kenya, The Aberdares and Mau Forests, which are key water towers. The Committee consequently called for a total ban on timber harvesting and instead proposed the prioritization of tree farming until proper regulations on timber harvesting were put in place and the Kenya Forest Service, the entity tasked with forest management and conservation, reformed.
7. However, on 24<sup>th</sup> February, 2018, the Executive, through the Deputy President's office, imposed a 90 day moratorium on timber harvesting and subsequently, a taskforce was formed to look into the issue of forest conservation and management in the country. The move was welcomed by the Committee.
8. The Committee, on its own motion, then set out to inquire into the logging matter by scheduling meetings with stakeholders in the sector, specifically: the Timber Manufacturers Association, the Community Forest Associations, the Ministry of Environment and Forestry and the Management and Board of the Kenya Forest Service and the County Governments of Nakuru and Nyandarua on various dates. The Committee also visited to the Mau Forest Complex and the Aberdare Forest from 15<sup>th</sup> to 18<sup>th</sup> March, 2018 to assess the logging menace in those regions. This was in an effort to get to the root of the woes afflicting the management and conservation of forests in the country.

## **2.1 OBJECTIVES OF THE INQUIRY**

Arising from the cry from the public on drying of rivers, excessive logging in the forests and dangers to key water towers, the Committee pursuant to Standing Order 216() (e) embarked on an inquiry into the status of logging in the country. The inquiry was guided by the following objectives:

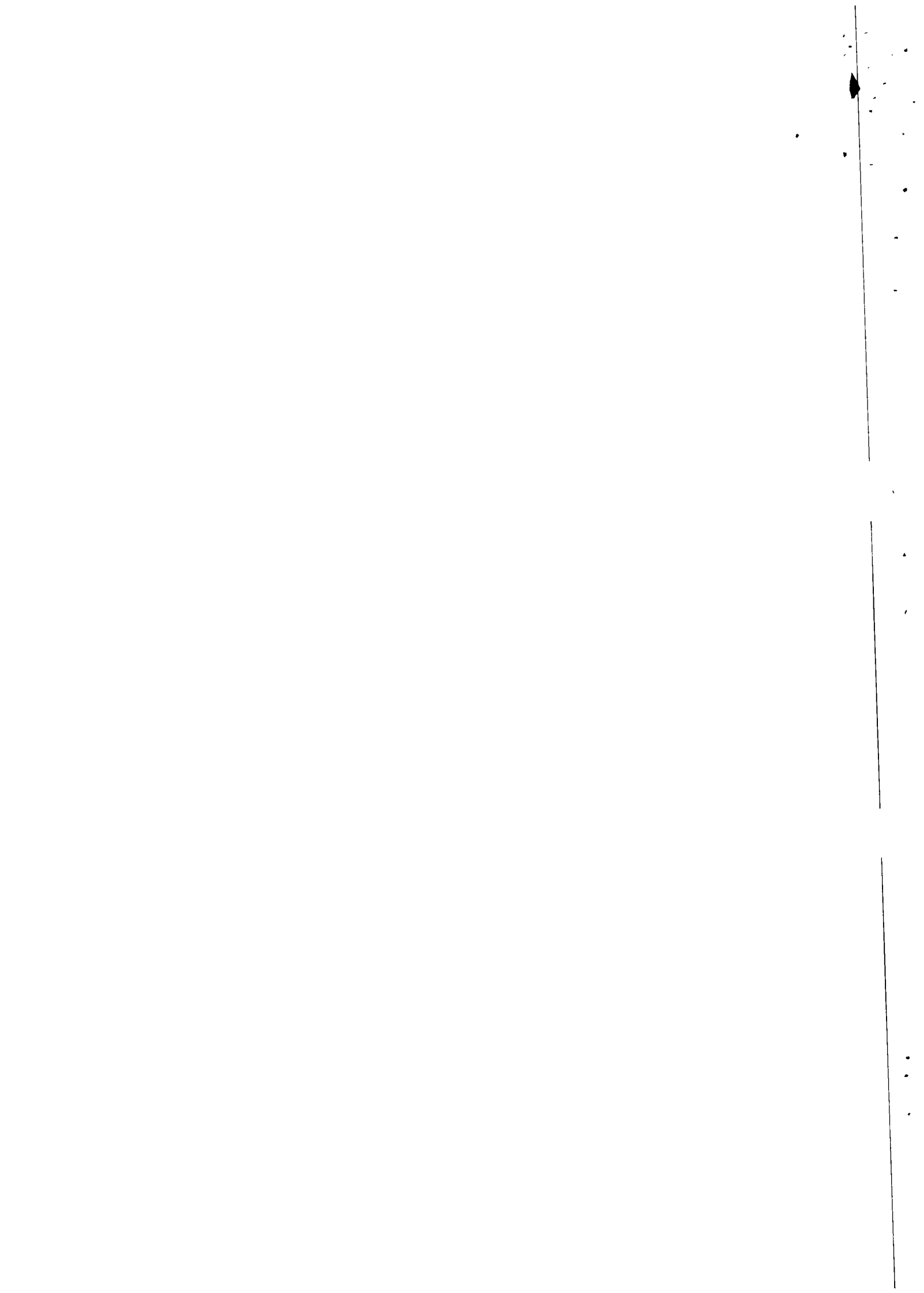
- (i) To investigate the extent and effects of logging in the country and forest degradation in the country; and
- (ii) To recommend strategies of achieving 20% forest cover in Kenya by 2030.



## **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 exceeding 1 million or to imprisonment for a term not exceeding 3 years, or to both (section 64(3) of the Act).

Any person who contravenes the provisions of section 61 shall be guilty of an offence and is liable on conviction to a fine not exceeding one million or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

7. Part IX of the Act provides for prohibited activities in forests. Section 64(a) prohibits a person from felling, cutting, taking, burning, injuring or removing any forest produce except under a licence or permit or a management agreement. Under section 64(f), a person shall not clear, cultivate or break up land for cultivation or for any other purpose. Section 64 (k) prohibits a person from possessing, bringing or introducing any chain saw or logging tools or equipment.
8. The penalty for the offences listed in paragraph 8 is imprisonment for a term not exceeding 6 months or a fine not exceeding 100,000, or to both.
9. Section 67(1) (e) of the Act provides for the offence of a person who makes or is found in possession of charcoal without a licence. The penalty is a fine not exceeding 50,000 shillings or to imprisonment for a term not exceeding 6 months, or to both. The provision states as follows—

*67. Other offences*

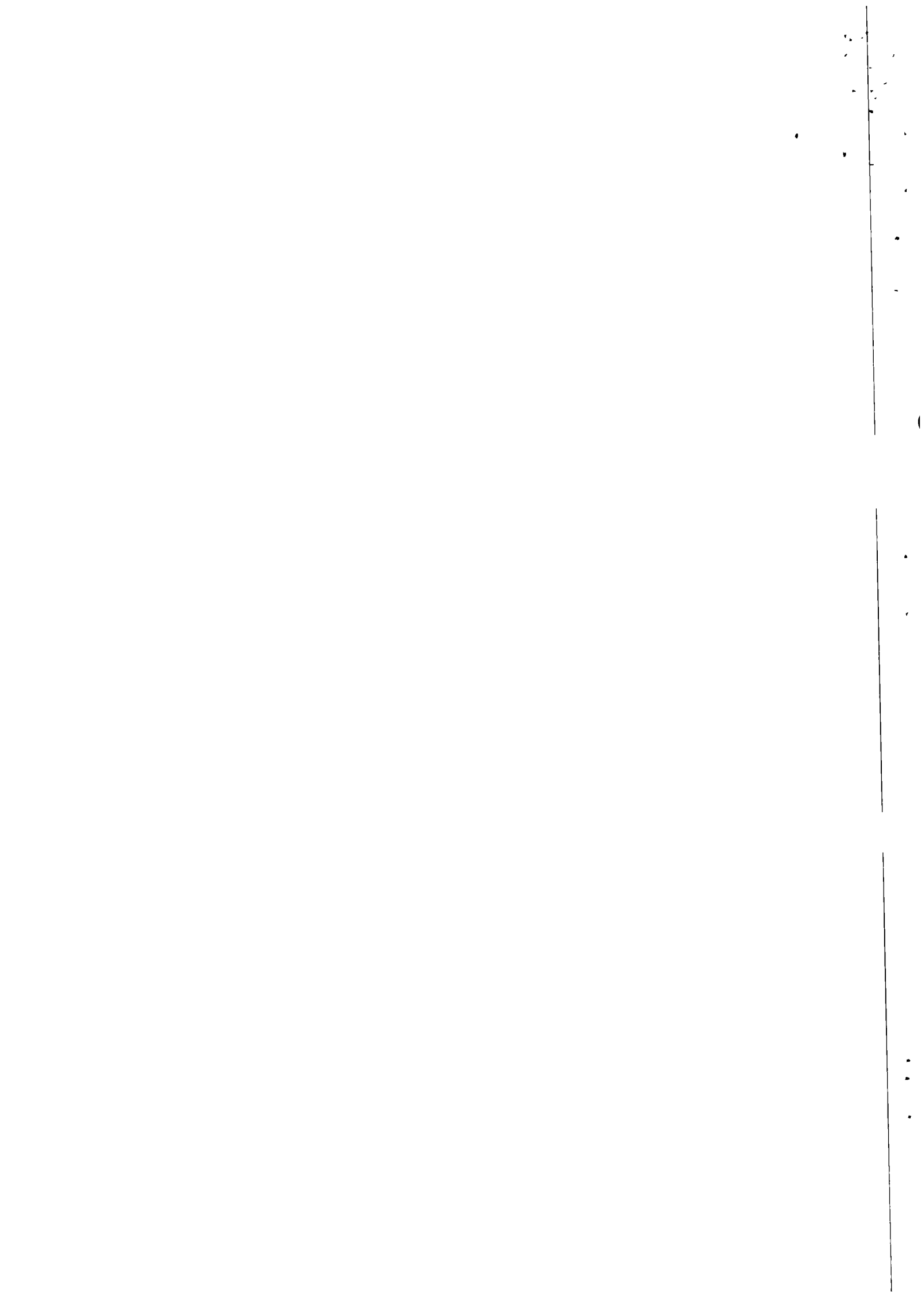
*(1) Any person who—*

*(e) makes or is found in possession of charcoal in a national, county or provisional forest; or in community forest, private forest or farmlands without a licence or permit of the owner as the case may be: commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.*

10. Section 67(3) of the Act provides as follows—

*67. (3) Any person who operates a sawmill in a manner contrary to that prescribed in rules made under this Act commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.*

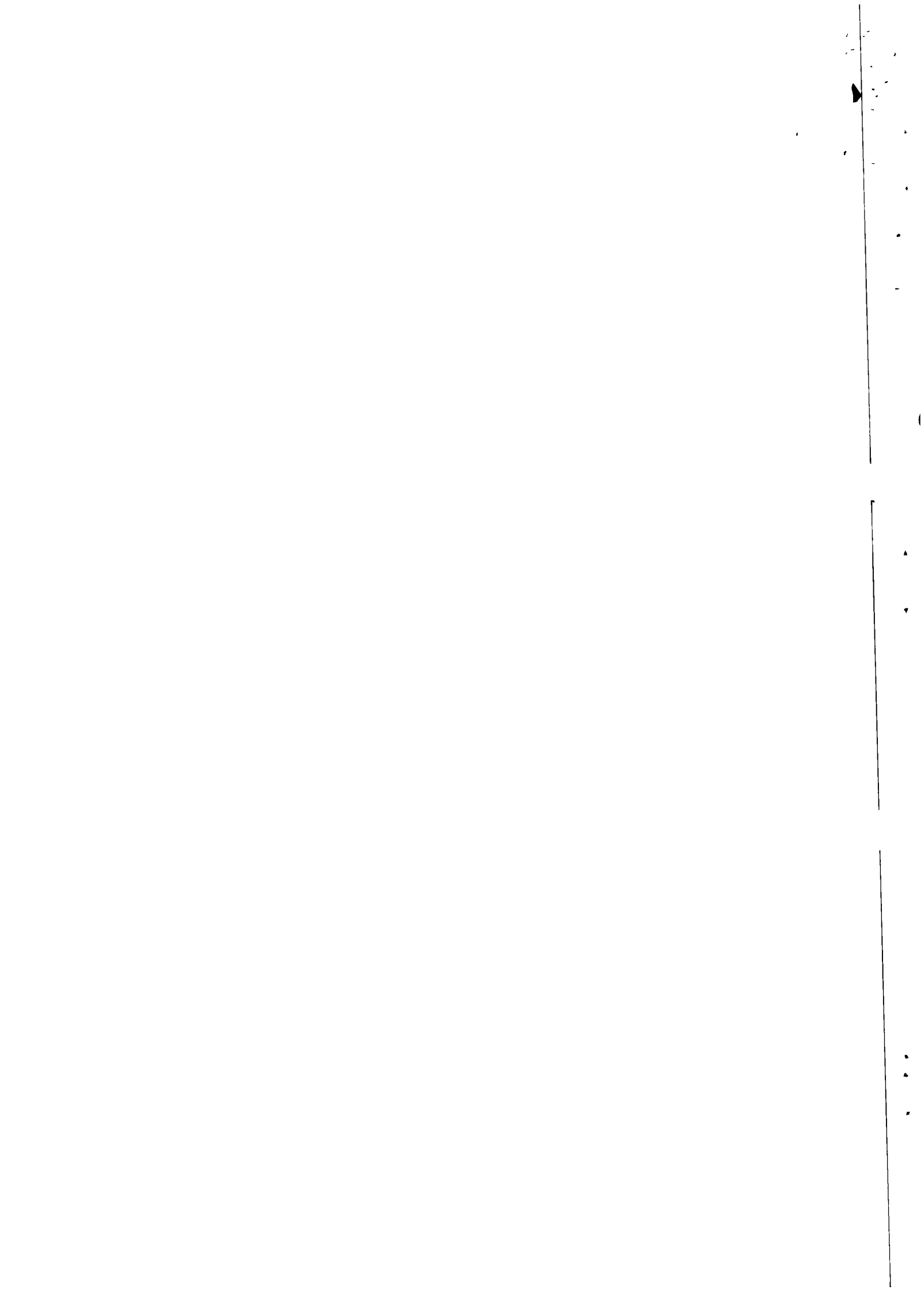
11. Section 67 (8) (d) of the Act provides that any person who, in any forest area extracts, removes, or causes to be removed, any tree, shrub or part thereof for export commits an offence and is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment.



12. It should be noted that apart from the punishments provided in the Act for the various offences, the Act also provides for compensation for loss or damage. Section 68 of the Act provides for the following:
- 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).

15. Regulation 14 provides for charcoal movement permit. A person is required to apply for it in order to move charcoal or charcoal products from one place to another. Regulation 17 provides for the requirement of a person or association exporting charcoal or charcoal products, from Kenya to obtain an export permit from the KFS. Regulation 18 provides for the requirement of a person or association importing charcoal or charcoal products, from Kenya to obtain an import permit from the KFS.
16. The penalty for contravening the provisions of the Regulations is a fine of not less than 10,000 shillings or an imprisonment for a term not exceeding 3 months.

### **2.3 THE MORATORIUM**

17. The Moratorium on logging was issued by the Deputy President on 24<sup>th</sup> February, 2018. The specifics of the Moratorium were to halt logging and charcoal burning on both public and community forest lands. 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. Consequently, a Taskforce comprising of 15 members to look into Forest Resource Management and Logging Activities in Kenya was established on 26<sup>th</sup> February, 2018.



### **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 15<sup>th</sup> to 18<sup>th</sup> March, 2018.

#### **3.1 KFS Management**

20. The Chief Conservator of Forests, Kenya Forest Service Mr. Emilio Mugo appeared before the Committee 24<sup>th</sup> 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.



5. Kenya Forest Service planted/replanted an average of 10,000 Ha and only allowed harvesting of 3,000 to 4,000 Ha annually. The agency had prequalified and licensed 898 sawmills, 34 pole treatment plants and 742 fuel wood operators.
6. There were procedures for prequalification of Saw millers which included:
  - Basic infrastructure e.g power, equipment, site.
  - Legal requirement - registration and compliance.
  - Technical knowledge on harvesting, technology, equipment and skills.
  - Financial capacity to pay for the forest product,
7. There were procedures for sale of Forest Trees which included;
  - An approved tree harvesting plan
  - Application by the prequalified and licensed saw millers for allocation of a forest area.
  - Selection and marking the area for thinning
  - Recommendation by the Head of Conservancy (FCC)
  - Assessment and valuation of the forest
  - Allocation of the forest to the qualifying saw miller
  - Payment of licensee fees and appropriate royalty.
  - Removal of paid for trees in the forest area
  - Exit report for by the forest station manager
8. Forest Hot spot areas included:
  - Mau forest Complex (Nakuru, Kericho, Baringo)
  - Cheranganyi Forest Blocks (West Pokot, Elgeyo Marakwet)
  - Kakamega Forest Ecosystem (, Kakamega)
  - Samburu Forest Ecosystem (Samburu, Isiolo)
  - Mt Kenya and Nyandarua Forest Ecosystem (Meru, Nyandarua, Nyeri,
  - Mt Elgon Forest ecosystem (Bungoma, Trans Nzoia)
  - Coast forest ecosystem (Boni Forest, Kilifi, Tana River)
  - Nyanza Forest Ecosystem (Homa bay)
9. On forest restoration efforts:
  - i) The Kenya Forest Service was coordinating a multi-stakeholder effort to support the Government commitment to restore 5.1 million hectares of the Country's degraded and deforested landscapes by 2030.
  - ii) The restoration target was the Government contribution to the African Forest and Landscape Restoration Initiative, Bonn Challenge and the New York Declaration of Forests to globally restore 350 million hectares of degraded land by 2030.



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

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### **3.2 Submissions by the Governor, Nakuru County, H.E Lee Kinyanjui**

21. The Governor, Nakuru County, H.E Lee Kinyanjui submitted to the Committee on Friday 16<sup>th</sup> March, 2018 that:

1. There was need for a focused and fact-oriented way of dealing with forest conservation and management issues.
2. The effects of damaging the country's environment were already being seen through the erratic weather patterns including drought and flash floods.
3. The county, being the home to the Mau Forest Complex fully supported the logging moratorium. He however pointed out that there was need for a policy that was consistent and predictable for a conducive environment for investors in the sector. For instance there were investors who had invested billions and employed hundreds but had not been given a hearing before imposing the moratorium which put their businesses in jeopardy.
4. The effects of deforestation were directly felt in the counties but the authority over these forests was with the KFS at the national level. There was therefore need for closer collaboration at the two levels such that the counties have a major stake in the management of their own resources (forests).
5. There was an urgent need to invest in the fencing of the Mau Forest Complex among other water towers. Equally surveillance by the KFS ought to be improved to curb the illegal logging menace. The critical water towers equally needed to be declared restricted areas.
6. There was need to have adequate, up-to-date scientific data of the country's tree cover in order to craft appropriate and strategic interventions to remedy the situation.
7. Nakuru County was in the process of planting trees and was working with farmers to plant fruit trees through its Agriculture Department. The county was targeting to plant 300,000 avocado seedlings in 2018.
8. There was need for harmonization of the Forest Conservation and Management Act, 2016 and the Wildlife (Conservation and Management) Act since in their current state; they were a major source of conflict in terms of functions.
9. Wasteful use of timber needed to be checked by encouraging recycling/reuse of timber or alternatives to timber especially in the construction industry. This could be done through legislation.
10. There was need to brand forest areas and make them recreational places too. Such branding would make them a key revenue source and enhance their protection as was the case with the Karura Forest.



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**

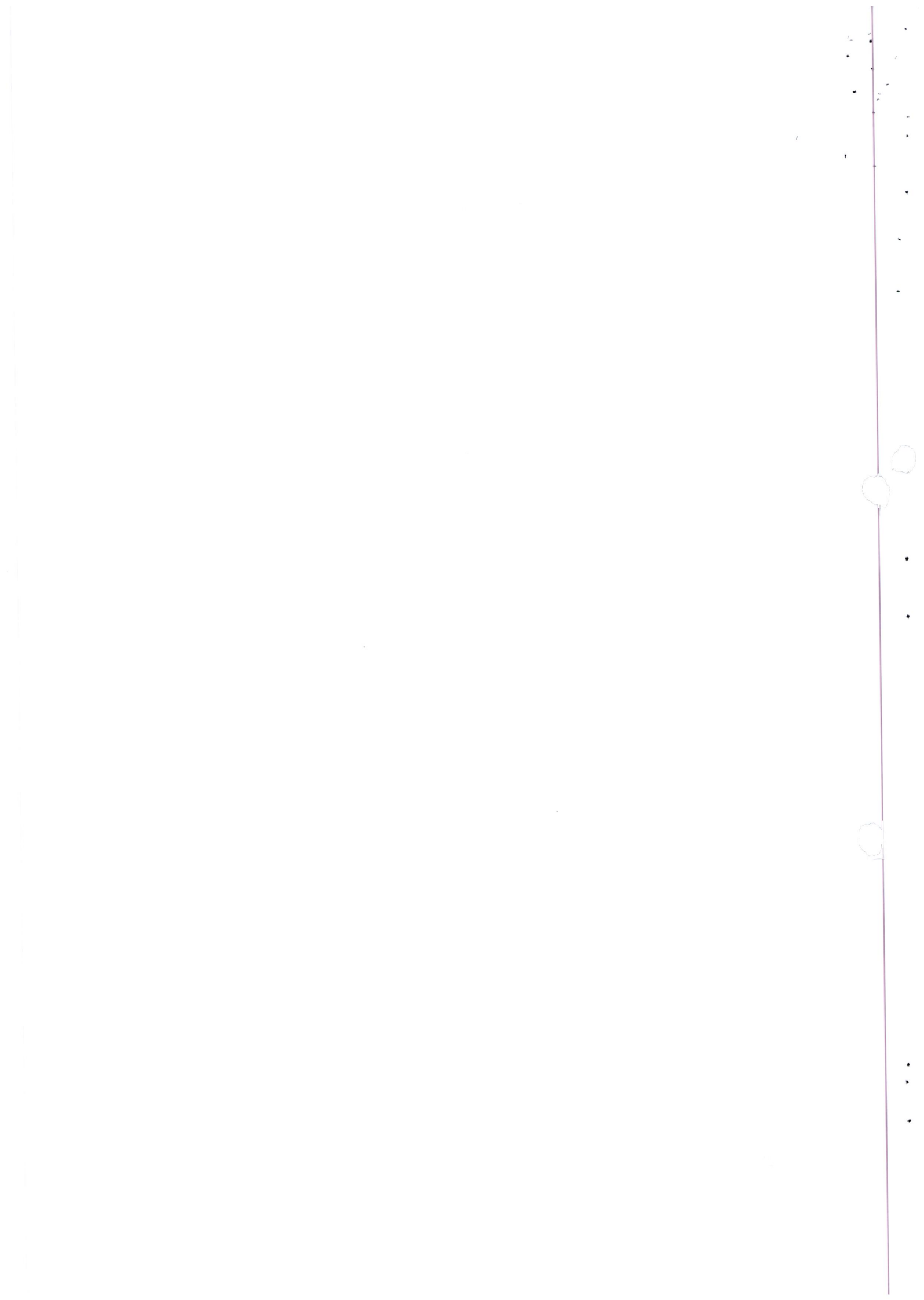
22. The Committee conducted an aerial inspection of the Mau Forest Complex Friday 16th March, 2018 and made the following observations:

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 16<sup>th</sup> 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.

