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ACT NO. 17 OF 1998

Forestry Act 1998

An act to repeal and replace the law relating to the planting and preservation of forests; and to provide for the regulation and control of dealings in forest produce and the sustained management of forests and forest reserves; and for other matters connected therewith.

Enacted by the Parliament of Lesotho

PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Forestry Act, 1998 and shall come into operation on the date of its publication in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“Chief” means a chief as defined by section 2 of the Chieftainship Act, 1968¹ whose district, ward or area of jurisdiction includes the whole or part of a forest reserve or a private forest or a co-operative forest;

“Chief Forestry Officer” means the person appointed as such under section

4 of this Act;

Community forest” means a forest declared as such under section 17 of this Act;

“Co-operative forest” means a forest declared as such under section 17 of this Act;

“forest” means any existing area of land under section 11 and any new areas of land used for forestry, or declared for forestry use, under sections 12, 13 and 14 of this Act;

Forest Management Plan” means an operating plan prescribed for a particular forest reserve to secure the orderly taking, renewal and conservation of trees in accordance with the principle of sustained yield;

“forest produce” means —

- (a) anything which is produced by trees or is grown or grows in a forest including trees, timber, wood, firewood, poles, laths, branchwood, slabs, chips, sawdust, charcoal, plants, grass, reeds, thatch, rushes, peat, creepers, leaves, moss, humus, flowers, ferns, fruit, seeds, roots, bulbs, spices, bark, rubber, latex, gum, oleoresin, sap, essential oils; and
- (b) game, birds, skins, fish, honey, wax, bees and any other things naturally found in or obtained from a forest reserve;

“forest reserve” means a forest reserve declared as such under section 12 or continued under section 11 of this Act;

“Forestry Department” means a department of the Government charged with the responsibility of administering forestry affairs including this Act;

“Forestry Officer” means an officer appointed in terms of section 4 of this Act and includes an honorary forestry officer;

“Forestry Division” refers to the forestry division created under the Forest Act 1978²;

“land authority” means the authority entitled to exercise the power to allocate land or to make grants of interest or rights in or over land in Lesotho in terms of any law;

“licence” means a licence or permit issued under this Act;

“livestock” means cattle, horses, donkeys, mules, pigs, sheep and goats;

“Minister” means the Minister responsible for forestry;

“Principal Secretary” means the Principal Secretary of the Ministry of Agriculture;

“private forest” has the meaning assigned to it in section 17 of this Act;

“tree” includes any seedlings, sapling, transplant or coppice shoot of any age;

“working day” means any day other than Saturday, Sunday or a gazetted public holiday.

PART II TREE TENURE

Tree tenure

3. (1) Notwithstanding any rule of customary or common law or any legislation to the contrary, individuals, groups of individuals, communities, organisations or cooperatives or their assigns or successors, as the case may be, who plant and grow a tree on land lawfully held by such individuals, groups of individuals, communities, organisations or cooperatives, as the case may be, shall own that tree and shall have all other rights of ownership in that tree subject to the provisions of this Act.

(2) Notwithstanding any rule of customary, common law or any legislation to the contrary, ownership of trees not covered by subsection (1) of this section, shall vest in the State and it shall be lawful for the Minister to transfer such ownership to individuals, groups of individuals, communities, organisations or cooperatives, as the case may be, on such terms as he may deem fit.

PART III ADMINISTRATION

Appointment of officers

4. (1) The Public Service Commission shall appoint a Chief Forestry Officer and as many Forestry Officers and other officers as may be considered necessary for the purposes of this Act.

(2) The Minister may designate a person as an honorary forestry officer to exercise the powers and perform the duties of a forestry officer in terms of this Act.

(3) All officers of the Forestry Division holding office at the date of commencement of this Act shall be deemed to have been appointed under this Act without prejudice to their existing entitlements.

Duties of Chief Forestry Officer

5. The duties of the Chief Forestry Officer shall include -

- (a) the conservation, management and establishment of forests;
- (b) the demarcation and maintenance of forest boundaries;
- (c) the issuance of licences and permits for the harvesting of trees and other forest produce in forest reserves;
- (d) the protection and preservation of water resources in forest reserves, private forests, co-operative forests and along streams and the rivers in co-operation with the relevant water affairs authority;
- (e) the promotion of the practice of forestry and agroforestry in the agricultural, pastoral and other areas in conjunction with the relevant divisions of the Ministry of Agriculture and the encouragement of proper forestry practices and management on private land through advice and assistance;
- (f) the promotion of proper forest conservation practices;

- (g) the survey, establishment, management, development and administration of forest reserves;
- (h) the maintenance of biological diversity in forests;
- (i) the training of staff and other relevant individuals or groups under the Act;
- (j) the promotion and implementation of educational programmes to improve understanding of the contribution of forests to national well-being and economic development;
- (k) advising the Minister on orderly and progressive de-gazetting of forest reserves and government-owned or government-run forest enterprises;
- (l) the discharging of any other functions or duties that may be assigned or prescribed under this or any other Act.

Delegation of duties

6. The Chief Forestry Officer may, subject to such conditions as he may specify, delegate any of his duties under this Act, to any forestry officer.

Forestry Fund

7. (1) The existing Forest Fund created by the Forest Fund Regulations, 1983¹, shall be redesignated as the Forestry Fund and its control and administration shall be transferred to the Principal Secretary.

(2) All fees, monies and fines collected under this Act, as well as, any voluntary contributions shall be paid into the Forestry Fund.

(3) The Principal Secretary shall administer the Forestry Fund and shall keep proper accounts and other records in respect with the operations of the Fund.

(4) As soon as possible after the close of the financial year, but not later than three months thereafter, the Principal Secretary shall submit to the Accountant General accounts of the Fund including -

(a) a statement of receipts and payments for the period of the financial year;

(b) such other statements as may be prescribed in the Regulations.

(5) The Ministry of Finance shall cause the accounts of the Fund to be audited annually by the Auditor-General.

(6) The proceeds of the Fund shall be used for the establishment and sustained management of forests and forest research, and in part particular, for —

(a) payments agreed to with the representatives of a community in terms of a written contract;

(b) assistance to owners of private, community or cooperative forests in accordance with section 17 of this Act;

(c) to defray the cost of reforestation conducted by the Forestry Division or by a person or an entity, who is not required to reforest under

this Act;

- (d) to provide subsidies, seedlings, technical assistance and other incentives as may be specified in Regulations made under this Act to a person or an entity wishing to establish forests in accordance with this Act.

PART IV FOREST MANAGEMENT

Management objectives

8. (1) The Chief Forestry Officer shall manage the gazetted forests and indigenous forests in Lesotho to obtain the maximum benefits in the form of forest production, environmental conservation and other economic uses that can be sustained over time.
- (2) The Chief Forestry Officer shall be entitled to advise the owners of any private, community or co-operative forests to adopt scientifically sound management practices.
- (3) For this purpose, the Chief Forestry Officer shall compile and keep under constant review an inventory of forest and forest produce in Lesotho.

Forestry