3. There was an urgent need for a well thought out and all-encompassing strategy on conservation and management of forest, water and other natural resources in the country. The Office of the President being represented to the village level ought to be at the centre of such a strategy.
4. There was need for closer consultations between the National Government and the Counties especially on issues of benefit sharing in respect of natural resources domiciled in each county. For instance, despite Nyandarua County being a major water bank for the country, the water was being supplied to other counties without ensuring that locals had the supply too.
5. There was need to compel the Ministry of Environment and Forestry to come up with a master plan on environmental conservation spanning at least 25 years in collaboration with all stakeholders; chief among them county governments.
6. There was need for the National Assembly to be a link to ensure the ministries responsible for agriculture, environment and water worked together to deal with environmental and natural resources matters since disjointed efforts would not yield desired results.
7. The county was not involved by the KFS in the reforestation exercise, tree harvesting activities taking place in the Aberdare forest and the proceeds from the activity were not being shared with the county
8. There was need for Kenya to take advantage and claim carbon credits to help in her efforts at forest and general ecosystem conservation. A system should be put in place to reward conservators and equally fine those who pollute and destroy the environment.
9. There was need for regular stock taking (audit) at all the water points in the country to establish the adequacy or inadequacy of water resource in the country.

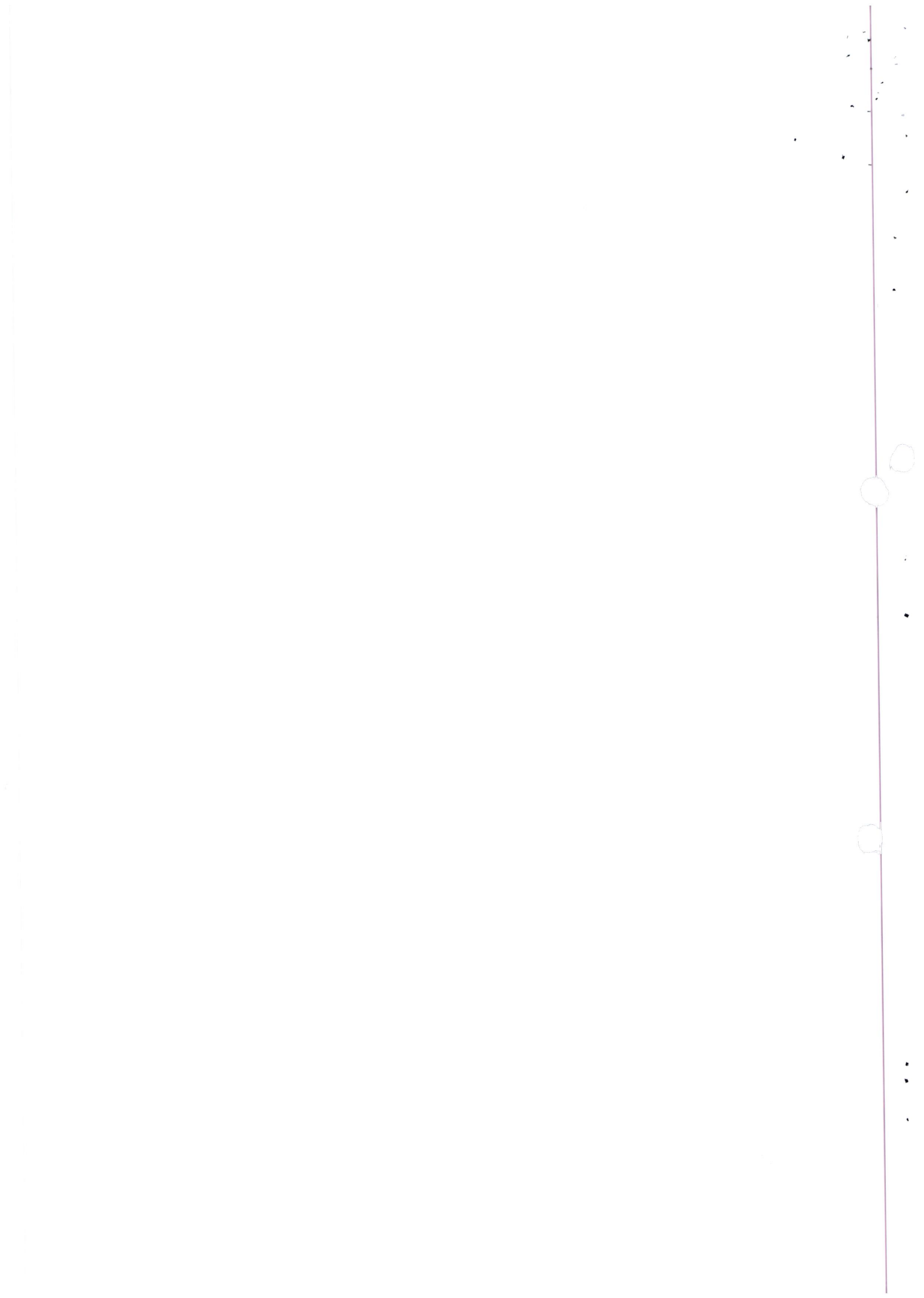
### **3.5 Submissions by The Ecosystem Conservator, Nyandarua County, Ms. Jenniffer Situma**

24. The Ecosystem Conservator, Nyandarua County, Ms. Jenniffer Situma appeared before the Committee on Friday 16<sup>th</sup> March, 2018 and submitted that:

1. The Kenya forest Service was the organization mandated to conserve, develop and sustainably manage forestry resources as per the Forest Conservation and Management Act, 2016.



2. Forests in Nyandarua County were part of the forest range that also covered Nyeri, Kiambu and Murang'a. The total gazetted forest area 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.

5. There were however opportunities for improving performance including:
  - i) Existence of good cooperation & teamwork among stakeholders who play an important role in forest conservation and management;
  - ii) Elaborate legal framework;
  - iii) Existence of large areas of forest with planting backlog;
  - iv) Forest being managed in accordance with prepared management plans
  - v) High demand for raw materials
  - vi) Adoption of farm forestry practices and agroforestry practices technology by farmers.
6. Key success stories in forest conservation in Nyandarua County include:
  - i) Development of Nyandarua transition implementation plans (TIPs) which had been validated by stakeholders. Forestry functions had been devolved to the county government in alignment with the Constitution.
  - ii) Development and implementation of five plantation management plans for the five forest stations.
  - iii) Development and launch of participatory forest management plans (PFMP) and signing of forest management agreements (FMA) for South Kinangop, North Kinangop and Geta Forest station.
7. The main challenges hindering progress included:
  - i) Inadequate finances to carry out silvicultural operations;
  - ii) Skilled permanent labour charged with nursery maintenance were advanced in age and were retiring without replacement/recruitment. Temporary casuals were difficult to source due to the reduced rates and were unskilled;
  - iii) Inadequate Forest Guards to man all stations;
  - iv) Poor infrastructure development where some forest beats did not have rangers houses and the existing ones in poor condition;
  - v) Rejection of allocated materials by sawmillers due to poor quality;
  - vi) Lack of 4 wheel drive vehicles to access the unfavorable terrains which could not be accessed by smaller vehicles in the stations e.g Geta and N. Kinagop;



- vii) Farmers tree nurseries not being certified thus poor planting stock to farmers;
- viii) Debarking of young cypress plantation by Sykes Monkey at Geta and Ndaragwa forests
- ix) Pest damage to cypress species
- x) Illegal logging
- 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 17<sup>th</sup> 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.
  - vi) Closing of KTDA factories due to lack of fuelwood leading to unemployment and loss of foreign exchange as tea leaves could not be cured.
  - vii) Industries and institutions like schools and hospitals that rely on fuel wood were bound to have an increase in operation cost;
  - viii) A knock on effect on companies that rely on fuel wood to produce soaps, edible oils and others which were facing closure;
  - ix) Most allocated forest materials had loans pegged on them and hence members risked defaulting on financial commitments. It was estimated that the loans were about Kshs. 40 Million hence the banks will foreclose the businesses in two months' time.
4. Effects of timber deficits included:
- i) Increased deforestation in Natural Forests- prompted by attractive market prices
  - ii) Increased recurrent expenditure on protection vs Investments
  - iii) Increased prices impact on the competitiveness of dependant industries
  - iv) Widening trade deficit, as wood imports would grow exponentially
5. Effects of the previous logging ban of 1999 were cited as:
- i) The ban was discriminatory
  - ii) Tree planting back log
  - iii) Massive job losses in the industry
  - iv) Some of the members died due to stress related ailments occasioned by their loss of livelihood
  - v) Degradation of machinery in sawmillers' sites
  - vi) Increased poaching of indigenous forests
  - vii) A sharp increase in price of timber
  - viii) Forests were excised to settle Kenyans' leading to less land available for deforestation
  - ix) Massive deforestation in the country as private farmland tree was cut in an attempt to cash in on the timber harvesting degenerated by becoming over mature.
6. What TMA requested for included:



- i) Immediate reinstatement of movement permits to enable them transport processes timber and fuel wood from their yards and sawmills to customers. This would assist in easing their financial pressure.
  - ii) Private farms to be allowed to continue harvesting their trees as they had no correlation to state forests.
  - iii) To be allowed eventual access to the forests to access felled trees that had been paid for and were decomposing.
  - 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.
    - b) Urgent identification of alternate lands whether state, public, county or private where forest plantations could be established and have these land declared forest priority zones. It's estimated that to have a 20% tree cover in 15 years, there would be need to replant a minimum of 100,000HA of new forests per year translating to about 135,000,000 seedlings every year and zone 1.5M HA for this exercise. Priority should be given to ASAL lands.
    - c) Lifts the moratorium on logging to enable urgent clearing of over mature plantations to allow replanting.
    - d) Severely control/limit water intakes upstream along river ways. Unless for commercial farming, this intakes should be banned.
    - e) Identification of tree species that could be replanted in new forested areas with a specific thought to speed of growth and commercial value of lumber which will then ultimately ease off pressure on state forests. Kenya can become a net wood exporter.
    - f) Reconsider the energy sector use of concrete poles for electricity transmission vs timber poles. The number of trees planted by Kenyan's to tap into this market was enormous and led to a lot of reforestation.
    - g) Ring fence the local softwood import market as a way of motivating Kenyans to grow trees on small scale holding for commercial purposes.
  - ii) Medium-Term
    - a) Establishment of well thought out policies to enable commercial forestry on forest priority zones.
    - b) Well thought out incentives to private plantations to incentivize them to put more trees under cover.
  - iii) Long-Term
    - a) Establishment of private commercial forestry in ASAL areas across the country.



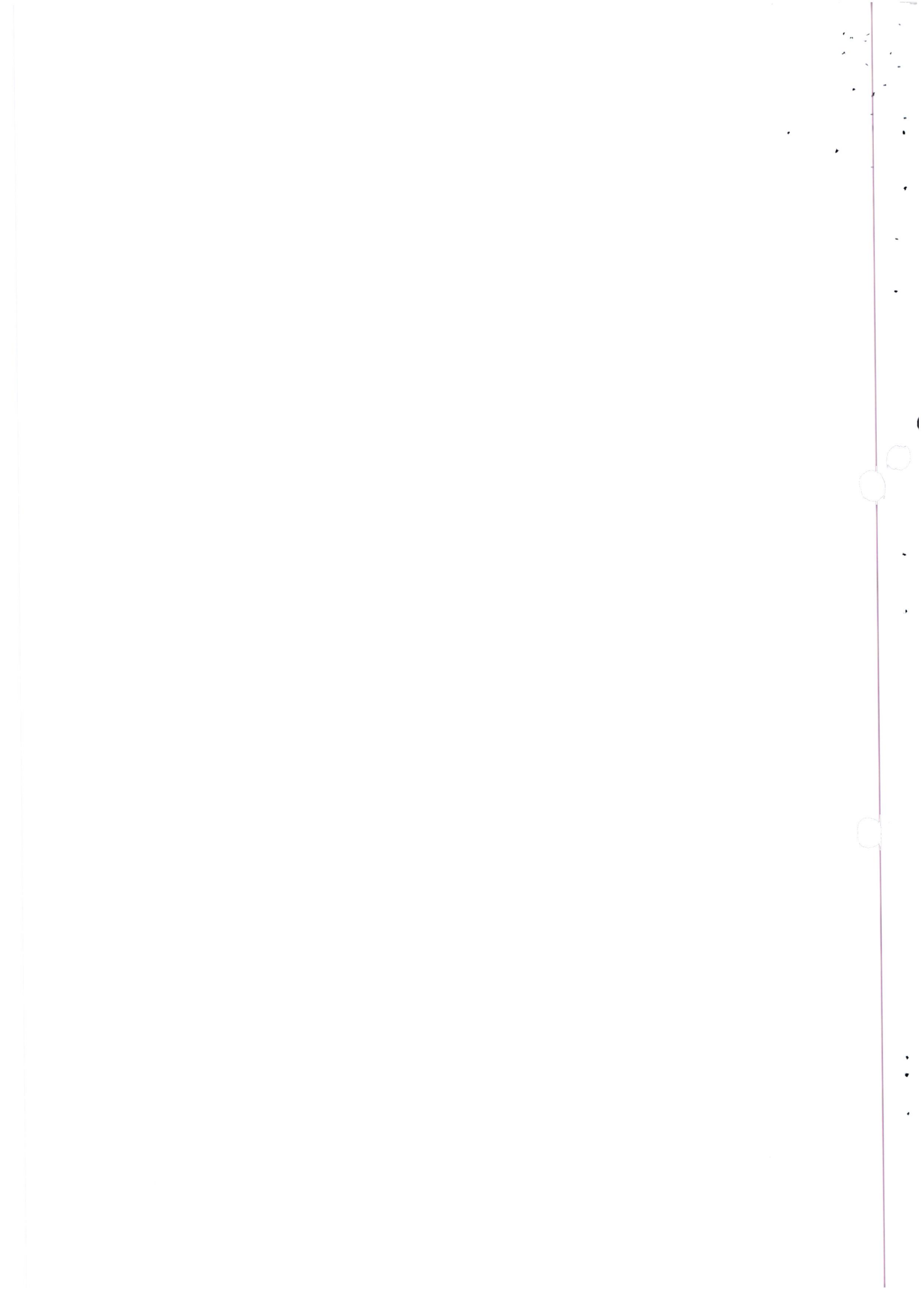
b) Establishment of a surplus wood balance and Kenya becoming a net timber exporter.

12. There was need to replicate the case of Uruguay which through appropriate legislation managed to transform itself from an importer to a net exporter of wood products within a short time.

### **3.7 Submissions by Timsales Limited**

26. Mr. Walter Ogada, a representative of Timsales Limited appeared before the Committee on Saturday 17<sup>th</sup> 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;

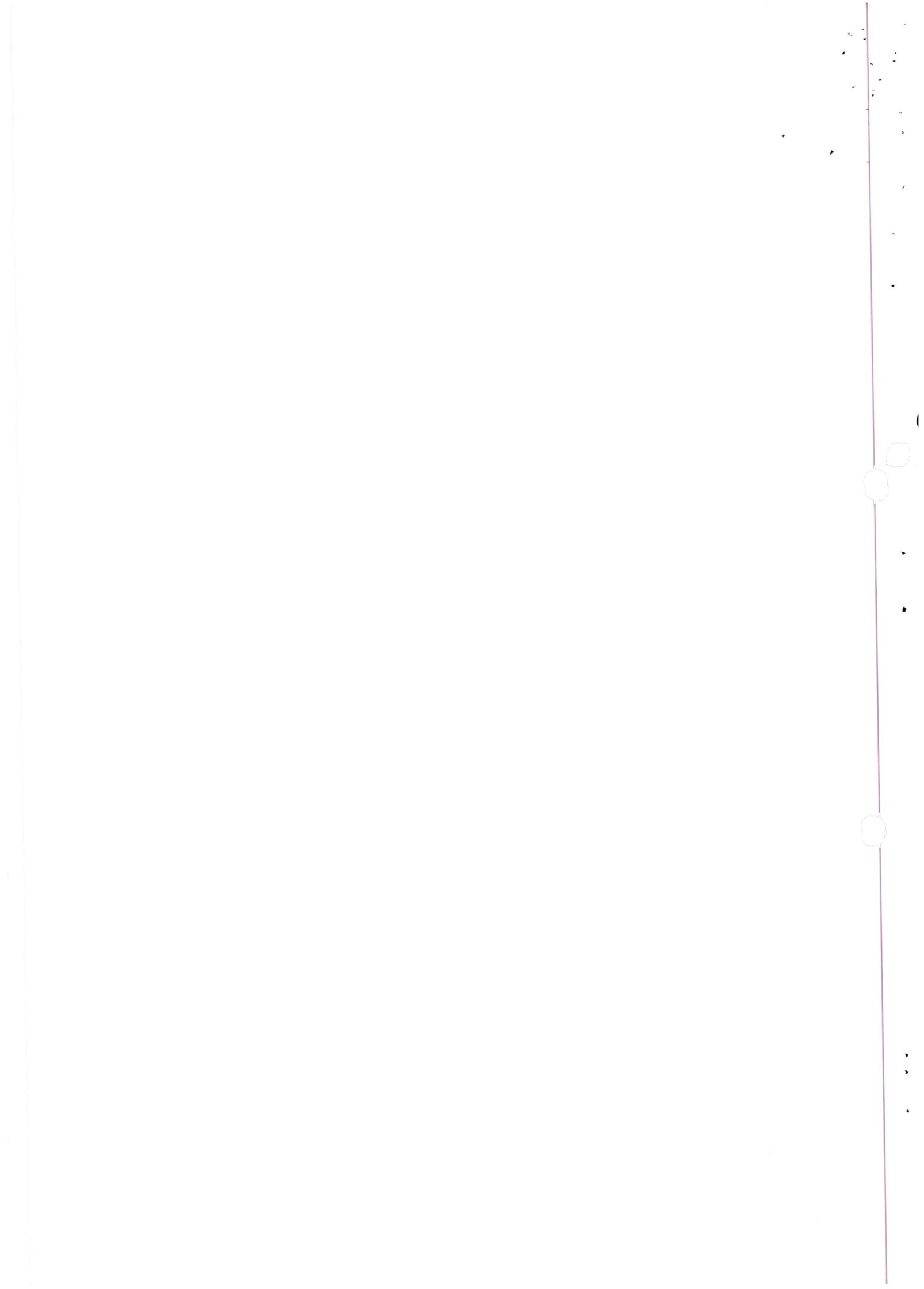


- d) Stop illegal burning of trees for charcoal in the natural forests.

### **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 17<sup>th</sup> March, 2018 and informed the Committee that:

1. The Community Forest Associations were associations for the communities living near forests.
2. The communities around forest areas were doing a lot in terms of forest conservation but their efforts were not appreciated. For instance they signed a contract to prune forest trees but the contract was never honored by the KFS. Instead the contract was given to casual workers who never did the work.
3. The PELIS programme had been of help to the communities in terms of food security and improving the livelihoods of the poor living near forests. However the CFAs got only a 30% allocation whereas 70% of the allocations went to people who were not members of the community. They alleged corrupt dealings involving KFS officials for such skewed and opaque allocations.
4. CFAs were also being ignored even after making requests to be involved in thinning of forests. Instead the same was given to people who were strangers to the communities and unknown to the CFAs.
5. There was need for revenue sharing especially with respect to grazing rights in the forests. The situation then was that forest guards colluded with grazers and excluded CFAs in potentially opaque and corrupt dealings.
6. PELIS system was being abused. For instance:
  - i) Beneficiaries of the PELIS system were being overcharged due to ignorance of the set rates by the KFS. There was need for dissemination of the information to CFAs by the KFS head office.
  - ii) Forest officers got non-locals and allocated them huge tracts of land while sidelining the locals. There was need for CFAs to vet and approve the allocatees.
  - iii) KFS allowed farming even along riparian areas leading to massive soil erosion which compromised the sustainability of forest conservation and management.
  - iv) Equally farming was being carried out along firefighting routes leading to challenges in firefighting activities during fire outbreaks.



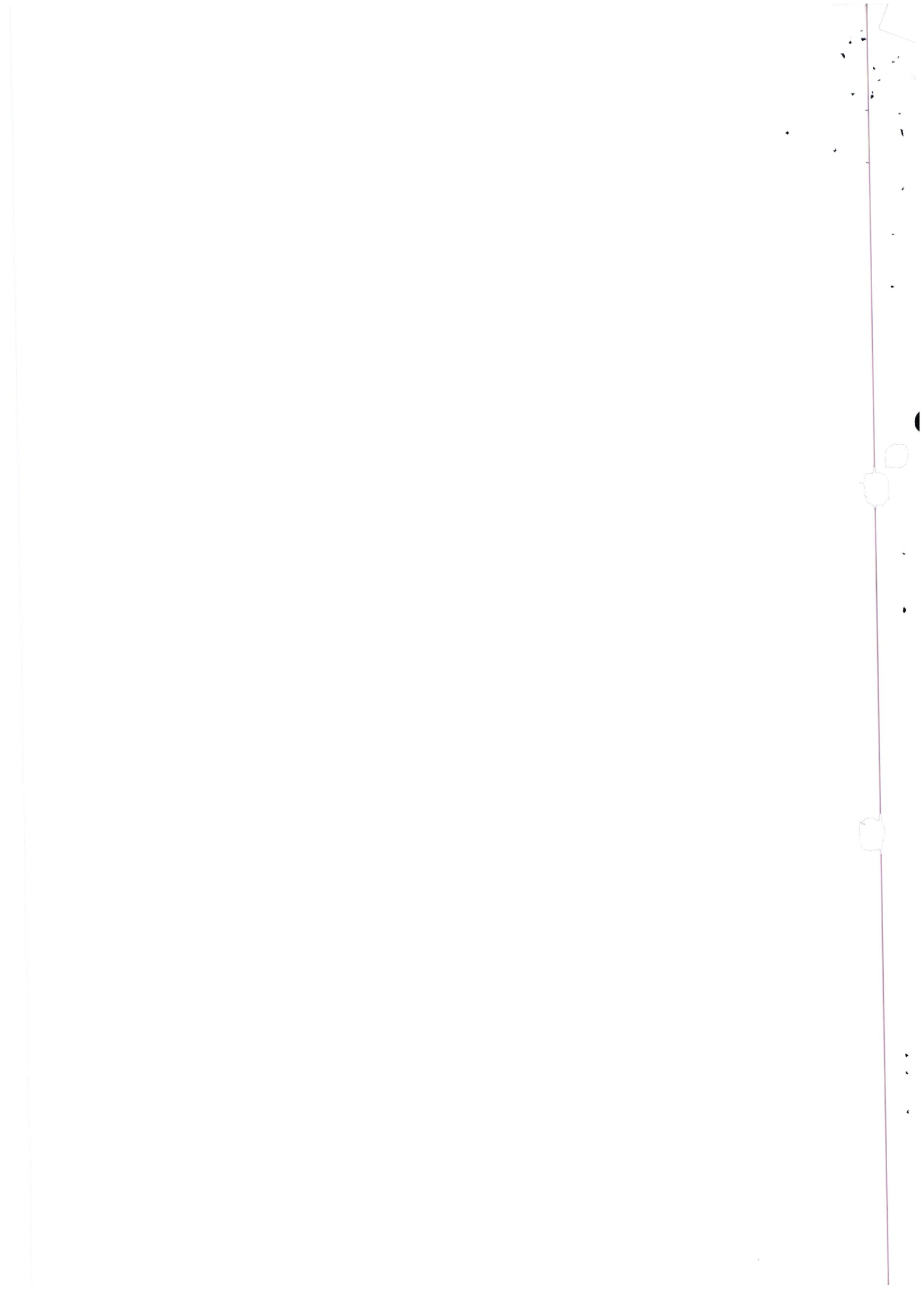
- v) KFS officers equally overcharged those grazing animals in the forests and went ahead to allow them to destroy trees with abandon.
- 7. Although the CFAs were entrenched in the Forest Conservation and Management Act, 2016, policies had not been put in place to operationalize the Act. These needed to be acted upon. CFAs should in the meantime be allowed to enjoy forest services as provided for in the said Act.
- 8. There was need to revisit the removal of a representative of CFAs from the KFS board through an amendment effected in 2016.
- 9. The sawmillers destroyed the road infrastructure in their areas of operation due to use of heavy trucks and other machinery yet they were not willing 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 29<sup>th</sup> 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.

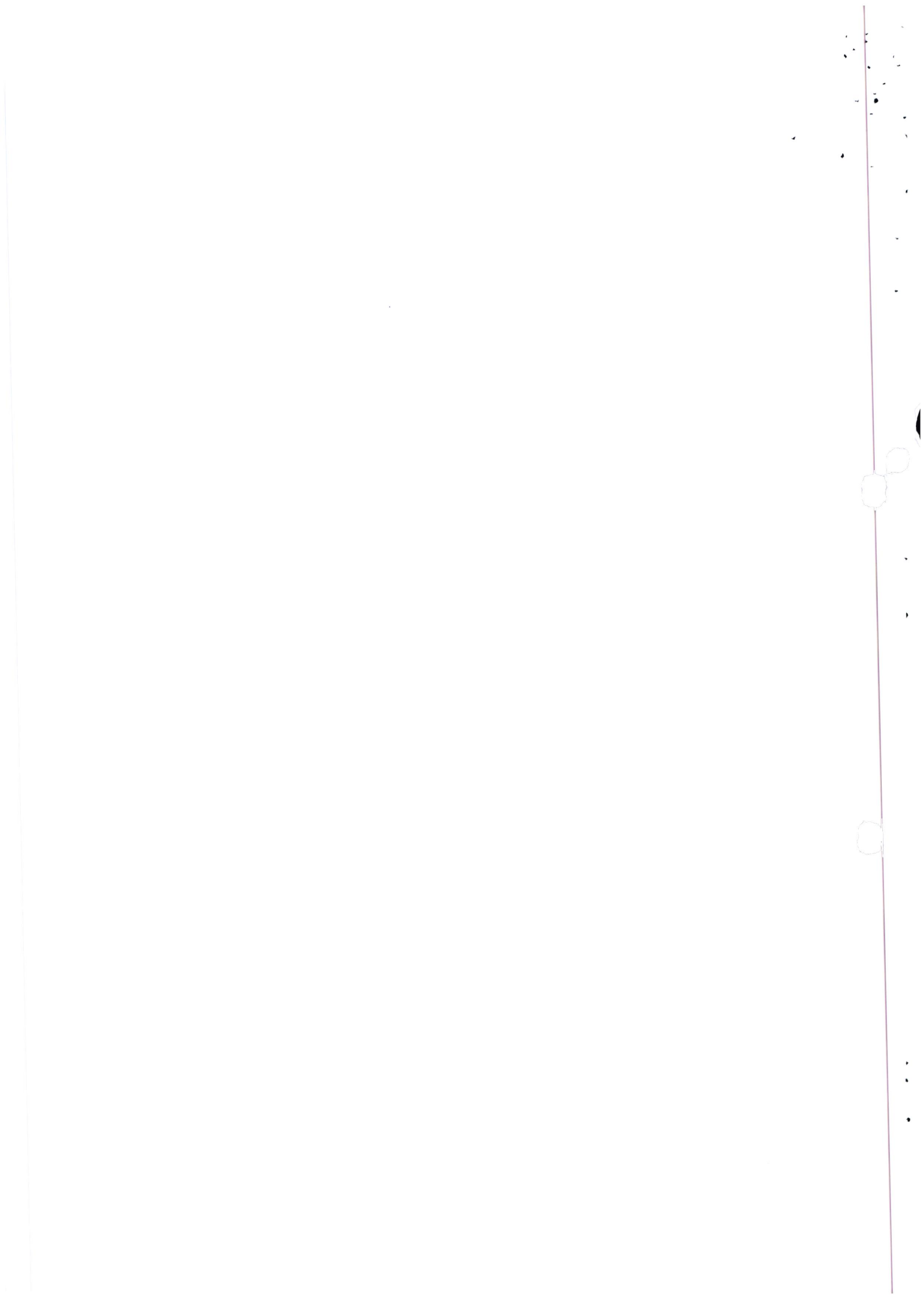


3. Public plantation forest areas occupy 135,871Ha and are distributed in 24 Counties across the country. These forests generate over KSHs 3 Billion annually to the exchequer in form of revenues and support the development of the wood-based industries.
4. One of the key strategies being used in Forest 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 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 was illegal logging, charcoal burning, illegal grazing, settlement encroachment and mismanagement of plantation forests and the Shamba system. Most parts of the country were experiencing drying of rivers, lowering of water tables and drying of wells.
6. Some of the highlighted catchment areas with extensive threats were: -
  - i) Mau forest Complex: - The Mau Forest Complex covers approximately a total area of 416,542 hectares which consists of 22 forest blocks. The forest faced threats of encroachment, mismanagement of forest plantations, illegal logging, charcoal burning and livestock grazing. Maasai Mau block in particular covers an area of 46,278 hectares and had been subjected to massive encroachment where communities had cleared the forest for settlement.
  - ii) Mount Kenya Forest ecosystem. This ecosystem had been affected by mismanagement of forest plantations, illegal logging, charcoal burning and mismanagement of shamba system (PELIS).
  - iii) Embobut forest block within Cherangany Ecosystem:- This forest was under the threat of encroachment by the Sengwer indigenous community who claim ancestral ownership. It covered an area of 16,000 hectares.
  - iv) Mt. Elgon Forest Ecosystem: - The expansion of Chebyuk Settlement Schemes phases 1, II & III that covers a total



area of 8,293 hectares for the settlement of Elgony Dorobos from Chepkitale National Reserve had led to serious degradation and loss of ecological integrity of Mount Elgon Forest ecosystem.

- v) Nyakweri forest: - This was also a community owned forest within Mau ecosystem where the community was carrying out land adjudication and clearing for settlement. The encroachment had resulted in un-controlled charcoal burning and agricultural activities that included maize cultivation.
7. Before the Moratorium was imposed, licensed saw millers were expected to carry out logging (harvesting) operations in gazetted forest plantations based on license conditions issued by the Kenya Forest Service. Saw milling licenses were issued in accordance with the Forests Act, 2016, and Forest Management and Felling Plans. 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 25<sup>th</sup> 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 7<sup>th</sup> 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.



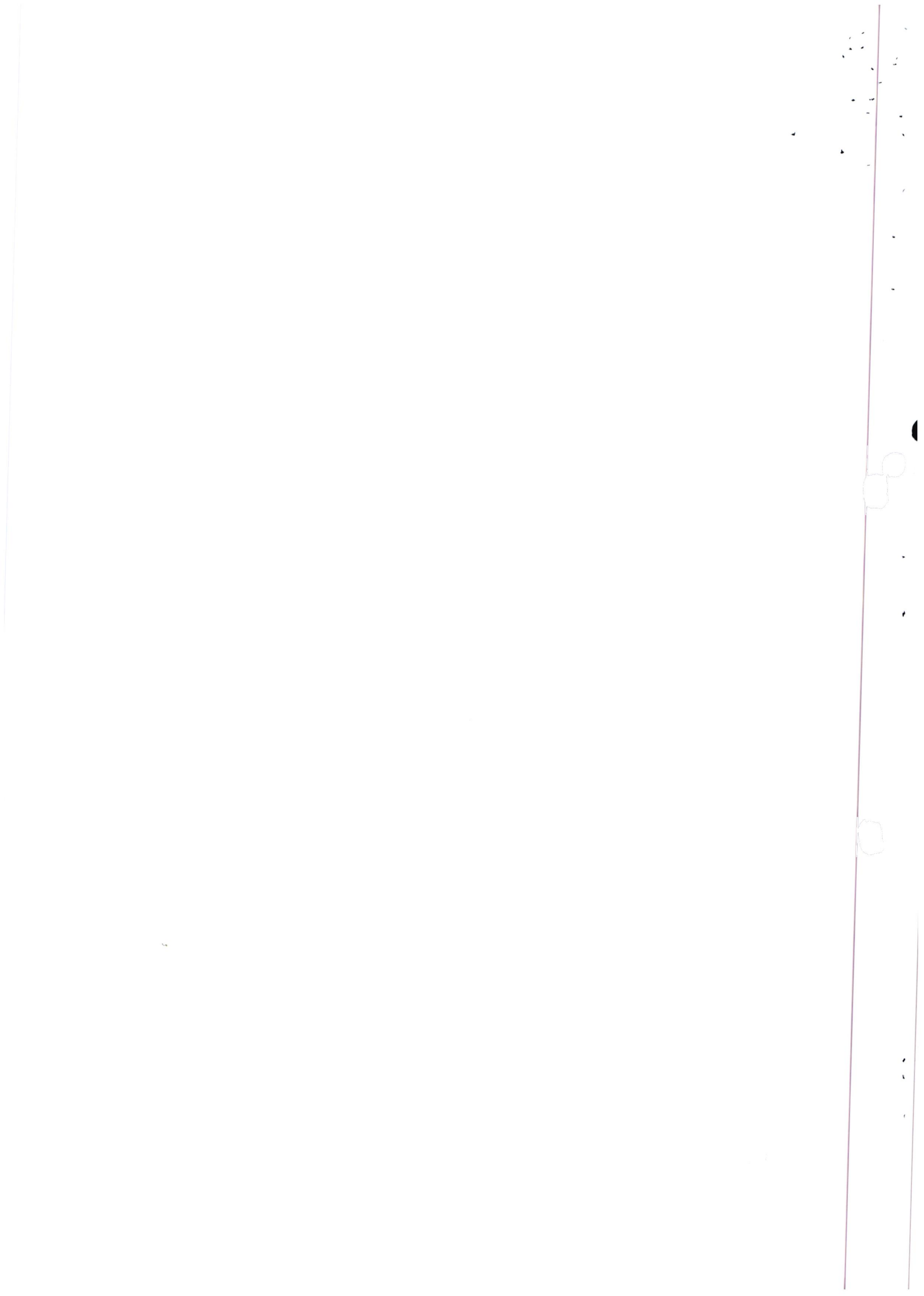
- v) Kenya Forest Service Board effected far reaching administrative and disciplinary measures against suspected errant staff. So far, 26 forest officers were under a disciplinary process.

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.
- iii) Inadequate suitable vehicles and weapons for operations in forest terrain and lack of modern technology (aerial surveillance platforms and communication equipment).
- iv) Inadequate housing for the available forest rangers.
- v) Inadequate forest professional and technical staff.
- vi) Poor road infrastructure in the forests which hindered effective management and protection.
- vii) Inadequate funds for operations and lack of an integrated financial management system for accountability.

11. On the way forward, the KFS budget was at Kshs.6.89 billion against a projection of 15.1 billion which was far below the requirements to fully implement all the programmes in the Service. He requested support to the Ministry to secure enhanced budget to strengthen and enable the KFS to:

- i) Recruit additional 2500 Forest Rangers, 400 technical forest officers and 300 professional forest officer's work force to close the gap and fully manage and secure the Kenyan forests.
- ii) Mobilize stakeholders in a massive tree planting programme throughout the country and to work closely with the local communities.
- iii) Capacity-build the County Governments to be in a better position to implement the devolved forestry functions.
- iv) Close the revenue shortfalls by making an appeal to treasury for more allocation.



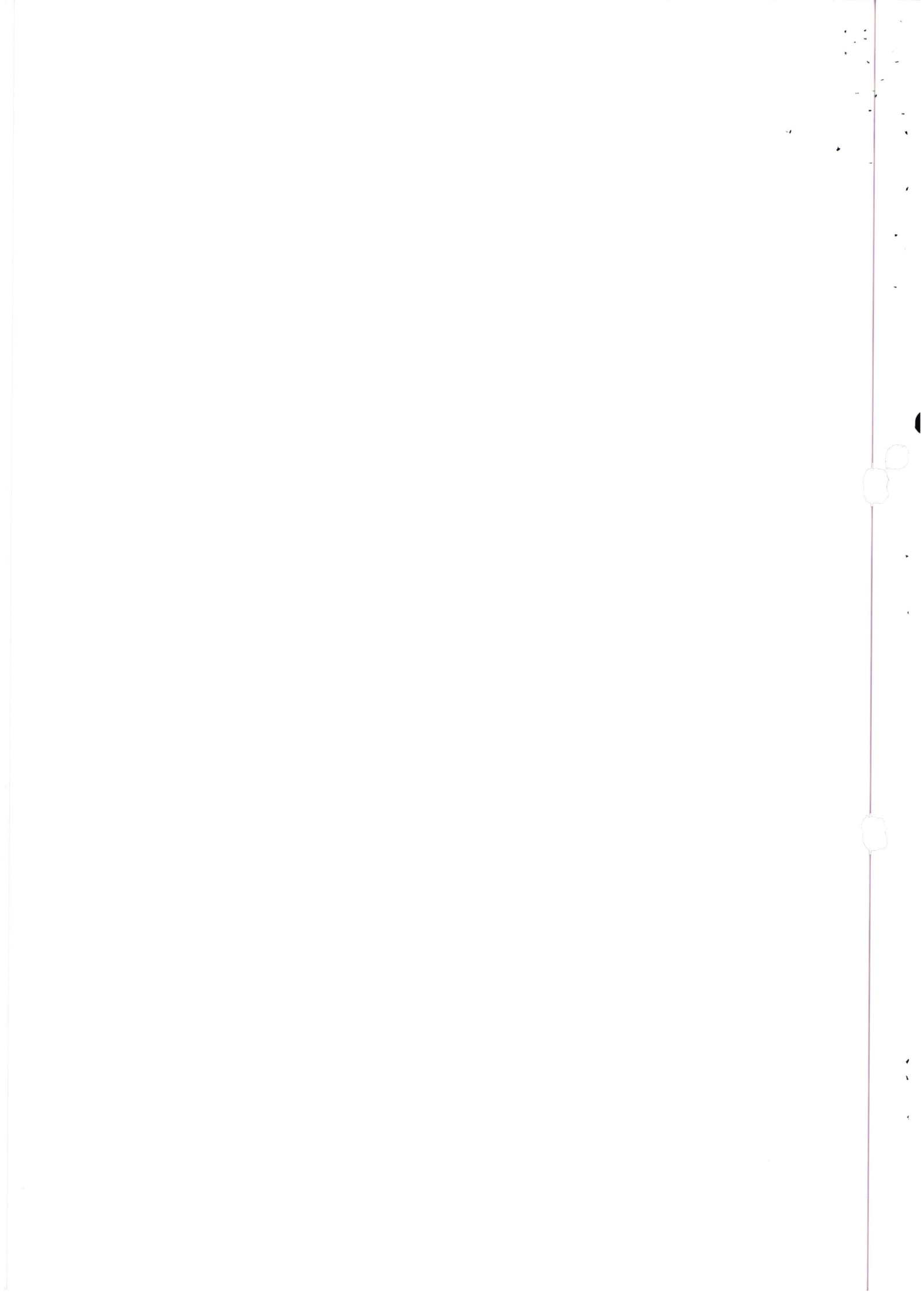
### 3.10 Submission by the KFS Suspended Officers

29. Six (6) suspended officers at the Kenya Forest Service (KFS) appeared before the Committee on 12<sup>th</sup> April, 2018 and informed it as follows:

1. Mr. Emilio Mugo, Chief Conservator of Forests

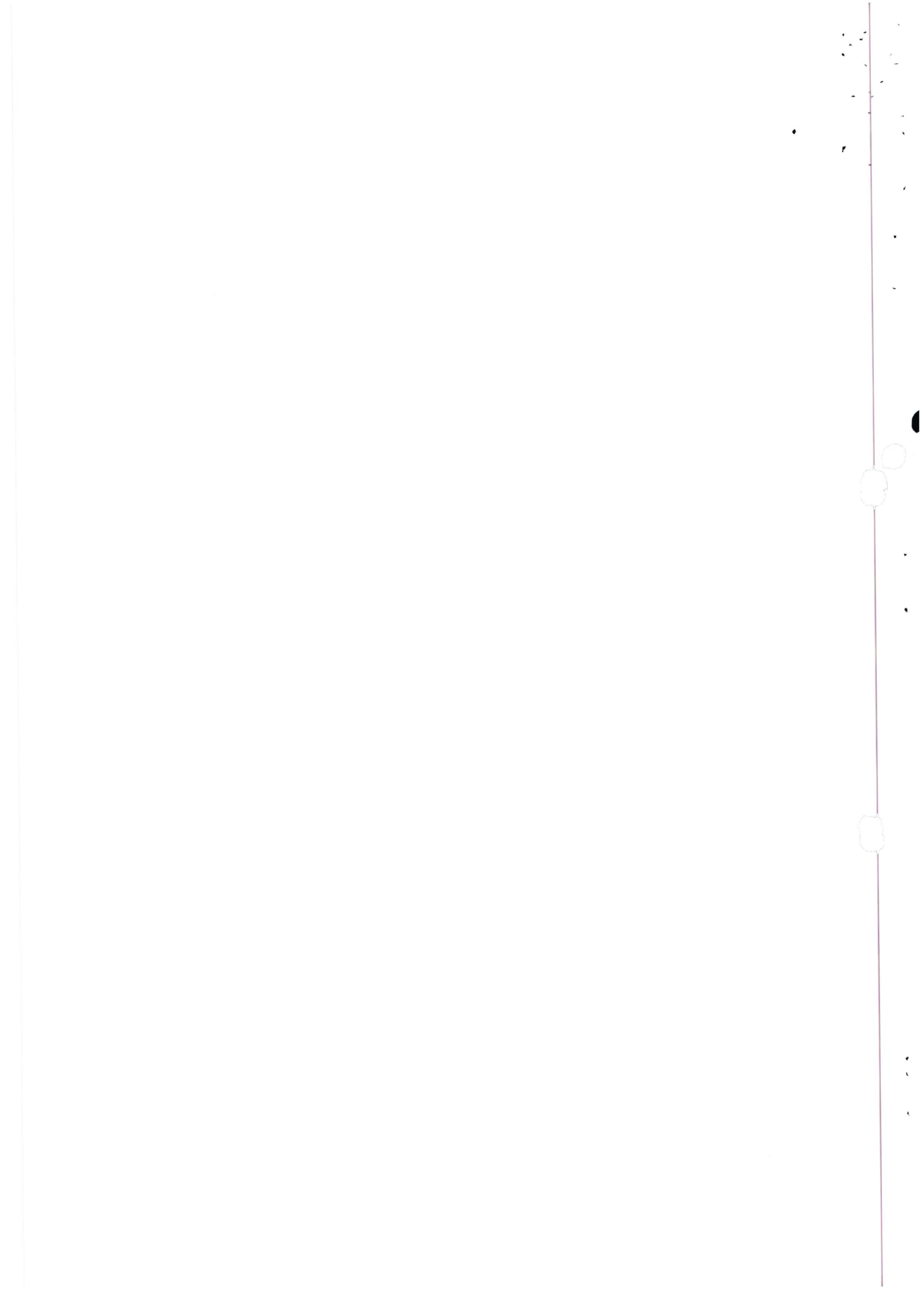
He stated that:

- a) He was suspended on 12<sup>th</sup> March, 2018 after a tour of Thogoto Forest, Ngong Road Forest, Oloolua Forest and Kibiko Forest.
- b) On the tour he was accompanied by the Cabinet Secretary, the Chairperson of the taskforce inquiring into forest resources management and logging activities in Kenya, Ms. Marion Wakanyi Kamau.
- c) The issues raised included complaints on implementation of the Plantation Establishment Livelihood Improvement Scheme (PELIS) and harvesting of the forests in question.
- 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 13<sup>th</sup> 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.

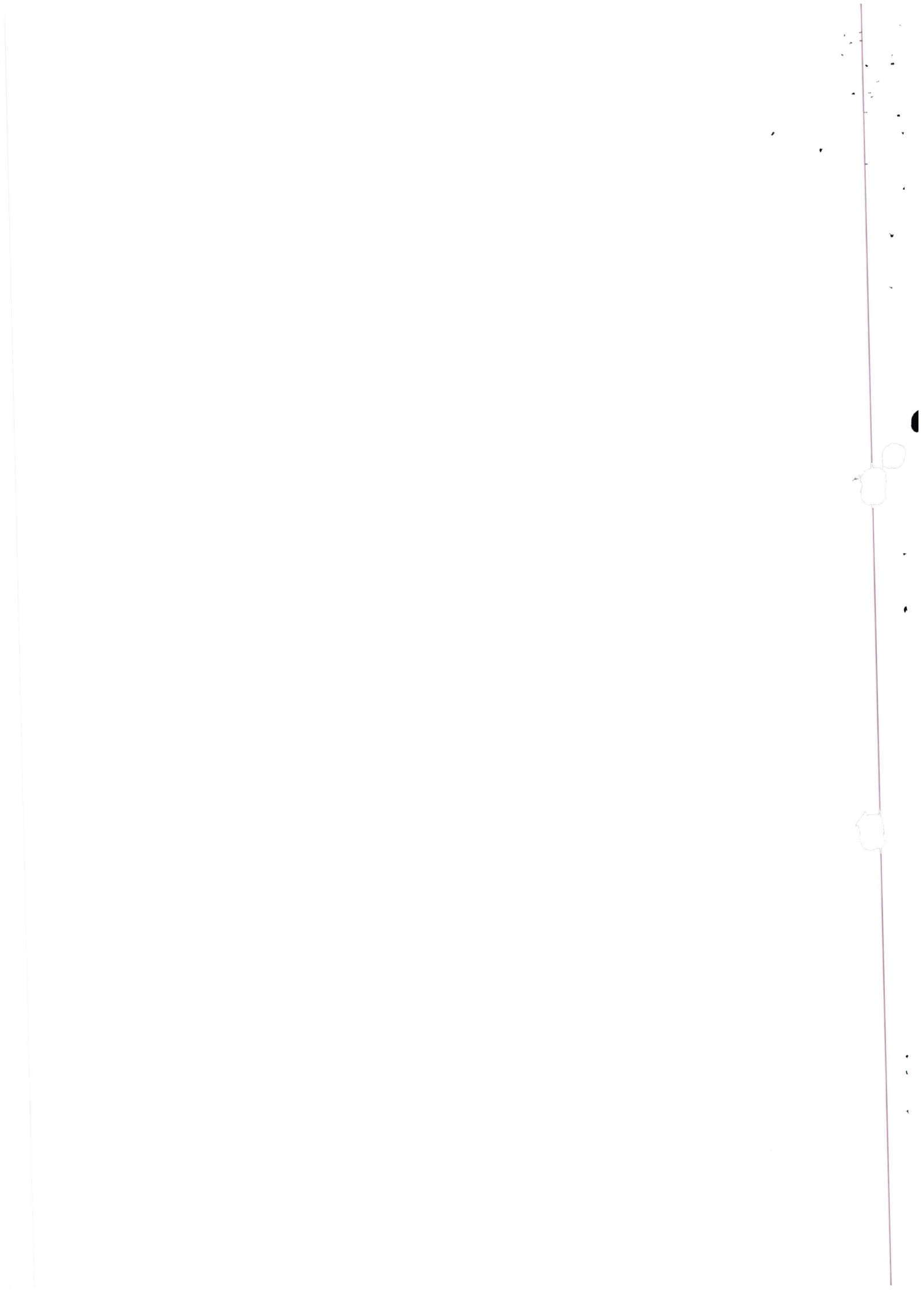
2. Mr. Patrick Nyaga, Senior Manager, Finance and Administration
  - a) He was sent on compulsory leave commencing on 26<sup>th</sup> February, 2018 to pave way for investigations into allegations of non-facilitation of field operations especially with regard to vehicle maintenance and fueling.
  - b) 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 14<sup>th</sup> 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.
  - c) His letter was signed by the Chairman, KFS Board.
  - d) He contended that he had not allowed any accumulation of debt under his watch and the interdiction was effected without him being given any opportunity to respond to the allegation.
  
4. Mr. Boniface W. Simiyu, Deputy Chief Conservator of Forests, Plantations and Enterprise.
  - a) He was sent on a 90-day compulsory leave through a letter dated 26<sup>th</sup> February, 2018. The leave was commencing on 27<sup>th</sup> February, 2018.
  - b) The compulsory leave was meant to pave way for in depth investigations into complaints of over-logging and under valuation of forest plantations.
  - c) He complained of not being given an opportunity to respond to the allegations, being sent on compulsory leave in a dehumanizing manner. He contended that he worked diligently and professionally in executing the duties of his office.
  
5. Mr. Francis Kariuki, Assistant Chief Conservator of Forests (Eastern Conservancy, Embu).
  - a) He was sent on a 90-day compulsory leave through a letter dated 27<sup>th</sup> February, 2018. The leave was commencing on 1<sup>st</sup> March, 2018.



- b) The leave was meant to pave way for investigations into issues of illegal cultivation in Irangi Forest Station.
  - c) He contended that all Plantation Establishment Livelihood Improvement Scheme (PELIS) activities in his area of jurisdiction were duly authorized.
6. Mr. Cosmas K.P. Ikiugu, Assistant Chief Conservator of Forests (Central Highlands).
- a) He was sent on a 30-day compulsory leave through a letter dated 14<sup>th</sup> March, 2018.
  - b) The leave was meant to facilitate investigations into the management of the Plantation Establishment Livelihood Improvement Scheme (PELIS) in Wanjerere Forest Station and plantation harvesting in Kabaru Forest Station.
  - c) He contended that all Plantation Establishment Livelihood Improvement Scheme (PELIS) activities and plantation harvesting in his conservancy region were procedurally processed.
  - 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**

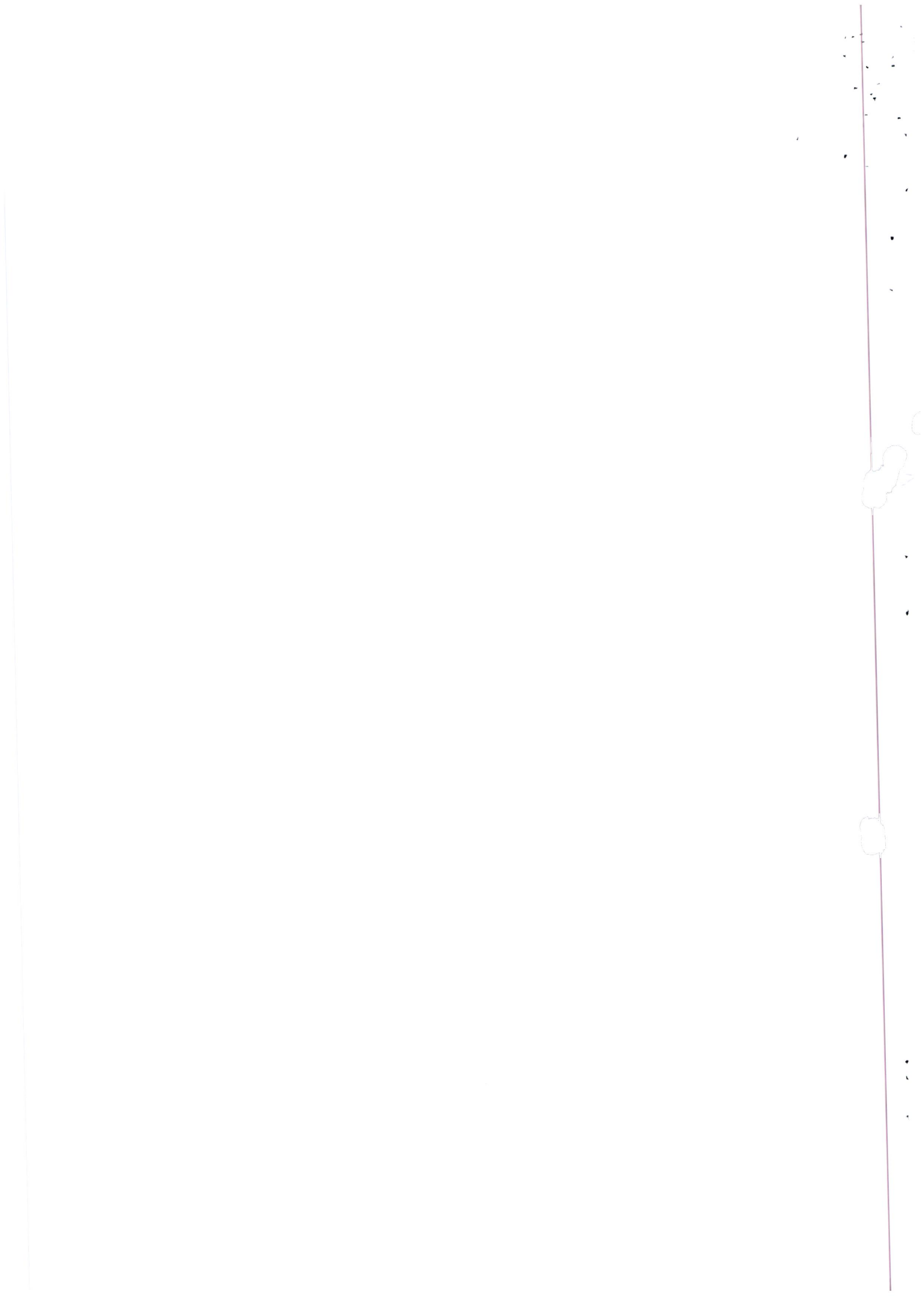
30. Capt. John Miriti, Board Member, KFS (Chairperson, Human Resource Committee) appeared before the Committee on 12<sup>th</sup> April, 2018 and informed it that:
- 1. By profession, he was a retired Kenya air force pilot.
  - 2. He was the then Chairperson of the Human Resources Committee of the KFS 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 a hotel in Karura Forest, one of the areas under the jurisdiction of the KFS.

### **3.11 Submission by the Former Kenya Forest Service Board**

31. Mr. Benard Sang, a former board member appeared before the Committee on 19<sup>th</sup> April, 2018 and informed it that:
  1. He held the position of the Chairperson, Audit Committee while serving at the Kenya Forest Service Board.
  2. The term of the former Kenya Forest Service Board terminated on 31<sup>st</sup> March, 2018.
  3. On human resources issues at the KFS he stated that:
    - a) On 26<sup>th</sup> February, 2018, the then newly appointed Cabinet Secretary for Environment and Forestry, Mr. Keriako Tobiko, visited the KFS head office.
    - b) Thereafter, the board retreated to deliberate on human resources issues at the KFS and tasked the Human Resources Committee of the board to meet and deal with the human resources issues raised in their entirety.
    - c) The issues staff in question were being investigated on related to the illegal logging activities in the country and the board sought to establish culpability among KFS staff. The

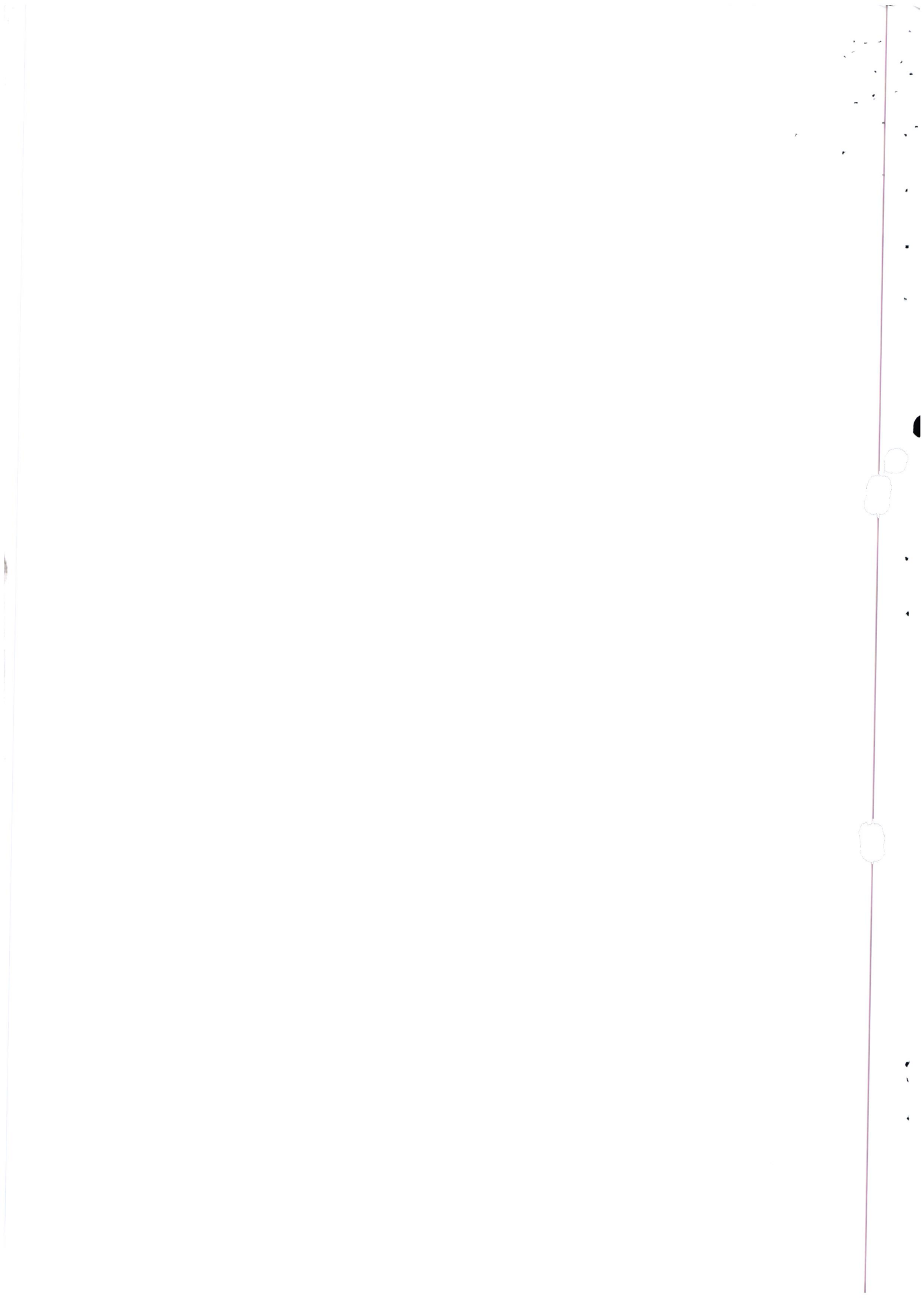


appointment of a new Cabinet Secretary and the moratorium imposed by government largely informed the genesis of the investigations. The staff affected and had action taken against them on 12<sup>th</sup> March, 2018 included:

- Mr. Boniface Wasike Simiyu-sent on compulsory leave for 90 days.
- Mr. Patrick Nyaga -sent on compulsory leave for 90 days.
- Mr. Francis Kariuki Kamuti - sent on compulsory leave for 90 days.
- Mr. Erick Chemitei Kiplagat - interdicted
- Ms. Nafasi Wambui Mfahaya - sent on compulsory leave for 90 days.
- Mr. Dennis Kerengo Kiprotich- interdicted

- d) A meeting of the KFS full board held on 13<sup>th</sup> March, 2018 asked the Chief Conservator of Forests, Mr. Emilio Mugo, to step aside and effected other changes in the management to ensure continuity despite the interdictions and compulsory leaves given to affected staff.
- 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 31<sup>st</sup> March, 2018.
- g) The suspensions/interdictions effected on 12<sup>th</sup> 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 20<sup>th</sup> 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.
3. Commercial forests made up just 6.5% of Kenya's forest by area but contribute over 21% by means of sustainable wood supply. This contribution was especially important in context of sustainable wood supply deficit and the deficit was growing rapidly undermining Kenya's conservation and economic development targets.
4. Expanded commercial forestry in a combination of both high productivity and ASAL areas was needed to close the deficit. The government is targeted to expand commercial forestry by 28,750 hectares a year until 2030. Conservative target of 345,000 hectares of commercial forestry plantation would be established by 2030 arising from 28,750 Hectares per year.
5. There is a need to secure land lease arrangements for private commercial forestry to help catalyse activity in the sector.
6. The following was highlighted as lessons from other jurisdictions:
  - a. **Lessons from Uganda:** It had 70,000 hectares of high quality commercial forestry by private sector under land lease arrangement. Its success was as a result of:
    - Secure long term lease arrangements of government land to different scales of commercial growers
    - Incentives and support services developed to link quality standards



- Both domestic and foreign direct investments
- Companies brought technologies, skills and employment opportunities

The Same level of activity in Kenya could contribute over 2 million M3 of sustainable supply per year which is approximately 15 % of national deficit.

- b. **Lessons from Uruguay:** Expansion of commercial forestry sector was compatible with conservation of indigenous forest resources. In mid-80s, forest cover was under 5% with 31,000 ha of plantations. There was wood supply deficit net importer and pressure on indigenous forests. However, new law and policy was introduced in 1987 outlining 3.6m ha forestry priority zones with subsidies, tax incentives and soft credit to encourage commercial planting and investment. As a result, forest cover rose to 10%, with 30-fold increase in plantations and 6.5% increase in indigenous forest by 2010. Employment was up fivefold in sector. Wood worth \$570m wood was exported in 2013 providing 6% of total export earnings.
- 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, value addition and utilisation technologies and transparent pricing mechanisms, sector insight to support sector planning and policy functions.
9. In Conclusion, there is need to enhance and expand the commercial forestry sub-sector for Kenya to meet the national conservation and economic development targets. In addition, land lease arrangements conditional on use of quality inputs and production standards have effectively catalyzed the sector elsewhere and could be an effective option in Kenya.



#### 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**

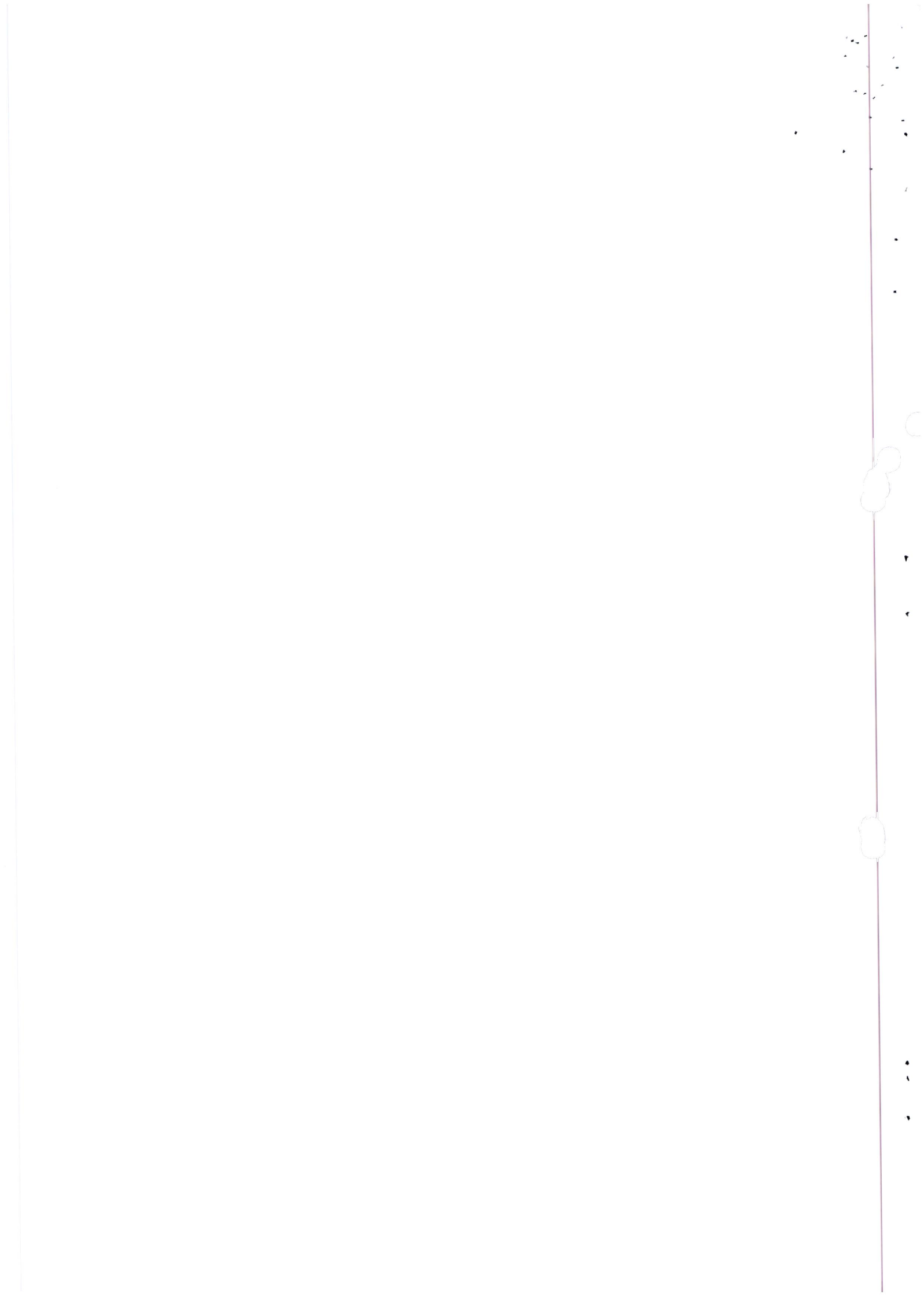
8. It was observed that the Timber Manufacturers Association had 898 members. However, there were other independent members and large scale members who were not part of the association. The Committee was concerned with the huge number of saw millers and the pressure they exerted on forest resources.
9. 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.
10. 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.

#### **e. Community Forest Association**

11. The Community Forest Association consisting of people living around the forest played a key role in forest conservation and management. However, despite many dedicated years of service and hard labour in forest conservation, they reaped very little from their efforts. With these challenges, some CFAs tended to collude with the forest rangers in forest destruction.
12. The Plantation Establishment Livelihood Improvement Schemes (PELIS) was a good practice in forest management and conservation; however, its abuse was observed as the community living around the forests complained of conflict of interest by the forest rangers who either undertook to practice farming at the expense of guarding forest or sublet the parcels of land. Equally, it was noted that some Community Forest Association members were also colluding with the forest officers in forest destruction.

#### **f. Kenya Forest Service**

13. Kenya Forest Service received inadequate funding which resulted in inefficiencies in its operations and inadequate human and equipment capacity in forest management and conservation efforts.
14. KFS had introduced an elaborate procedure in material allocation through felling plans which was done at the local level and approved at the Head Office. However, there were allegations of corruption involving some of its officers and saw millers which brought about complaints from the stakeholders.



15. On issues of good governance, the Chairman of Kenya Forest Service Board of Directors was noted to have acted in contravention of law and guiding principles such as Mwongozo Code of Governance for State Corporations. For instance, the Board Chairperson suspended KFS officers without regard to the KFS Human Resource 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 31<sup>st</sup> 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.



## **5.0 COMMITTEE RECOMMENDATIONS**

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

### **a. Commercial plantation**

1. The KFS withdraws from commercial plantations and gradually converts the 134,000 hectares of commercial plantation into natural forest by restoring the cleared land with indigenous trees. Subsequently, the Executive should create new natural forest boundaries with Nyayo Tea Zones in order to create buffer zones.
2. The Ministry of Environment and Forestry should provide incentives, enabling policies and other relevant interventions to private commercial forest plantation in order to increase the forest cover and to promote timber industry.
3. KEFRI and KFS should be adequately funded and supported to develop high quality indigenous and exotic tree seedlings and nurseries in order to restore government forest land and to promote private commercial plantation.

### **b. Forest Degradation**

4. Punitive penalties should be entrenched in law to curb forest destruction and illegal logging. The Forest Conservation and Management Act (No. 34 of 2016) should be amended to provide for punitive penal provisions.

### **c. Strategic Forest Management**

5. Kenya should take advantage and claim carbon credits to help in her efforts at forest and general ecosystem conservation. The Ministry of Environment and Forestry should create awareness on carbon credit to enable Kenyans to embrace the programme.
6. Tree seedlings should be made readily available to citizens especially through empowerment of the youth and women in collaboration with KEFRI and KFS. The youth and women are encouraged to join cooperative movements in order to access cheaper seedlings due to economies of scale.
7. The Ministry of Environment and Forestry should spearhead inter-ministerial collaboration with the ministries of Petroleum and Mining, Water and Sanitation, Tourism and Wildlife in coming up with an all-encompassing strategy on conservation and management of forest, water and other natural resources in the country. Their operation should be coordinated from the Office of the President.



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 31<sup>st</sup> 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: .....  .....

FOR

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

DATE: ..... 02/05/2018 .....



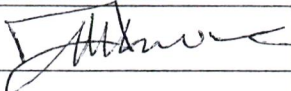
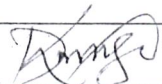
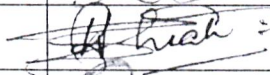
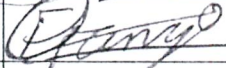
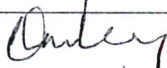

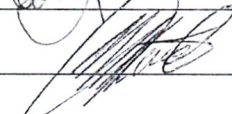
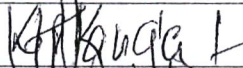
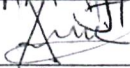


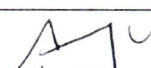
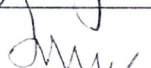
**DC-ENR: DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL  
RESOURCES**

**ATTENDANCE REGISTER/ADOPTION LIST**

**AGENDA:** CONSIDERATION AND ADOPTION OF THE REPORT ON FOREST RESOURCES  
MANAGEMENT AND LOGGING ACTIVITIES IN KENYA.

**DATE:** 26<sup>TH</sup> APRIL, 2018 (12 NOON)

**VENUE:** BOARDROOM ON 9<sup>TH</sup> FLOOR,  
HARAMBEE PLAZA

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



**MINUTES OF THE 32<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 29<sup>TH</sup> MARCH, 2018 AT 10.00 AM IN THE COMMITTEE ROOM ON 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.**

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**PRESENT**

- |   |                  |
|---|------------------|
| 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. Francis Chachu Ganya, M.P.        |                  |
| 5. The Hon. Charles Ong'ondo Were, M.P.       |                  |
| 6. The Hon. Said Hiribae, M.P.                |                  |
| 7. The Hon. Beatrice Cherono Kones, M.P.      |                  |
| 8. The Hon. Charity Kathambi Chepkwony, M.P.  |                  |
| 9. The Hon. Hilary Kiplang'at Kosgei, M.P.    |                  |
| 10. The Hon. (Eng.) Paul Musyimi Nzengu, M.P. |                  |
| 11. The Hon. Rehema Hassan, M.P.              |                  |
| 12. The Hon. Hassan Oda Hulufu, M.P.          |                  |
| 13. The Hon. Rozaah Buyu, M.P.                |                  |
| 14. The Hon. Ali Wario Guyo, M.P.             |                  |
| 15. The Hon. Benjamin Dalu Tayari, MP         |                  |

**APOLOGIES**

1. The Hon. Peter Kimari Kihara, M.P.
2. The Hon. Nasri Sahal Ibrahim, M.P.

**ABSENT**

3. The Hon. Amin Deddy Mohamed Ali, M.P.
4. The Hon. David Kangogo Bowen, M.P.

**IN ATTENDANCE**

**MINISTRY OF ENVIRONMENT AND FORESTRY**

- |                       |   |   |
|-----------------------|---|---|
| 1.Hon. Keriako Tobiko | - | Cabinet Secretary                           |
| 2.Hon. Mohamed Elmi   | - | Chief Administrative Secretary              |
| 3.Mr. Charles Sunkuli | - | Principal Secretary                         |
| 4.Mr. Gedion Gathaara | - | Forestry Conservation Secretary             |
| 5.Mr. Peter Kinyua    | - | Chairman, Kenya Forest Service              |
| 6.Ms. Monicah Kalenda | - | Acting Chief Conservator Of Forests         |
| 7.Mr. Wilson Tonkei   | - | Personal Assistant to the Cabinet Secretary |

**THE NATIONAL ASSEMBLY**

- |                     |   |                       |
|---------------------|---|-----------------------|
| 1.Ms. Esther Nginyo | - | Third Clerk Assistant |
|---------------------|---|-----------------------|

2.Mr. Dennis M. Ogechi	-	Third Clerk Assistant
3.Mr. Joe Okongo	-	Media Relations Officer
4.Mr. Salem Lorot	-	Legal Counsel II
5.Ms. Joyce Chelagat	-	Audio Recording Officer
6.Mr. Albert Ndemo	-	Serjeant-At-Arms

### **AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Cabinet Secretary, Ministry of Environment and Forestry on the Logging Status in the Country.**
- v) Any Other Business
- vi) Date of the next Sitting

### **MIN.NO. DC/ENR/163/2018: - PRELIMINARIES**

The meeting was called to order at 10.21 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was meeting with the Cabinet Secretary, Ministry of Environment and Forestry on the Logging Status in the Country. He then asked all those present to introduce themselves.

The Members adopted the agenda of the meeting.

### **MIN.NO.DC/ENR/164/2018: - CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous meeting was deferred to the next meeting.

### **MIN.NO. DC/ENR/165/2018: - MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT AND FORESTRY ON THE LOGGING STATUS IN THE COUNTRY.**

The Chairperson stated that:

1. In its Sitting on 1<sup>st</sup> February, 2018, the Committee noted that there was an urgent need to address the logging menace in the country with special focus on the Mt. Kenya, The Aberdares and Mau Forests.
2. It was further noted that destruction of forests along the country's water towers had led to drying up of rivers in the affected regions threatening livelihoods. The Committee then called for a total ban on timber harvesting and instead proposed the prioritization of tree

farming until proper regulations on timber harvesting were put in place and the Kenya Forest Service reformed.

3. However, soon after, the executive through the Deputy President's office imposed a 90 day moratorium on timber harvesting and formed a taskforce to look into the issue of forest conservation and management in the country. The move was welcomed by this Committee.
4. The Committee then scheduled visits to the Mau Forest Complex and the Aberdare Forest from 15<sup>th</sup> to 18<sup>th</sup> March, 2018 to assess the logging menace in those regions. It also met stakeholders in the sector especially the Timber Manufacturers Association and the Community Forest Associations.
5. The Committee then resolved to invite the Cabinet Secretary, Ministry of Environment and Forestry for a meeting on Thursday, 22<sup>nd</sup> March, 2018 at 11.00 a.m. to address:
  - i) The status of forest logging across the country,
  - ii) The steps the Ministry was taking towards the same,
  - iii) Progress made so far on the matter; and
  - iv) The challenges being faced in addressing logging issue.
6. However, the meeting never took place after it was reported that the Cabinet Secretary had other engagements on the said date and time. Hence the rescheduling of the meeting.

He then welcomed the Cabinet Secretary to make his presentation:

**MIN.NO. DC/ENR/166/2018: - PRESENTATION BY THE CABINET  
SECRETARY, MINISTRY OF  
ENVIRONMENT AND FORESTRY ON THE  
LOGGING STATUS IN THE COUNTRY.**

In his presentation, the Cabinet Secretary informed the Committee that:

1. The Ministry of Environment and Forestry through the Kenya Forest Service manages 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 is now rebranded and renamed Plantation Establishment and Livelihood Improvement Scheme (PELIS). The Scheme allows 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 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 was illegal logging, charcoal burning, illegal grazing, settlement encroachment and mismanagement of plantation forests and the Shamba system. Most parts of the country were experiencing drying of rivers, lowering of water tables and drying of wells.
6. Some of the highlighted catchment areas with extensive threats were: -
  - i) **Mau forest Complex:** - The Mau Forest Complex covers approximately a total area of 416,542 hectares which consists of 22 forest blocks. The forest faces threats of encroachment, mismanagement of forest plantations, illegal logging, charcoal burning and livestock grazing. Maasai Mau block in particular covers an area of 46,278 hectares and had been subjected to massive encroachment where communities had cleared the forest for settlement.
  - ii) **Mount Kenya Forest ecosystem.** This ecosystem had been affected by mismanagement of forest plantations, illegal logging, charcoal burning and mismanagement of shamba system (PELIS).
  - iii) **Embobut forest block within Cherangany Ecosystem:-** This forest was under the threat of encroachment by the Sengwer indigenous community who claim ancestral ownership. It covered an area of 16,000 hectares.
  - iv) **Mt. Elgon Forest Ecosystem:** - The expansion of Chebyuk Settlement Schemes phases 1, II & III that covers a total area of 8,293 hectares for the settlement of Elgony Dorobos from Chepkitale National Reserve had led to serious degradation and loss of ecological integrity of Mount Elgon Forest ecosystem.
  - v) **Nyakweri forest:** - This was also a community owned forest within Mau ecosystem where the community was carrying out land adjudication and clearing for settlement. The encroachment had resulted in un-controlled charcoal burning and agricultural activities that include maize cultivation.
7. Before the Moratorium was imposed, licensed saw millers were expected to carry out logging (harvesting) operations in gazetted forest plantations based on license conditions issued by the Kenya Forest Service. Saw milling licenses were issued in accordance with the Forests Act, 2016, and Forest Management and Felling Plans. 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 25<sup>th</sup> 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 7<sup>th</sup> 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 Current gazetted forests area in the Country is 2.5 million hectares manned by only 2,500 rangers. This translates 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 are 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.
  - iii) Inadequate suitable vehicles and weapons for operations in forest terrain and lack of modern technology (aerial surveillance platforms and communication equipment).
  - iv) Inadequate housing for the available forest rangers.
  - v) Inadequate forest professional and technical staff.

- vi) Poor road infrastructure in the forests which hinder effective management and protection.
  - vii) Inadequate funds for operations and lack of an integrated financial management system for accountability.
11. On the way forward, the KFS budget was at Kshs.6.89 billion against a projection of 15.1 billion which was far below the requirements to fully implement all the programmes in the Service. He requested support to the Ministry to secure enhanced budget to strengthen and enable the KFS to:
- i) Recruit additional 2500 Forest Rangers, 400 technical forest officers and 300 professional forest officer's work force to close the gap and fully manage and secure the Kenyan forests.
  - ii) Mobilize stakeholders in a massive tree planting programme throughout the country and to work closely with the local communities.
  - iii) Capacity-build the County Governments to be in a better position to implement the devolved forestry functions.
  - iv) Close the revenue shortfalls by making an appeal to treasury for more allocation.

**MIN.NO. DC/ENR/167/2018: - MEMBERS' OBSERVATIONS**

Members observed that:

1. There was need for the Kenya Forest Service to urgently recruit forest rangers to ensure there are adequate numbers to effectively manage and conserve the country's forest resources.
2. The taskforce constituted to look into issues of forest conservation and management lacked people with new ideas and was therefore not likely to yield novel and tangible proposals to change the state of affairs in the sector. However, the Cabinet Secretary noted that he had 7 days to constitute it and did the best he could to ensure the taskforce got the requisite expertise and representation.
3. There was discriminative suspension of officers at the Kenya Forestry Service even before the taskforce constituted to look into forest conservation and management in the country completed its work and made recommendations on the need, if any, of such suspensions. However the Cabinet Secretary noted that the KFS Board made the suspensions and had its own reasons for the choices it made. He further clarified that the suspensions were meant to pave way for investigations hence none of the suspended officers would be declared culpable until investigations were completed.
4. There were concerns that the funds meant for reforestation efforts never left the ministry headquarters to KFS and that officers who raised the concerns were mostly targeted by the suspensions made at the KFS. However the Principal Secretary noted that all funds voted for the KFS were released to the entity and that the only funds that were allocated but not disbursed were those that were not released by the exchequer.

5. Tree planting was a labour intensive undertaking and there was need for the Ministry and KFS to be prepared in terms of human resource and a well thought out strategy that may include:
  - i) Partnering closely with county governments
  - ii) Mainstreaming tree planting in all government Ministries, Departments and Agencies.
  - iii) Utilization of the services of other disciplined services
  - iv) Donor support especially with regard to purchase of seedlings from private investors who have tree nurseries.
  - v) Establishment of chief's nurseries at locations and sub locations level.
6. The KFS Board ought to have been suspended by the Cabinet Secretary too since if there were any lapses at the KFS; the Board must have presided over the same. Further, it was noted that there was need to visit the Karura Forest and investigate circumstances under which the family of chairman of the KFS Board owned a restaurant/hotel within the forest.
7. There was concentration of forest protection efforts in Mt. Kenya Forest, the Araba Forest and the Mau Forest Complex. There was need to focus on other forests in the country too that were being degraded by rampant charcoal burning and other activities.
8. The 90-day moratorium had had unintended effects like stoppage of ongoing works at dams that are situated in forested areas and the consequent demand for compensation by contractors on account of stoppage of works. Such dams included for instance the Wamba Dam, the Itare Dam and Chemus Dam. However, the Cabinet Secretary noted that the concerns had been raised by the Water and Sanitation Ministry and that discussions were ongoing under the chairmanship of the Deputy President to chart the way forward. Equally, there were similar consultations with respect to the scope of the moratorium since it affected even felled materials that were subsequently rotting in the forests and even movement of materials that were already outside the forest due to non-issuance of movement permits.
9. There was a huge cost implication of the moratorium to the KFS since it affected its revenue base yet no funds had been availed to the entity to cushion it from the sudden changes. The Ministry needs to offer policy direction on the same.
10. There was need for full implementation of the participatory forest management policy developed by the KFS to ensure Community Forest Associations benefitted from the forests since they hosted and protected them.
11. Sawmillers were being given credit by the KFS against the organization's enabling legislation. There was need to probe this further.
12. Since the KFS was overwhelmed, there was need for the Ministry to collaborate and ensure counties were empowered to perform some of the devolved functions like issuance of movement permits.

13. There was need to develop an information system to ensure availability of information on seedlings availability, appropriateness of the seedlings to specific regions and hence match demand with supply in the long term.

**MIN.NO. DC/ENR/168/2018: - RESOLUTIONS**

The Committee resolved that:

1. The secretariat:
  - a) Schedules a meeting with the Kenya Forest Service Board (and accompanied by suspended officers) and the Human Resource Committee of the Board to deliberate on the following:
    - i) The seemingly discriminative suspensions of KFS officers (to provide notice of board meeting and evidence of constitution of Human Resource Board Committee).
    - ii) Implementation of the participatory forest management policy developed by the KFS to ensure Community Forest Associations benefitted from the forests since they hosted and protected them.
    - iii) Sawmillers being given credit by the KFS which was against the organization's enabling legislation.
  - b) Plans a visit to the Karura Forest to assess forest conservation efforts and investigate circumstances under which the Chairman of the KFS board/his family owned a restaurant/hotel within the forest.
  - c) Works closely with the office of the Cabinet Secretary, Ministry of Environment and Forestry to actualize the 3-day retreat pledged by the Cabinet Secretary to engage with the Committee and chart the way forward.

**MIN.NO. DC/ENR/169/2018: - ADJOURNMENT**

There being no other business the meeting was adjourned at 12.58 pm.

SIGNED:  .....

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

DATE:  .....

**MINUTES OF THE 31<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 27<sup>TH</sup> MARCH, 2018 AT 11.00 AM IN CPA ROOM, MAIN PARLIAMENT BUILDINGS.**

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**PRESENT**

- |   |                  |
|---|------------------|
| 1. The Hon. Kareke Mbiuki, M.P.               | Chairperson      |
| 2. The Hon. Sophia Abdi Noor, M.P.            | Vice Chairperson |
| 3. The Hon. Francis Chachu Ganya, M.P.        |                  |
| 4. The Hon. Charles Ong'ondo Were, M.P.       |                  |
| 5. The Hon. Said Hiribae, M.P.                |                  |
| 6. The Hon. Peter Kimari Kihara, M.P.         |                  |
| 7. The Hon. Beatrice Cherono Kones, M.P.      |                  |
| 8. The Hon. Charity Kathambi Chepkwony, M.P.  |                  |
| 9. The Hon. Hilary Kiplang'at Kosgei, M.P.    |                  |
| 10. The Hon. (Eng.) Paul Musyimi Nzengu, M.P. |                  |
| 11. The Hon. Rehema Hassan, M.P.              |                  |
| 12. The Hon. Benjamin Jomo Washiali, M.P.     |                  |
| 13. The Hon. Benjamin Dalu Tayari, MP         |                  |

**APOLOGIES**

1. The Hon. Nasri Sahal Ibrahim, M.P.
2. The Hon. Ali Wario Guyo, M.P.
3. The Hon. Amin Deddy Mohamed Ali, M.P.
4. The Hon. Rozaah Buyu. M.P.
5. The Hon. David Kangogo Bowen, M.P.
6. The Hon. Hassan Oda Hulufu, M.P.

**FRIEND OF THE COMMITTEE**

The Hon. Patrick Mariru, MP

**IN ATTENDANCE**

**LONDON DISTILLERS LIMITED**

- |                        |   |   |
|------------------------|---|---|
| 1. Mr. Alvin Galot     | - | Managing Director                         |
| 2. Mr. Alex Thangei    | - | Company Advocate                          |
| 3. Mr. Martin Oloo     | - | Company Advocate                          |
| 4. Mr. Parvan Gehlat   | - | Manager, Operations                       |
| 5. Mr. Peter Muli      | - | Head of Human Resource and Administration |
| 6. Mr. Justus Mombis   |   |   |
| 7. Mr. P.S. Mann       |   |   |
| 8. Mr. Crispus Michira |   |   |
| 9. Mr. Ashoh Datta     |   |   |
| 10. Mr. Fred Ayuyo     |   |   |

## PETITIONERS

1. Joseph M. Waithaka
2. James Nyongio Kimeri
3. Washington Ngatia
4. Samuel Kamau
5. Peter Wanjohi
6. Charles Kiragu
7. Susan Maina
8. Peter Ndirangu Kihiko
9. John Muchangi
10. Margaret Njeri
11. Joseph Wanjau
12. Rev. F. Wambugu
13. Eutyclus Kamone
14. Abraham Rono

## THE NATIONAL ASSEMBLY

- |                         |   |                         |
|-------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo    | - | Third Clerk Assistant   |
| 2. Mr. Dennis M. Ogechi | - | Third Clerk Assistant   |
| 3. Mr. Joe Okongo       | - | Media Relations Officer |
| 4. Mr. Salem Lorot      | - | Legal Counsel II        |
| 5. Mr. Simon Muinde     | - | Audio Recording Officer |
| 6. Mr. Stanley Lagat    | - | Serjeant-At-Arms        |

## AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Consideration and adoption of the Report on the Vetting of the Principal Secretary nominee for the State Department of Mining, Mr. John M. Omenge.**
- v) **Meeting With the Management of London Distillers Limited on a Complaint of Environmental Pollution.**
- vi) **Meeting With Hon. Patrick Mariru, MP on the Petition Regarding the Human-Wildlife Conflict in Laikipia West Constituency.**
- vii) Any Other Business
- viii) Date of the next Sitting

MIN.NO. DC/ENR/149/2018:

- PRELIMINARIES

The meeting was called to order at 11.22 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was:

- i) Consideration and adoption of the Report on the Vetting of the Principal Secretary nominee for the State Department of Mining, Mr. John Morangi Omenge.

- ii) Meeting With the Management of London Distillers Limited on a Complaint of Environmental Pollution.
- iii) Meeting With Hon. Patrick Mariru, MP on the Petition Regarding the Human-Wildlife Conflict in Laikipia West Constituency.

The Members adopted the agenda of the meeting.

**MIN.NO.DC/ENR/150/2018: - CONFIRMATION OF MINUTES**

Minutes of the 29<sup>th</sup> Sitting held on Friday 23<sup>rd</sup> March, 2018 at 10.00 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Charity Kathambi Chepkwony, M.P. and seconded by Hon. Charles Ongondo Were, MP.

Minutes of the 30<sup>th</sup> Sitting held on Monday 26<sup>th</sup> March, 2018 at 9.30 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Chachu Ganya, M.P and seconded by Hon. Peter Kihara, M.P.

**MIN.NO. DC/ENR/151/2018: - MATTERS ARISING**

Under **MIN.NO. DC/ENR/146/2018**

It was noted that the vetting exercise for the Principal Secretary nominee for the State Department of Mining took place without a hitch on Monday, 26<sup>th</sup> March, 2018.

**MIN.NO. DC/ENR/152/2018: -CONSIDERATION AND ADOPTION OF THE VETTING REPORT ON THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF MINING, MR. JOHN M. OMENGE**

The Report on the Vetting of the Principal Secretary nominee for the State Department of Mining, Mr. John Morangi Omengo was considered and adopted after being proposed and seconded by Hon.Peter Kihara, MP and Hon. Chachu Ganya, MP respectively.

The Report was adopted with the following observations that the nominee:

- i. Had satisfied the requirements of chapter six of the Constitution of Kenya on Leadership and Integrity having been cleared by: The Ethics and Anti-Corruption Commission, the Directorate of Criminal Investigations, the Kenya Revenue Authority on Tax Compliance, Higher Educations Loans Board (HELB) and the Registrar of Political Parties.

- ii. Has never been charged with a criminal offence in a court of law and has no potential conflict of interest with regard to the position he had been nominated to.
- iii. Has never been dismissed from office for contravention of the provisions of article 75 of the constitution which deals with conduct of State Officers that are adversely mentioned in any investigatory report of Parliament or any commission of inquiry.
- iv. Has the necessary qualifications and extensive experience in the public service as seen from the documentation presented to the Committee.
- v. Has the right attitude and commitment to serve in the position for which he had been nominated as observed from the way he responded to the Members' questions on mining related issues during the approval hearing.
- vi. Does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- vii. Exhibited impressive knowledge and understanding of issues relating to the docket he had been nominated for appointment.

Consequently, the recommendation of the Committee was that having considered the suitability, capacity and integrity of the nominee, and pursuant to Article 155(3) of the Constitution and Section 8 (2) of the Schedule to the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 and Standing Order 216 (5) (f) of the National Assembly, the Committee recommends that the National Assembly approves the nomination of Mr. John Morangi Omenge for appointment by H.E. the President to the position of Principal Secretary for Mining.

**MIN.NO. DC/ENR/153/2018: - MEETING WITH THE MANAGEMENT OF LONDON DISTILLERS LIMITED ON A COMPLAINT OF ENVIRONMENTAL POLLUTION.**

The Chairperson welcomed all those present and stated that:

1. Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate located on Shanghai Road, Athi River, Mavoko Sub county Machakos County through a letter dated 22<sup>nd</sup> January, 2018 to the National Environment Management Authority (NEMA) and raised issues regarding environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which was negatively affecting the lives of the residents of the larger Athi river area.
2. The National Assembly, Departmental Committee on Environment and Natural Resources got hold of the matter after receiving a copy of the said letter by Erdemann Property Limited. It then invited the following entities to a meeting on Tuesday 20<sup>th</sup> March, 2018: Erderman Property Limited, London Distillers Kenya Limited, National Environment Management Authority (NEMA).

He then invited the Managing Director, London Distillers Limited to make his presentation.

**MIN.NO. DC/ENR/154/2018: - PRESENTATION BY THE MANAGING  
DIRECTOR, LONDON DISTILLERS  
LIMITED**

In his presentation, largely made by the firm's legal counsel, the Managing Director stated that:

1. London Distillers Kenya Limited (LDK) was aware of a complaint levelled against it by Erdemann Property Limited dated 22<sup>nd</sup> January, 2018.
2. LDK was not a polluter of the environment. The activities carried out by LDK in its premises were not environmentally harmful to its own staff, some of whom reside within the factory premises, nor did its activities affect other neighbours or workers as alleged by the Great wall Garden Estate workers.
3. LDK regularly submits itself to the compliance measures established by the National Environment Management Authority (NEMA).
4. Erdemann Properties Limited had not established an evidence based case against LDK save for wild allegations and arrogating to itself the role NEMA.
5. Erdemann Properties Limited made unfounded allegations against NEMA and LDK, acted in bad faith and was not honest in their complaint. This was demonstrated by copying their letter dated 5<sup>th</sup> February 2018, to the Presidency, the Cabinet Secretary for Environment and Natural resources, the Governor of Machakos, the Clerk to the National Assembly as well a total of 22 other players including the media.
6. LDK was a responsible corporate citizen which pays its taxes, employs Kenyans and through them, benefits their families. LDK was the only company in Kenya that has a robust climate change policy, embraces green energy through solar equipment and biogas plant. It has regenerated the environment through tree planting and proper waste management processes.
7. London Distillers Kenya Limited started its operations in the year 1986 in Athi River in an area designated as industrial zone, long before Erdemann Properties Limited, Hillcrest Park, the Kraal among other recent arrivals like Mavuno Church, Everest Park Estate, Safaricom Staff Pension Scheme, City Carton residents, and Jam City Estate Residents. It is located in premises zoned off for industrial and ancillary purposes as per the title documents which also applies to the surrounding premises.
8. LDK was allocated its land in 1982 but doesn't not know when Edermann Properties gained access to the land they occupy and whether they ever subjected themselves to change of user from industrial to housing. Subsequent subdivision of land in this area had yielded into an untidy semblance of mixture of land use including industrial, residential and agricultural.

9. LDK had endured complaints from similar actors in the past. On 16<sup>th</sup> of January, 2006 and 3<sup>rd</sup> of February 2006 E.H.S Resource Centre filed a complaint with the Public Complaints Committee (PCC) on the Environment under PCC Recommendation No: 115/2006.
10. One of the findings and recommendations of the PCC no 115/2006 was that Mavoko Municipal Council as it was then known should cease, in the absence of a Master Development Plan, granting individual change of user permits in areas where there is likely to be conflict where such permits are granted.
11. The Export Processing Zones authority has a sewer line to which industries connect upon payment of a fee and observance of certain standards. The EPZA then directs the effluent in their sewer line to their final treatment plant before final discharge into the environment.
12. On 6<sup>th</sup> February, 2017, the National Environment Management Authority issued a closure Order for LDK because as they said, they had received numerous complaints from the public about environmental pollution. The letter referred to ground inspections carried out on 6<sup>th</sup> May of 2016, 21<sup>st</sup> July, 2016 and 8<sup>th</sup> September, 2016. The letter alleged that LDK had failed to comply with the orders.
13. The NEMA letter of closure failed to disclose the fact that LDK responded on May 19<sup>th</sup> to the issues raised in the May 6<sup>th</sup> 2016 inspection vide letter Ref LDK/AD/584/16 received at the NEMA County offices on 24<sup>th</sup> May 2016 with the promise of compliance and a copy of third party analysis report from SGS and gave a programme for continuing improvement of the management of the effluent discharge.
14. The NEMA closure letter failed to disclose the fact that LDK had responded to their inspection report of 6<sup>th</sup> July 2016 vide their letter dated 27<sup>th</sup> July, 2016, in which LDK appended copies of the latest quarterly third party analysis reports from SGS, internal effluent analysis records, licensed garbage/waste handlers and a work plan to addressing issues raised in the improvement order.
15. In responding to the closure order, LDK pointed out the fact that as a result of their earlier letters and actions, the NEMA inspectors who visited on 28<sup>th</sup> of February 2017, had noted that that LDK had complied with all the improvement orders issued. LDK confirmed that all the improvements procedures were in place to effect the orders. They appealed against the closure through their heir letter dated March 7, 2017 and referenced LDK/MG/184/17.
16. On March 13<sup>th</sup> 2017, NEMA wrote a letter lifting the closure order for LDK in which they confirmed that the organization had undertaken the following: 1) Repaired sections of the damaged sewer line, 2) Submitted effluent analysis Report to NEMA, 3) Submitted Stack emission analysis report to NEMA, 4) had installed clarifiers at the effluent treatment plant and lastly, 5) contracted a NEMA approved/licensed waste transporter – Kinca Trading Company to collect and discharge waste water that had leaked/spilled from the sewer system.

17. NEMA then made additional recommendations on: 1) Installation of sludge drying beds to manage the environmental impacts of sludge, 2) Ensuring no spillage at entry points of the sewer system and all illegal discharges of waste water are controlled, 3) Submission of Quarterly effluent analysis report for the pre-treated waste water before discharge to the sewer line, and lastly, 5) Strict adherence to Environmental Management Plan (EMP) and periodic consultations with environmental experts and full implementation of the Audit reports.
18. On 20<sup>th</sup> March 2017 in response to the lifting of the closure order, LDK confirmed that the management team was in the process of implementing the recommendations and keeping track of appropriate checklists. This letter also attached a work-plan to implement the proposed recommendations.
19. LDK was making serious investments in environmental conservation including tree planting. Over ten thousand trees had been planted to green the area.
20. LDK had invested over USD 1,205, 432.81 in the solar energy in a bid to manage carbon emissions.
21. LDK had as of 7<sup>th</sup> December 2016 concluded an agreement with PRAJ Industries Limited to upgrade technology, design, engineering and supply of equipment worth USD 1,250,000.
22. He concluded that Industries world over emit effluent which, if not treated, can be harmful. LDK was aware of this and continued to work with the regulator to ensure that its activities were not harmful to the environment.

**MIN.NO. DC/ENR/155/2018:**

**MEMBERS' OBSERVATIONS**

Members observed that:

1. The London Distillers Limited had responded to the issue of discharge of hazardous effluent but had avoided addressing the issue of air pollution which was the main complaint against it.
2. The London Distillers Limited were making huge profits and therefore ought to invest in technologies that mitigate against air pollution, recycle solid waste, and escalate institute internal self-regulation.
3. The London Distillers Limited was paying substantial tax to the government and was employing a lot of Kenyans. However, that ought not to be an excuse for the pollution it was engaged in, which was likely to adversely affect the health of many Kenyans, leading to huge medical related expenses.
4. The London Distillers Limited seemed to refer to NEMA as its first line of defence in the proceedings. This could imply possible collusion with NEMA as the company

disregarded environmental laws and regulations with impunity. There was therefore need to include health officials and a reputable international entity with experience in industrial pollution to give the Committee an independent expert opinion on the issues at hand.

5. The Report on Air Quality Measurement at London Distillers Limited was received at the Company on 24<sup>th</sup> March, 2018 days after receiving an invitation to appear before the Committee. This could imply that the report was merely done to exonerate the company from the accusations levelled against it. The report may consequently be a public relations exercise geared purely at hoodwinking the Committee.
6. London Distillers Limited has an agreement for sewer connection with the Export Processing Zones Authority (EPZA). However, a letter dated 14<sup>th</sup> January, 2015 indicated the polluting nature of the company. In the introductory paragraph, the letter states in part that: "after rigorous analytical /quality assessment of your pre-treated effluent it is a fact that you are unable to achieve the values of COD and BOD set at 1000mg/l and 500 mg/l respectively as stipulated in the Environmental Management and Coordination (Water Quality) Regulations, 2006 of Legal Notice No.120". The letter goes on to give conditions for connection to the EPZA sewer line which include higher charges for its effluent which doesn't meet set standards. The company accepted the set conditions.
7. There was need to expand the investigation of the air pollution issue in Athi River to other industries in the area to ensure protection of the residents of the larger Athi River area. This may need a separate full blown inquiry by the Committee.
8. There was need to create a master plan for land use in the area to avoid the mixed user of land which in the first place generated environmental pollution conflict.

**MIN.NO. DC/ENR/156/2018: - RESOLUTIONS**

The Committee resolved that:

1. It shall visit the area affected by the pollution and the London Distillers Limited premises at a date to be decided later.
2. It shall include/consult health officials who will provide an independent opinion on the effect of industrial air pollution on human health.
3. It will seek then permission of the Speaker to engage a reputable international entity with experience in industrial pollution to give the Committee an independent expert opinion on the issues at hand.

**MIN.NO. DC/ENR/157/2018: - MEETING WITH HON. PATRICK MARIRU,  
MP ON THE PETITION REGARDING THE  
HUMAN-WILDLIFE CONFLICT IN  
LAIKIPIA WEST CONSTITUENCY.**

The Chairperson welcomed all those present and stated that:

1. The Petition on Human – Wildlife Conflict in Laikipia West Constituency was presented to the National Assembly by the Hon. Mariru Patrick Kariuki, MP on 26<sup>th</sup> February, 2018.
2. The Petition sought to draw the attention of the House to the following, THAT:
  - a) The Wildlife Conservation And Management Act, 2013 contemplates formulation of innovative measures for mitigating Human-Wildlife conflict and compensating victims of Human-Wildlife conflict;
  - b) In the recent past, residents of Marmanet, Githiga, Salama, Rumuruti, Igwamiti and Olmoran Wards had experienced increased cases of attacks by elephants resulting in loss of lives and destruction of property.
  - c) The KWS wardens were evidently overwhelmed by the situation resulting in delays in responding to distress calls by residents.
  - d) Most parts of the Rumuruti, Marmanet, Sharmanei forests remain unfenced making it easier for the animals to stray often.
  - e) Residents of Laikipia West had held demonstrations against inaction by the KWS.
  - f) Between 2016 and 2018 more than 3 persons had lost lives and their families were yet to be compensated by the KWS.
  - g)
3. The petitioners prayed that that National Assembly through the Committee:
  - a) Recommends that KWS compensates victims and affected families for loss of lives and destruction caused and schools affected be fenced using electric fencing.
  - b) Intervenes to ensure that government expeditiously erects perimeter fences around Rumuruti, Marmanet, Sharmanei forests and private conservancies to curb the stray of wild animals.
  - c) Recommends that the KWS increases the posts in the areas for efficient surveillance and quick responses to distress calls.
  - d) Makes any other direction that it deems fit in the circumstances.
4. Upon receipt of the petition, the Committee resolved to invite:
  - The petitioner, Hon. Mariru Patrick Kariuki, MP, to brief the Committee on the petition; and
  - The KWS to respond to the issues contained in the petition.

He then invited the Hon. Mariru Patrick Kariuki, MP to make his presentation.

MIN.NO. DC/ENR/158/2018: - PRESENTATION BY HON. MARIRU  
PATRICK KARIUKI, MP LAIKIPIA WEST  
CONSTITUENCY

Hon. Mariru Patrick Kariuki, MP appeared before the Committee, accompanied by residents of Laikipia West Constituency. In his presentation, he informed the Committee that:

1. The Human-Wildlife conflict affected several wards in his Constituency.
2. **In Marmanet Ward:**
  - The ward covers Gatundia, Oljabet, Karaba, Melwa, Gatero areas and borders Rumuruti forest.
  - Six residents had been killed by elephants yet no compensation had been done so far despite making claims. These were: Wachira Gachahi, Mr Karoki, Thuo Mwangi, Kimani Kariru, Isaac Kipgetich Barno and Kiuru Mwenda.
  - Some residents had been maimed and lived desolate lives. For example Wilson Laboso, Richard Ndirangu, samuel Wachira had not yet received compensation.
  - The conflict had affected school going children. In Melwa, Murichu, Munyu and Kiriti Primary schools. The pupils report late to school due to fear of elephants attacks.
  - Elephants had been destroying fences, maize stores and homes in this ward particularly around Siron area. He gave photos of evidence of fences and stores destroyed.
  - Many farmers had lodged compensation claims yet compensation had not been forthcoming. A copy of a filled claim form was provided.
  - Farming activities in the area had been adversely affected.

Proposed Solutions

- Rumuruti Fence should be elected.
- KWS out-stations should be increased along the fence.
- A fence maintenance program should be mooted to ensure the fence was maintained.

3. **In Igwamiti Ward:**

- The elephants were destroying homesteads and leaving people homeless and destitute.
- Elephants had also killed people. For example, Mr Kiuru, Jane Wangari both from Maina Village, Mary Murugi and David Michobo from Mahianyu village.
- They had also maimed people like Alfred Kibogo, Charles Maina (a standard four (4) pupil at Maina Primary school), Mr Emali., Wambui Mutitu and Magdalene Wanja.
- In Maina Village, the destruction of property, farms and homes had resulted in an increase in crime levels as young people are were abandoning farming.

Proposed Solutions

- Fencing off of Marmanet and Sharmek forests
- KWS out- stations in the area be increased and facilitated
- A fence Maintenance program be mooted

#### 4. In Salama Ward:

- Property and farms had been destroyed around Kiamariga, Raya, Kianjogu, Kiriko, Kiahiti and Pesi areas.
- Persons had been killed for example; Mr. Hassan Iten yet no compensations had been made despite claims being lodged.

##### Proposed Solutions

- The Mutara fence around ADC farm should be completed;
- A fence maintenance program be put in place;
- KWS Out-stations be increased and facilitated; and
- Compensations for loss of lives and properties be effected.

#### 5. In Rumuruti Ward:

- The most affected areas are OMC, Kapkures, Kahuho, Ainampmoi, Simotwo, Orlanyiro areas.
- There was destruction of farms and other properties.
- Compensation claims had been lodged but no compensation had been effected.
- Deaths had been reported there too. For example those of: Jannifer Nyokiriany, Josiah Njinu and Stephen Karanja Kingori of Rumuruti ward.
- Reported laxity on the side of KWS in response to distress calls by residents.
- Lions had been reported to roam in Lorian area and had killed 12 cows so far.
- There were also buffalos invasions reported in the ward.

##### Proposed Solutions

- Rumuruti fence and Mutara fence be elected.
- A fence maintenance program be instituted.
- KWS outstations be increased and facilitated
- Compensations for loss of lives and properties be effected

#### 6. In Olmorani Ward:

- The most affected are horticultural areas of Wangwaci, Kabati, Bondeni, Ka-metha, Naiborom areas.
- No compensation for the destroyed properties and farms despite claims being lodged. This had affected livelihoods especially for the youth.
- People killed ; Paul Ndungu Wahome, Peter Maina Njororoge.

##### Proposed Solutions

- Completion of the Laikipia Ranching fence
- A fence maintenance program be mooted

- KWS out-stations be increased and facilitated
- Compensations for loss of lives and properties be effected

**7. In Githiga Ward:**

- The ward covers Kamwenje, Mutitu, Kariaini, Lobere, Ndindika, Eighteen, Njorua
- Although there was a fence, it was established using short poles.
- Cereal stores had been destroyed for instance those belonging to: James Nyogio, Daniel Ihigo .
- People had been killed for instance Jane Wairimu and Martha Nduta.
- Those maimed included: Susan Wanjiru and Ester Awoi.

Proposed Solutions

- Compensation for the lives lost and crops destroyed
  - Establishment of a fence along the entire forest boundary
  - KWS station ought to be set along the Kuki Gallman farm
  - Setting up of a trench and a fence in order to curb the movements of elephants from Kamwenje, Wangwachi to Nagum.
8. The petitioner provided photographic evidence of the destruction occasioned by the wild animals in the areas affected.

**MIN.NO. DC/ENR/159/2018: - MEMBERS' OBSERVATIONS**

Members observed that:

1. There were both private conservancies and KWS controlled areas in the areas affected. There was therefore need to establish the contributions that KWS and the private conservancies needed to make towards the fencing of the areas proposed by the petitioner.
2. The County Government of Laikipia had made budgetary allocations to institute urgent fencing requirements to protect lives and property. There was therefore need for the KWS to find possible areas of collaboration with the county governments across the country to ensure minimal Human-Wildlife conflict.
3. The KWS had not put forth a serious case for increased budgetary allocation for compensation claims. There was therefore need for the KWS to engage both the National Treasury and the Committee on the same. Equally, the KWS ought to prioritize compensation of victims of Human-Wildlife Conflict from funds received from the exchequer and other donor support.
4. The issue of human-wildlife conflict was a critical concern throughout the country in areas bordering wildlife habitats, there was therefore need to seek a global solution to the menace.

**MIN.NO. DC/ENR/160/2018: - RESOLUTION**

It was resolved that the Hon. Mariru Patrick Kariuki, MP be invited to the meeting the Committee shall hold with the KWS on the same matter.

**MIN.NO. DC/ENR/161/2018: - ANY OTHER BUSINESS**

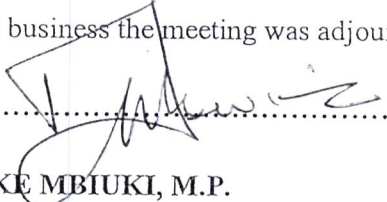
1. It was reported that the Committee had been invited to a workshop by the Synergy Development Systems Limited from April 18<sup>th</sup> to 20<sup>th</sup> 2018 at the Whitesands Beach Resort, Mombasa. The workshop seeks to contribute to the dialogue on forest conservation and management and inform policy formulation and legislative processes that may come up from the environmental audit being undertaken.

**Resolution:** The Committee resolved to attend the workshop.

2. It was reported that the Committee delegation that participated at the 8<sup>th</sup> World Water Forum, Brasilia, Brazil from March 18<sup>th</sup> to 23<sup>rd</sup>, 2018 had a successful trip and was back to the country. Its report was under preparation.

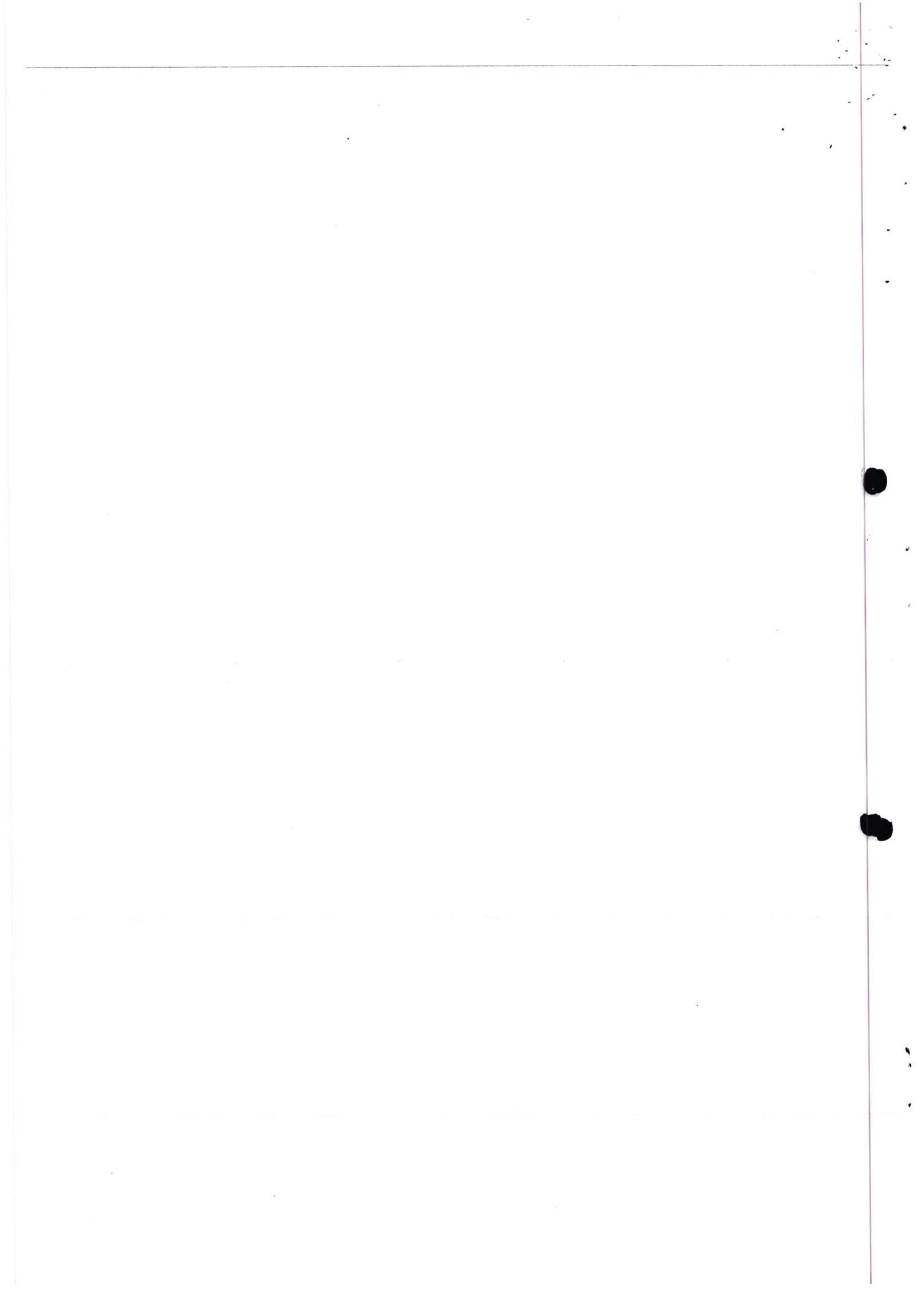
**MIN.NO. DC/ENR/162/2018: - ADJOURNMENT**

There being no other business the meeting was adjourned at 2.16 pm.

SIGNED: .....  


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

DATE: .....  

**MINUTES OF THE 26<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY 17<sup>TH</sup> MARCH, 2018 AT 2.30 PM AT THE SAROVA WOODLANDS HOTEL AND SPA, NAKURU**

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**PRESENT**

1. **The Hon. Kareke Mbiuki, M.P.**                      **Chairperson**
2. The Hon. Charity Kathambi Chepkwony, M.P
3. The Hon. Beatrice Cherono Kones, M.P.
4. The Hon. Charles Ong'ondo Were, M.P.
5. The Hon. Hilary Kiplang'at Kosgei, M.P.

**APOLOGIES**

1. **The Hon. Sophia Abdi Noor, M.P.**                      **Vice Chairperson**
2. The Hon. Benjamin Jomo Washiali, M.P.
3. The Hon. Peter Kimari Kihara, M.P
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
6. The Hon. Hassan Oda Hulufu, M.P.
7. The Hon. Amin Deddy Mohamed Ali, M.P.
8. The Hon. Rozaah Buyu. M.P.
9. The Hon. David Kangogo Bowen, M.P.
10. The Hon. Francis Chachu Ganya, M.P.
11. The Hon. Ali Wario Guyo, M.P.
12. The Hon. Benjamin Dalu Tayari, MP
13. The Hon. Said Hiribae, M.P.
14. The Hon. Rehema Hassan, M.P.

**COMMUNITY FOREST ASSOCIATIONS (CFAs)**

- |                         |   |                        |
|-------------------------|---|------------------------|
| 1.Mr. Joseph Barngetuny | - | CFA Kiptunga           |
| 2.Mr. Joseph Lesingu    | - | CFA Kiptunga           |
| 3.Mr. Charles Lember    | - | CFA Logoman            |
| 4.Mr. David Mutai       | - | CFA Logoman            |
| 5.Mr. Wesley Kipkorir   | - | CFA Likia              |
| 6.Mr. Emmanuel Kioko    | - | Chairperson, CFA Likia |
| 7.Mr. Kiprotich Langat  | - | CFA Kericho            |

**THE NATIONAL ASSEMBLY**

- |                        |   |                         |
|------------------------|---|-------------------------|
| 1.Ms. Esther Nginyo    | - | Third Clerk Assistant   |
| 2.Mr. Dennis M. Ogechi | - | Third Clerk Assistant   |
| 3.Mr. Joseph Okongo    | - | Media Relations Officer |
| 4.Ms. Winnie Kulei     | - | Research Officer        |
| 5.Mr. Stanley Lagat    | - | Serjeant-at-Arms        |
| 6.Mr. Simon Muinde     | - | Audio Recording Officer |

## AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Community Forest Associations (CFAs).**
- v) Any Other Business
- vi) Date of the next Sitting

### MIN.NO. DC/ENR/124/2018: - PRELIMINARIES

The meeting was called to order at 2.46 pm after which prayers were said. The Chairperson then stated that the main agenda of the meeting was to meet with the Community Forest Associations (CFAs) on the logging activities in the country. He then asked all those present to introduce themselves.

### MIN.NO. DC/ENR/125/2018: - MEETING WITH THE COMMUNITY FOREST ASSOCIATIONS (CFAS) ON THE LOGGING ACTIVITIES IN THE COUNTRY

#### **Chairperson's Remarks**

The Chairperson stated that the Committee had scheduled visits to the Mau Forest Complex and the Aberdare Forest to give it an opportunity to interrogate issues of concern including: level of degradation, restoration efforts, and the balance between forest exploitation to meet the country's needs and conservation. He further noted that Community Forest Associations (CFAS) were crucial stakeholders in forest management and conservation.

He then invited the Community Forest Associations (CFAS) represented to make their presentations.

#### **Presentations by Members of the Community Forest Associations (CFAS)**

In their presentations, members of the CFAs represented informed the Committee that:

1. The Community Forest Associations were an association for the communities living near forests.
2. The communities around forest areas were doing a lot in terms of forest conservation but their efforts were not appreciated. For instance they signed a contract to prune forest trees but the contract was never honored by the KFS. Instead the contract was given to casual workers who never did the work.

3. The PELIS programme had been of help to the communities in terms of food security and improving the livelihoods of the poor living near forests. However the CFAs get only a 30% allocation whereas 70% of the allocations went to people who were not members of the community. They suspected corrupt dealings involving KFS officials for such skewed and opaque allocations.
4. CFAs were also being ignored even after making requests to be involved in thinning of forests. Instead the same was given to people who were strangers to the communities and unknown to the CFAs.
5. There was need for revenue sharing especially with respect to grazing rights in the forests. The situation then was that forest guards colluded with grazers and excluded CFAs in potentially opaque and corrupt dealings.
6. PELIS system was being abused. For instance:
  - i) Beneficiaries of the PELIS system were being overcharged due to ignorance of the set rates by the KFS. There was need for dissemination of the information to CFAs by the KFS head office.
  - ii) Forest officers got non locals and allocated them huge tracts of land while sidelining the locals. There was need for CFAs to vet and approve the allocatees.
  - iii) KFS allowed farming even along riparian areas leading to massive soil erosion which compromised the sustainability of forest conservation and management.
  - iv) Equally farming was being carried out along firefighting routes leading to challenges in firefighting activities during fire outbreaks.
  - v) KFS officers equally overcharged those grazing animals in the forests then went ahead to allow them to destroy trees with abandon.
7. Although the CFAs were entrenched in the Forest Conservation and Management Act, 2016, policies had not been put in place to operationalize the Act. These needed to be acted upon. CFAs should in the meantime be allowed to enjoy forest services as provided for in the said Act.
8. There was need to revisit the removal of a representative of CFAs from the KFS board through an amendment effected in 2016.
9. The sawmillers destroyed the road infrastructure in their areas of operation due to use of heavy trucks and other machinery yet they were not willing to repair the roads. There needs to be 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 getting too cozy hence being compromised by cartels leading to them presiding over forest destruction instead of protection. Others became competitors with CFAs as they allocated 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.

25  
25  
10

**MEMBERS' OBSERVATIONS**

Members observed that:

1. There was need for the KFS to prioritize communities living around forests in recruitment of forest rangers.
2. There was an urgent need transfer forest guards who had 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 instead engaging in farming under the PELIS system and other malpractices in collusion with cartels in the sector.
3. There was need to streamline the operations of the PELIS system to curb the abuse forest rangers were subjecting it to. Equally riparian areas should be out of bounds for the PELIS system.
4. The KFS ought to provide for a budget line dedicated to planting of nursery seedlings. It should also establish mechanisms to build the capacity of nursery tree nursery growers in terms of quality of seeds and seedlings, exchange visits among them, waiver of levies on soil, and tending to seedlings.
5. There was need for CFAs to conduct regular elections to replace its officials to curb situations where CFA officials collude with forest rangers to involve themselves and/ or condone malpractices.

**MIN.NO. DC/ENR/126/2018: - ADJOURNMENT**

There being no other business the meeting was adjourned at 5.48 pm.

SIGNED:  .....

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

DATE:  .....

**MINUTES OF THE 25<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY 17<sup>TH</sup> MARCH, 2018 AT 10.00 AM AT THE SAROVA WOODLANDS HOTEL AND SPA, NAKURU**

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**PRESENT**

1. **The Hon. Kareke Mbiuki, M.P.** Chairperson
2. The Hon. Charity Kathambi Chepkwony, M.P
3. The Hon. Beatrice Cheroni Kones, M.P.
4. The Hon. Charles Ong'ondo Were, M.P.
5. The Hon. Hilary Kiplang'at Kosgei, M.P.

**APOLOGIES**

1. **The Hon. Sophia Abdi Noor, M.P.** Vice Chairperson
2. The Hon. Benjamin Jomo Washiali, M.P.
3. The Hon. Peter Kimari Kihara, M.P
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
6. The Hon. Hassan Oda Hulofo, M.P.
7. The Hon. Amin Deddy Mohamed Ali, M.P.
8. The Hon. Rozaah Buyu. M.P.
9. The Hon. David Kangogo Bowen, M.P.
10. The Hon. Francis Chachu Ganya, M.P.
11. The Hon. Ali Wario Guyo, M.P.
12. The Hon. Benjamin Dalu Tayari, MP
13. The Hon. Said Hiribae, M.P.
14. The Hon. Rehema Hassan, M.P.

**TIMBER MANUFACTURERS ASSOCIATION AND OTHER SAW MILLERS**

- |                        |   |                         |
|------------------------|---|-------------------------|
| 1.Mr. B. Kimani        | - | TMA Chairman            |
| 2.Mr. Joseph Cheruiyot | - | TMA Vice Chairman       |
| 3.Mr. John Wakaba      | - | TMA Secretary           |
| 4.Ms. Julia Ndungu     | - | TMA Assistant Secretary |
| 5.Mr. Geoffrey Malel   | - | Kericho TMA             |
| 6.Mr. Joseph Mbagara   | - | TMA Chairperson, Nakuru |
| 7.Mr. Godfrey Kibiru   | - | TMA Chairperson, Kiambu |
| 8.Mr. Stephn Kihumba   | - | Comply Industries Ltd   |
| 9.Mr. Walter Ogada     | - | Timsales Limited        |
| 10. Mr. Joseph Mungai  | - | Rai Plywoods Limited    |
| 11. Ms. Judy Gathoni   | - | Jugawi Sawmills         |
| 12. Ms. Paulina Tuwei  | - | Babra Sawmills          |
| 13. Ms. Lucy Mugure    | - | Lucnel Sawmills         |
| 14. Ms. Bannah Nelima  | - | Nelima Enterprises      |

## THE NATIONAL ASSEMBLY

1. Ms. Esther Nginyo	-	Third Clerk Assistant
2. Mr. Dennis M. Ogechi	-	Third Clerk Assistant
3. Mr. Joseph Okongo	-	Media Relations Officer
4. Ms. Winnie Kulei	-	Research Officer
5. Mr. Stanley Lagat	-	Serjeant-at-Arms
6. Mr. Simon Muinde	-	Audio Recording Officer

## AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Timer Manufacturers Association and other Saw Millers.**
- v) Any Other Business
- vi) Date of the next Sitting

## MIN.NO. DC/ENR/120/2018: - **PRELIMINARIES**

The meeting was called to order at 10.23 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was to meet with the Timer Manufacturers Association and other Saw Millers on the logging activities in the country. He then asked all those present to introduce themselves.

## MIN.NO. DC/ENR/121/2018: - **MEETING WITH THE TIMER MANUFACTURERS ASSOCIATION AND OTHER SAW MILLERS ON THE LOGGING ACTIVITIES IN THE COUNTRY**

### **Chairperson's Remarks**

The Chairperson stated that the Committee had scheduled visits to the Mau Forest Complex and the Aberdare Forest to give it an opportunity to interrogate issues of concern including: level of degradation, restoration efforts, and the balance between forest exploitation to meet the country's needs and conservation. He further noted that TMA and other saw millers were crucial stakeholders in forest management and conservation.

He then invited the Chairman, Timber Manufacturers Association to make his presentation.

### **Presentation by the Chairman, Timber Manufacturers Association**

The Chairman, Timber Manufacturers Association, Mr. B. Kimani appeared before the Committee and informed it that:

1. Timber Manufacturers Association comprised of private entities situated across the country who are licensed saw millers' by Kenya Forest Service. The organization was founded in 1982 and has a national membership of 862 timber manufacturers and its membership is AGPO (Access to Government Procurement Opportunities) compliant.
2. The association comprises of youth, women and persons with disabilities and its membership is categorized into three based on the size of their enterprises that is small, medium and large. The operations of the membership are strictly based in commercial forest plantation and the main species for the commercial plantations include pine, cypress and blue gum. Out of the government area of 2,666,000 ha, commercial plantations occupy only 135,000 ha, which is 6% of the total forest. Further, commercial harvesting is not done at one go. At any one time, TMA operates 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.
  - vi) Closing of KTDA factories due to lack of fuelwood leading to unemployment and loss of foreign exchange as tea leaves could not be cured.
  - vii) Industries and institutions like schools and hospitals that rely on fuel wood were bound to have an increase in operation cost;
  - viii) A knock on effect on companies that rely on fuel wood to produce soaps, edible oils and others which were facing closure;
  - ix) Most allocated forest materials had loans pegged on them and hence members risked defaulting on financial commitments. It was estimated that the loans were about Kshs. 40 Million hence the banks will foreclose the businesses in two months' time.
4. Effects of timber deficits included:
  - i) Increased deforestation in Natural Forests- prompted by attractive market prices
  - ii) Increased recurrent expenditure on protection vs Investments
  - iii) Increased prices impact on the competitiveness of dependant industries
  - iv) Widening trade deficit, as wood imports would grow exponentially
5. Effects of the previous logging ban of 1999 were:
  - i) The ban was discriminatory

- ii) Tree planting back log
  - iii) Massive job losses in the industry
  - iv) Some of the members died due to stress related ailments occasioned by their loss of livelihood
  - v) Degradation of machinery in sawmillers' sites
  - vi) Increased poaching of indigenous forests
  - vii) A sharp increase in price of timber
  - viii) Forests were excised to settle Kenyans' leading to less land available for deforestation
  - ix) Massive deforestation in the country as private farmland tree was cut in an attempt to cash in on the timber harvesting degenerated by becoming over mature.
6. What TMA requested for included:
- i) Immediate reinstatement of movement permits to enable them transport processes timber and fuel wood from their yards and sawmills to customers. This would assist in easing their financial pressure.
  - ii) Private farms to be allowed to continue harvesting their trees as they have no correlation to state forests.
  - iii) To be allowed eventual access to the forests to access felled trees that had been paid for and were decomposing.
  - 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 he proposed:
- 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.
    - b) Urgent identification of alternate lands whether state, public, county or private where forest plantations can be established and have these land declared forest priority zones. It's estimated that to have a 20% tree cover in 15 years, there would be need to replant a minimum of 100,000HA of new forests per year translating to about 135,000,000 seedlings every year and zone 1.5M HA for this exercise. Priority should be given to ASAL lands.
    - c) Lifts the moratorium on logging to enable urgent clearing of over mature plantations to allow replanting.
    - d) Severely control/limit water intakes upstream along river ways. Unless for commercial farming, this intakes should be banned.
    - e) Identification of tree species that can be replanted in new forested areas with a specific thought to speed of growth and commercial value of lumber which will then ultimately ease off pressure on state forests. Kenya can become a net wood exporter.
    - f) Reconsider the energy sector use of concrete poles for electricity transmission vs timber poles. The number of trees planted by Kenyan's to tap into this market was enormous and led to a lot of reforestation.
    - g) Ring fence the local softwood import market as a way of motivating Kenyans to grow trees on small scale holding for commercial purposes.
  - ii) Medium-Term
    - a) Establishment of well thought out policies to enable commercial forestry on forest priority zones.
    - b) Well thought out incentives to private plantations to incentivize them to put more trees under cover.
  - iii) Long-Term
    - a) Establishment of private commercial forestry in ASAL areas across the country.

- b) Establishment of a surplus wood balance and Kenya becoming a net timber exporter.
12. There was need to replicate the case of Uruguay which through appropriate legislation managed to transform itself from an importer to a net exporter of wood products within a short time.

### **Presentation by Timsales Limited**

Mr. Walter Ogada, a representative of Timsales Limited appeared before the Committee 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 runs 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.

MIN.NO. DC/ENR/122/2018: - MEMBERS' OBSERVATIONS

Members observed that:

1. There was need to focus on private plantations in ASAL areas to grow tree cover and increase supply of forest products since there was no competition in those areas from agriculture and human habitation.
2. There was an urgent need to ban circular saws which were wasteful and encourage band saws which were modern saws that saved trees.
3. There was need for the KFS books of account to reflect the stocks (materials in the forest) that were not yet processed to ensure quality in final audit of KFS operations.
4. There was need to provide in legislation for recruitment of scouts from local communities to supplement the KFS forest rangers in protection of forests.
5. There was need to streamline the allocation of forest materials by the KFS. Such allocation needed to have a bottom- up approach. This was likely to mitigate against the alleged corruption associated with the allocations done at the KFS head office.
6. There was need to adequately fund the KFS to ensure: prompt reforestation, better working conditions for its staff, adequate equipment like vehicles for surveillance.
7. There was need for equity in allocation of forest resources among various levels of saw millers i.e. small, medium and large scale saw millers. Companies in the same category ought to be treated in a similar manner in terms of allocations since they held a licence that was similar in terms of cost and category.
8. The cost of materials being allocated had a component of funding for seedlings/replanting the harvested plantations. However, the amounts received by KFS may not be adequate without supplementing from the exchequer.

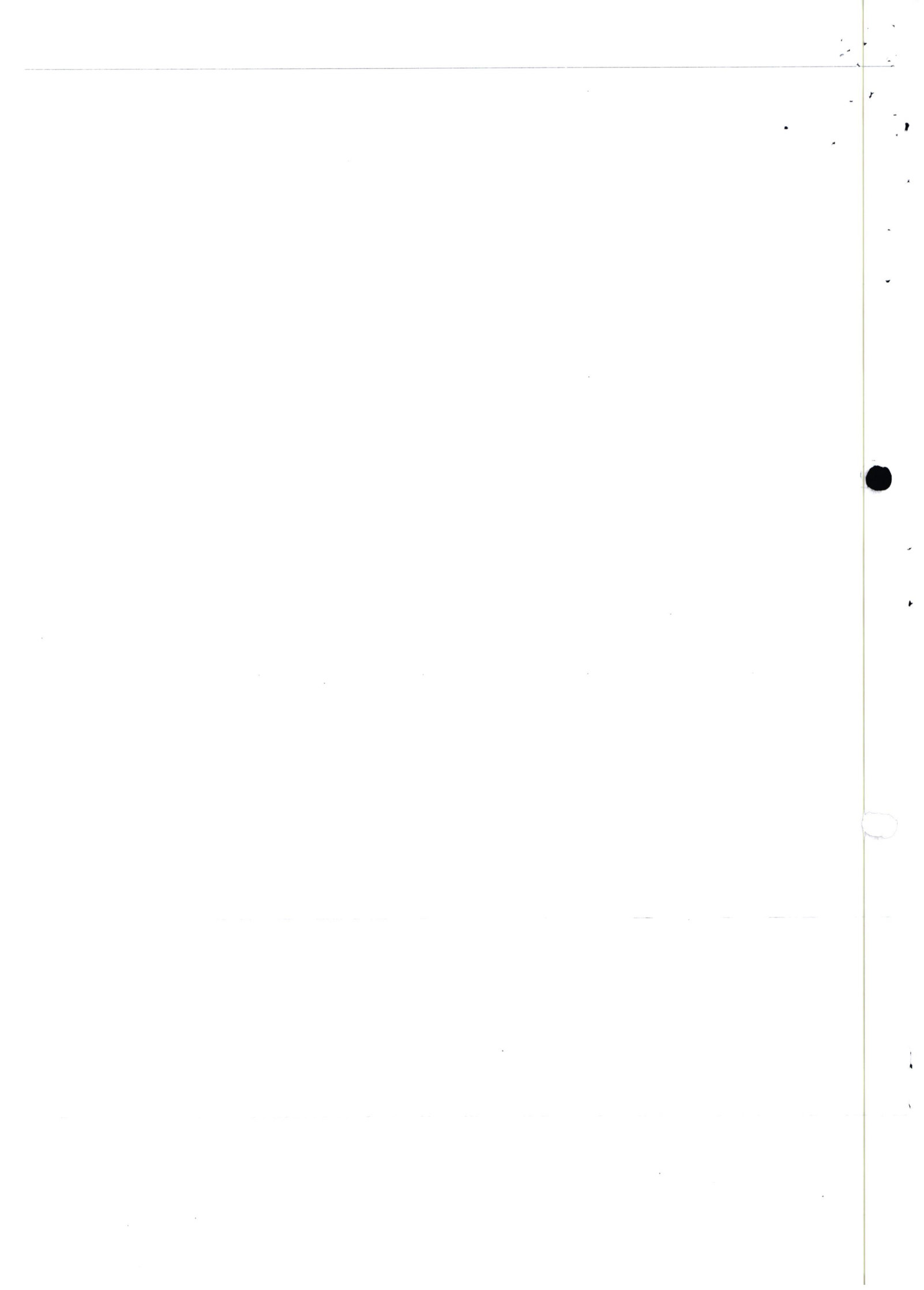
MIN.NO. DC/ENR/123/2018: - ADJOURNMENT

There being no other business the meeting was adjourned at 1.45 pm.

SIGNED:  .....

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

DATE: 10/04/2018 .....



**MINUTES OF THE 24<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY 16<sup>TH</sup> MARCH, 2018 AT 2.30 PM IN THE OFFICE OF THE GOVERNOR/COUNTY COMMISSIONER NYANDARUA COUNTY.**

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**PRESENT**

1. **The Hon. Kareke Mbiuki, M.P.**                      **Chairperson**
2. The Hon. Charity Kathambi Chepkwony, M.P
3. The Hon. Beatrice Cherono Kones, M.P.
4. The Hon. Charles Ong'ondo Were, M.P.
5. The Hon. Hilary Kiplang'at Kosgei, M.P.

**APOLOGIES**

1. **The Hon. Sophia Abdi Noor, M.P.**                      **Vice Chairperson**
2. The Hon. Benjamin Jomo Washiali, M.P.
3. The Hon. Peter Kimari Kihara, M.P
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
6. The Hon. Hassan Oda Hulofo, M.P.
7. The Hon. Amin Deddy Mohamed Ali, M.P.
8. The Hon. Rozaah Buyu. M.P.
9. The Hon. David Kangogo Bowen, M.P.
10. The Hon. Francis Chachu Ganya, M.P.
11. The Hon. Ali Wario Guyo, M.P.
12. The Hon. Benjamin Dalu Tayari, MP
13. The Hon. Said Hiribae, M.P.
14. The Hon. Rehema Hassan, M.P.

**NYANDARUA COUNTY GOVERNMENT**

- |                        |   |  |
|------------------------|---|--|
| 1.H.E. Francis Kimemia | - | Governor   |
| 2.Mr. Hiram Mwangi     | - | County Secretary   |
| 3.Mr. Simon Mwangi     | - | CEC Member for Water, Environment, Tourism & Natural Resources |

**COUNTY COMMISSIONER'S OFFICE**

- |                        |   |                              |
|------------------------|---|------------------------------|
| 1.Mr. Boaz Cherutich   | - | County Commissioner          |
| 2.Mr. Kennedy Momanyi  | - | Deputy County Commissioner   |
| 3.Ms. Jenniffer Situma | - | County Ecosystem Conservator |

**KENYA WATER TOWERS AGENCY**

- |                                 |   |                   |
|---------------------------------|---|-------------------|
| 1.Prof.Julius Gordon Tanui      | - | Managing Director |
| 2.Eng. David Kipkorir Chepkwony | - | Board Member      |

**THE NATIONAL ASSEMBLY**

1.Ms. Esther Nginyo	-	Third Clerk Assistant
2.Mr. Dennis M. Ogechi	-	Third Clerk Assistant
3.Mr. Joseph Okongo	-	Media Relations Officer
4.Ms. Winnie Kulei	-	Research Officer
5.Mr. Stanley Lagat	-	Serjeant-at-Arms
6.Mr. Simon Muinde	-	Audio Recording Officer

**AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Courtesy Call to the Governor and the County Commissioner, Nyandarua County**
- v) Any Other Business
- vi) Date of the next Sitting

**MIN.NO. DC/ENR/116/2018:** - **PRELIMINARIES**

The meeting was called to order at 2.43 pm after which prayers were said. The Chairperson then stated that the main agenda of the meeting was to pay a courtesy call on the Governor/County Commissioner, Nyandarua County before embarking on an Aerial Inspection Visit to the Aberdares Forest. The Governor welcomed the Committee to the County and then asked all those present to introduce themselves.

**MIN.NO. DC/ENR/117/2018:** - **COURTESY CALL TO THE GOVERNOR, NYANDARUA COUNTY AND AERIAL INSPECTION VISIT TO THE ABERDARES FOREST.**

**Chairperson’s Remarks**

The Chairperson stated that the Committee had scheduled visits to the Mau Forest Complex and the Arberdare Forest to give it an opportunity to interrogate issues of concern including: level of degradation, restoration efforts, and the balance between forest exploitation to meet the country’s needs and conservation. He further noted that county governments were critical in forest conservation and management in the country, being a shared function between the two levels of government.

**Remarks by the County Commissioner, Nyandarua County, Mr. Boaz Cherutich**

The County Commissioner, Nyandarua County briefed the Committee that:

- 1. The County hosted the Aberdare forest and forest conservation efforts in the county were commendable.

2. KFS was part of the county security committee and the police and the Kenya Forest Service worked together in conserving the forest.
3. The KWS ought to closely work with other stakeholders to ensure adequate protection and conservation of the Aberdare National Park which was within the Aberdare Forest.
4. The National Government had launched a tree planting exercise in the county and the county government provided 2 million tree seedlings for the exercise.

**Presentation by the Governor, Nakuru County, H.E Francis Kimemia**

He stated that:

1. There was need for regular stock taking (audit) at all the water points in the country to establish the adequacy or inadequacy of water resource in the country.
2. 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.
3. 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.
4. There was an urgent need for a well thought out and all-encompassing strategy on conservation and management of forest, water and other natural resources in the country. The Office of the President being represented to the village level ought to be at the centre of such a strategy.
5. There was need for closer consultations between the National Government and the Counties especially on issues of benefit sharing in respect of natural resources domiciled in each county. For instance he lamented that despite Nyandarua County being a major water bank for the country, the water was being supplied to other counties without ensuring that locals had the supply too.
6. There was need to compel the Ministry of Environment and Forestry to come up with a master plan on environmental conservation spanning at least 25 years in collaboration with all stakeholders; chief among them county governments.
7. There was need for the National Assembly to be a link to ensure the ministries responsible for agriculture, environment and water worked together to deal with environmental and natural resources matters since disjointed efforts would not yield desired results.
8. The county was not involved by the KFS in the reforestation exercise, tree harvesting activities taking place in the Aberdare forest and the proceeds from the activity were not being shared with the county

9. There was need for Kenya to take advantage and claim carbon credits to help in her efforts at forest and general ecosystem conservation. A system should be put in place to reward conservators and equally fine those who pollute and destroy the environment.

#### **Presentation by the Ecosystem Conservator, Nyandarua County, Ms. Jenniffer Situma**

She stated that:

1. The Kenya forest Service was the organization mandated to conserve, develop and sustainably manage forestry resources as per the Forest Conservation and Management Act, 2016.
2. Nyandarua County was one of the 47 counties in Kenya, located in central highlands Kenya. It borders Laikipia to the north; Nyeri to the East; Kiambu to the South; Muranga to the South East; and Nakuru to the west. The county has an area of 3,304KM, and is divided into five sub-counties (constituencies) namely: Kinangop, Kipipiri, Ol kalou, Ol Joro Orok and Ndaragwa and 25 wards.
3. Forests in Nyandarua County were part of the forest range that also covers Nyeri, Kiambu and Murang'a. The total gazzetted forest area in the county was 48,588 ha distributed in five forest stations which are 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 gazzetted representing 14.97% of the total land cover of Nyandarua County.
4. Other forests are fund 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.
5. 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 are Community Forest Association (CFA) members, are allocated plots through balloting where they cultivate crops while tending trees for approximately three years. The programme aims at improving 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 collaborates 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 is being supported by sustainable private forest management (SPFM) project, a German funded project.

6. There were however opportunities for improving performance including:
  - i) Existence of good cooperation & teamwork among stakeholders who play an important role in forest conservation and management;
  - ii) Elaborate legal framework;
  - iii) Existence of large areas of forest with planting backlog;
  - iv) Forest being managed in accordance with prepared management plans
  - v) High demand for raw materials
  - vi) Adoption of farm forestry practices and agroforestry practices technology by farmers.
7. Key success stories in forest conservation in Nyandarua County include:
  - i) Development of Nyandarua transition implementation plans (TIPs) which has been validated by stakeholders. Forestry functions have been devolved to the county government in alignment with the Constitution.
  - ii) Development and implementation of five plantation management plans for the five forest stations.
  - iii) Development and launch of participatory forest management plans (PFMP) and signing of forest management agreements (FMA) for South Kinangop, North Kinangop and Geta Forest station.
8. The main challenges hindering progress include:
  - i) Inadequate finances to carry out silvicultural operations;
  - ii) Skilled permanent labours charged with nursery maintenance are advanced in age and are retiring without replacement/recruitment. Temporary casuals are difficult to source due to the reduced rates and are unskilled;
  - iii) Inadequate Forest Guards to man all stations;
  - iv) Poor infrastructure development where some forest beats don't have rangers houses and the existing ones in poor condition;
  - v) Rejection of allocated materials by sawmillers due to poor quality;
  - vi) Lack of 4 wheel drive vehicles to access the unfavorable terrains which cannot be accessed by the currently available vehicles in the stations e.g Geta and N. Kinangop;

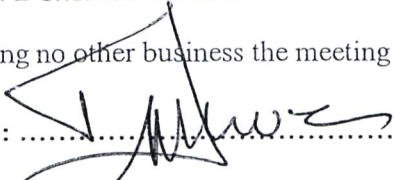
- vii) Farmers tree nurseries are not certified thus poor planting stock to farmers;
- viii) Debarking of young cypress plantation by Sykes Monkey at Geta and Ndaragwa forests
- ix) Pest damage to cypress species
- x) Illegal logging
- xi) Occurrences of forest fire.

**MIN.NO. DC/ENR/118/2018: - AERIAL INSPECTION VISIT TO THE ABERDARES FOREST**

The Committee did not proceed on an aerial inspection of the Aberdares Forest since the prevailing weather at the time would not allow overflying the Aberdares Ranges.

**MIN.NO. DC/ENR/119/2018: - ADJOURNMENT**

There being no other business the meeting was adjourned at 4.55 pm.

SIGNED:  .....

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

DATE:  .....

**MINUTES OF THE 23<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY 16<sup>TH</sup> MARCH, 2018 AT 9.30 AM IN THE OFFICE OF THE GOVERNOR, NAKURU COUNTY.**

**PRESENT**

1. **The Hon. Kareke Mbiuki, M.P.**                      **Chairperson**
2. The Hon. Charity Kathambi Chepkwony, M.P
3. The Hon. Beatrice Cheron Kones, M.P.
4. The Hon. Charles Ong'ondo Were, M.P.
5. The Hon. Hilary Kiplang'at Kosgei, M.P.

**APOLOGIES**

1. **The Hon. Sophia Abdi Noor, M.P.**                      **Vice Chairperson**
2. The Hon. Benjamin Jomo Washiali, M.P.
3. The Hon. Peter Kimari Kihara, M.P
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
6. The Hon. Hassan Oda Hulufu, M.P.
7. The Hon. Amin Deddy Mohamed Ali, M.P.
8. The Hon. Rozaah Buyu. M.P.
9. The Hon. David Kangogo Bowen, M.P.
10. The Hon. Francis Chachu Ganya, M.P.
11. The Hon. Ali Wario Guyo, M.P.
12. The Hon. Benjamin Dalu Tayari, MP
13. The Hon. Said Hiribae, M.P.
14. The Hon. Rehema Hassan, M.P.

**NAKURU COUNTY GOVERNMENT**

- 1.H.E. Lee Kinyanjui                      -                      Governor
- 2.Eng. Festus Ng'eno                      -                      CeC Member for Water, Environment, Energy and Natural Resources.

**THE NATIONAL ASSEMBLY**

- 1.Ms. Esther Nginyo                      -                      Third Clerk Assistant
- 2.Mr. Dennis M. Ogechi                      -                      Third Clerk Assistant
- 3.Mr. Joseph Okongo                      -                      Media Relations Officer
- 4.Ms. Winnie Kulei                      -                      Research Officer
- 5.Mr. Stanley Lagat                      -                      Serjeant-at-Arms
- 6.Mr. Simon Muinde                      -                      Audio Recording Officer

**AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Courtesy Call to the Governor, Nakuru County and Aerial Inspection Visit to the Mau Forest Complex.

- v) Any Other Business
- vi) Date of the next Sitting

**MIN.NO. DC/ENR/112/2018:**

**- PRELIMINARIES**

The meeting was called to order at 9.45 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was to pay a courtesy call on the governor, Nakuru County before embarking on an Aerial Inspection Visit to the Mau Forest Complex. The Governor welcomed the Committee to the County and then asked all those present introduced themselves.

**MIN.NO. DC/ENR/113/2018:**

**- COURTESY CALL TO THE  
GOVERNOR, NAKURU COUNTY AND  
AERIAL INSPECTION VISIT TO THE  
MAU FOREST COMPLEX.**

The Chairperson stated that the Committee had scheduled visits to the Mau Forest Complex and the Arberdare Forest to give it opportunity to interrogate issues of concern including: level of degradation, restoration efforts, and the balance between forest exploitation to meet the country's needs and conservation. He further noted that county governments were critical in forest conservation and management in the country, being a shared function between the two levels of government.

**Presentation by the Governor, Nakuru County, H.E Lee Kinyanjui**

He stated that:

1. There was need for a focused and fact oriented way of dealing with forest conservation issues.
2. The effects of damaging the country's environment were already being seen for instance: the erratic weather patterns including drought and flash floods.
3. The county, being the home to the Mau Forest Complex fully supported the logging moratorium. He however pointed out that the policy needed to be consistent and predictable for a conducive environment for investors in the sector. For instance there were investors who had invested billions and employed hundreds but had not been given a hearing before imposing the moratorium which put their businesses in jeopardy.
4. The effects of deforestation were directly felt in the counties but the authority over these forests was with the KFS at the national level. This should change such that the counties have a major stake in the management of their own resources (forests).
5. There was an urgent need to invest in the fencing of the Mau Forest Complex among other water towers. Equally surveillance by the KFS ought to be improved to curb the illegal logging menace. The critical water towers equally needed to be declared restricted areas.

6. There was need to have adequate, up-to-date scientific data of the country's tree cover in order to craft appropriate interventions to remedy the situation.
7. Nakuru County was in the process of planting trees and was working with farmers to plant fruit trees through its Agriculture Department. The county was targeting to plant 300,000 avocado seedlings in 2018.
8. There was need for harmonization of the Forest Conservation and Management Act, 2016 and the Wildlife (Conservation and Management) Act since in their current state; they were a major source of conflict in terms of functions.
9. Wasteful use of timber should be checked by encouraging recycling/reuse of timber or alternatives to timber especially in the construction industry. This can be done through legislation.
10. There was need to brand forest areas and make them recreational places too. Such branding would make them a key revenue source and enhance their protection as was the case with the Karura Forest.
11. There was 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. The situation currently left a lot of gaps in the management of the lakes.

**MIN.NO. DC/ENR/114/2018: - AERIAL INSPECTION VISIT TO THE MAU FOREST COMPLEX**

The Committee then made an aerial inspection of the Mau Forest Complex 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.

MIN.NO. DC/ENR/115/2018: - ADJOURNMENT

There being no other business the meeting was adjourned at 12.55 pm.

SIGNED:  .....

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

DATE: 10/04/2018 .....

**MINUTES OF THE 10<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 15<sup>TH</sup> FEBRUARY, 2018 AT 10.00 AM IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS.**

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**PRESENT**

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. Ali Wario Guyo, M.P.
6. The Hon. Beatrice Cherono Kones, M.P.
7. The Hon. Charity Kathambi Chepkwony, M.P
8. The Hon. Francis Chachu Ganya, 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.

**APOLOGIES**

1. The Hon. Rehema Hassan, M.P.
2. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

**THE NATIONAL ASSEMBLY**

- |                     |   |                         |
|---------------------|---|-------------------------|
| 1.Mr. Dennis Mogare | - | Clerk Assistant III     |
| 2.Mr. Salem Lorot   | - | Legal Counsel II        |
| 3.Ms. Winnie Kulei  | - | Research Officer III    |
| 4.Mr. Stanley Lagat | - | Sergeant-At-Arms II     |
| 5.Mr. Simon Muinde  | - | Audio Recording Officer |

**AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Legal Brief on Timber Harvesting and Ban on the Use, Manufacture and Importation of Plastic Bags Used For Commercial and Household Packaging.**
- v) Any Other Business
- vi) Date of the next Sitting

#### **MIN.NO. DC/ENR/041/2018: - PRELIMINARIES**

The meeting was called to order at 10.15 am after which prayers were said. The Chairperson stated that the main agenda of the meeting was a presentation by the Legal Counsel on Timber Harvesting and Ban on the Use, Manufacture and Importation of Plastic Bags Used for Commercial and Household Packaging. He, however, noted the Principal Secretary for the State Department of National Water Services had been scheduled to brief the Committee on the status of all water projects in the country but he could not attend due to the ongoing reorganization within the executive arm of government. He however pledged to provide a written submission to the Committee on the same.

The Members adopted the agenda of the meeting.

#### **MIN.NO.DC/ENR/042/2018: - CONFIRMATION OF MINUTES**

Minutes of the 1<sup>st</sup> Sitting held on Wednesday 20<sup>th</sup> December, 2017 were confirmed as a true record of deliberations after being proposed by Hon. Peter Kimari Kihara, M.P. and seconded by Hon. Nasri Sahal Ibrahim, M.P.

Minutes of the 2<sup>nd</sup> Sitting held on Tuesday 23<sup>rd</sup> January, 2018 were confirmed as a true record of deliberations after being proposed by Hon. Hassan Oda Hulufu, M.P. and seconded by Hon. Amin Deddy Mohamed Ali, M.P.

#### **MIN.NO.DC/ENR/043/2018: - BRIEF ON TIMBER HARVESTING**

##### **Presentation by the Legal Counsel**

In his presentation, he informed the Committee that:

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 exceeding 1 million or to imprisonment for a term not exceeding 3 years, or to both (section 64(3) of the Act).  
Any person who contravenes the provisions of section 61 shall be guilty of an offence and is liable on conviction to a fine not exceeding one million or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.
  7. Part IX of the Act provides for prohibited activities in forests. Section 64(a) prohibits a person from felling, cutting, taking, burning, injuring or removing any forest produce except under a licence or permit or a management agreement. Under section 64(f), a person shall not clear, cultivate or break up land for cultivation or for any other purpose. Section 64 (k) prohibits a person from possessing, bringing or introducing any chain saw or logging tools or equipment.
  8. The penalty for the offences listed in paragraph 8 is imprisonment for a term not exceeding 6 months or a fine not exceeding 100,000, or to both.
  9. Section 67(1) (e) of the Act provides for the offence of a person who makes or is found in possession of charcoal without a licence. The penalty is a fine not exceeding 50,000 shillings or to imprisonment for a term not exceeding 6 months, or to both. The provision states as follows—

*67. Other offences*

*(1) Any person who— (e) makes or is found in possession of charcoal in a national, county or provisional forest; or in community forest, private forest or farmlands without a licence or permit of the owner as the case may be: commits*

*an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.*

10. Section 67(3) of the Act provides as follows—

*67. (3) Any person who operates a sawmill in a manner contrary to that prescribed in rules made under this Act commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.*

11. Section 67 (8) (d) of the Act provides that any person who, in any forest area extracts, removes, or causes to be removed, any tree, shrub or part thereof for export commits an offence and is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment.

12. It should be noted that apart from the punishments provided in the Act for the various offences, the Act also provides for compensation for loss or damage. Section 68 of the Act provides for the following:

- 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.

13. The Forest (Charcoal) Rules, 2009 (although there is confusion as to whether they are Rules or Regulations since the title uses the term "Rules" whereas the citation reads "The Forest (Charcoal) Regulations, 2009"). The Rules/Regulations 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).
15. Regulation 14 provides for charcoal movement permit. A person is required to apply for it in order to move charcoal or charcoal products from one place to another. Regulation 17 provides for the requirement of a person or association exporting charcoal or charcoal products, from Kenya to obtain an export permit from the KFS. Regulation 18 provides for the requirement of a person or association importing charcoal or charcoal products, from Kenya to obtain an import permit from the KFS.
16. The penalty for contravening the provisions of the Regulations is a fine of not less than 10,000 shillings or an imprisonment for a term not exceeding 3 months.

#### **MEMBERS' OBSERVATIONS**

Members observed that:

1. The Kenya Forest Service was not committed to forest conservation efforts in the country. Instead it was involved in forest destruction in most instances.
2. The penalties meted out to rich individuals involved in forest destruction and illegal logging was not punitive enough to deter them. Hence need to review the Forest Conservation and Management Act (No. 34 of 2016) to ensure punitive fines are in place and clarify the roles of the Kenya Forest Service.
3. Destruction of forests along water towers had led to drying up of rivers in the affected regions threatening livelihood. There was need to ban timber harvesting and instead encourage tree farming until proper regulations on timber harvesting are put in place and the Kenya Forest Service reformed.
4. Saw millers in the country operated largely with impunity. There was need, therefore, to stipulate clearly in law the penalties to be meted out to the chief conservator for abdicating his role or being complacent in forest destruction.
5. There was need to visit areas most affected by logging and meet the Kenya Forest Service and the loggers to shed light on the menace and facilitate formulation of a way forward.

#### **RESOLUTION**

The secretariat to schedule visits to the Mau Forest Complex, Mt. Kenya Forest Reserve and the Aberdare Forest within the month of March, 2018 to assess the logging menace in those regions.

MIN.NO.DC/ENR/044/2018: - **BRIEF ON BAN ON THE USE, MANUFACTURE AND IMPORTATION OF PLASTIC BAGS USED FOR COMMERCIAL AND HOUSEHOLD PACKAGING**

**Presentation by the Legal Counsel**

In his presentation, he informed the Committee that:

1. Through Gazette Notice No. 2334 and 2356 dated 14th March 2017, the then Cabinet Secretary for Environment and Natural Resources, Prof. Judi Wakhungu, banned the use, manufacture and importation of all plastic bags used for commercial and household packaging. The ban was specific to carrierbag (bag constructed with handles, and with or without gussets) and flatbag (bag constructed without handles, and with or without gussets).
2. The Gazette Notice was to take effect 6 months from the date of the notice. The Notice thus took effect from August 2017.
3. NEMA, in a clarification dated 6th September 2017 indicated that all plastic carrier bags regardless of their thickness or colour used as secondary packages were banned with effect from 28th August 2017. However, they exempted flat plastic bags used for industrial primary packaging but after fulfilment of following criteria:
  - i) They are used for industrial primary packaging at the source of the product and it is not available on sale at the counter or given freely outside the industrial setting;
  - ii) The bags must be clearly labelled (printed) the name of the industry and product packaged. Clearance is required to be sought from NEMA.
4. The clarification also stated that the ban had not affected the following plastic materials:
  - i) Plastic sheets used for construction, greenhouses, covering, etc
  - ii) Cling film/ stretch films used for wrappings
  - iii) Bopp self-adhesive tapes
5. Finally, the clarification indicated that since the ban is intended to reduce the plastic pollution, NEMA requires the responsible persons for plastic materials exempted to avoid where necessary or take due diligence to segregate and direct all used plastics materials to recycling facilities and not to dump them together with general waste.
6. The penalty under section 144 of the Environmental Management and Coordination Act is as follows:
  - imprisonment (one to four years) or
  - a fine (two to four million shillings) or both
7. In the case of *Kenya Association of Manufacturers & 2 others v Cabinet Secretary - Ministry of Environment and Natural Resources & 3 others [2017] eKLR* the Petitioner

moved the Environment and Land Court of Kenya to seek conservatory orders to stay implementation of Gazette Notice Nos. 2334 and 2356 both dated 28th February 2017. Judge BM Eboso rejected the Motion for the following reasons:

- a) The application does not satisfy the criteria for grant of a conservatory order within the framework of Article 23 (3) (c) of the Constitution.
  - b) Grant of a conservatory order in the unique circumstances of this dispute would gravely undermine and derogate the precautionary principle which is a key pillar and legal tool in the country's environmental management framework.
  - c) Grant of a conservatory order in the circumstances of the present dispute would severely injure the public interest. Public interest in this regard is the general environmental welfare of the Kenyan people, which requires recognition and protection; the totality of their natural environment in which they collectively and individually have a stake which requires state protection.
8. The countries in Africa that have either banned plastics or imposed taxes on plastics are Mali, Cameroon, Tanzania, Uganda, Ethiopia, Malawi, Morocco, South Africa, Rwanda and Botswana. In Rwanda, it is illegal to import, produce, use or sell plastic bags and plastic packaging except within specific industries like hospitals and pharmaceuticals. Traffickers caught carrying illegal plastic are liable to be fined, jailed or forced to make public confessions. Smugglers can receive up to six months in jail. The executives of companies that keep or make illegal plastic bags can be imprisoned for up to a year.
9. Kenya had tried to ban plastic bags twice before, the first being in 2007 where the government issued a ban against plastic bags below 0.3 millimetres in thickness, (0.11 inches) which failed. Then in 2011 the National Environmental Management Agency declared a ban on plastic bags below 0.6 millimetres in thickness but it too was not widely implemented.

### MEMBERS' OBSERVATIONS

Members observed that:

1. They fully supported the ban on plastic bags although it did not follow the laid down procedure in the Statutory Instruments Act.
2. The ban was done via a gazette notice which can easily be annulled. There was therefore need to entrench the same in law. There was need to amend the Environmental Management and Coordination Act (EMCA), 1999 to provide for offences and seal other loopholes therein.
3. The implementation of the ban on plastic bags had become an avenue for corruption especially at boarder points. This involves the police and NEMA officers. There was therefore the need to ensure that the State Department for Environment works closely with county governments to ensure effectiveness of the ban.

**RESOLUTION**

The legal counsel, after considering best practices in the world, was tasked to draft amendments to the Environmental Management and Coordination Act (EMCA), 1999 to provide for:

- i) offences
- ii) The Ban on the Use, Manufacture and Importation of Plastic Bags Used for Commercial and Household Packaging and proposed ban on plastic bottles.
- iii) Exceptions to the ban

MIN.NO. DC/ENR/045/2018: - AOB

1. The Committee was informed of a correspondence from the Erdermann Property Limited on a complaint against environmental pollution by London Distillers Kenya Limited (LDK) and a response on the same from London London Distillers Kenya Limited.

**Resolution:** the secretariat to prepare a detailed brief on the correspondence to facilitate deliberation the way forward.

2. The secretariat was tasked with preparation of a breakfast meeting with the National Environmental Management Authority (NEMA) to deliberate on:
  - i) The challenges faced by NEMA in execution of its mandate.
  - ii) Any weaknesses in the legal regime NEMA operates under.
  - iii) The budgetary issues at NEMA.
3. The secretariat was tasked with preparation of a brief on the green program being run by the Kenya Bankers Association.

MIN.NO. DC/ENR/046/2018: ADJOURNMENT

There being no other business the meeting was adjourned at 12.11 pm.

SIGNED: ..... 

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

DATE: ..... 01/03/2018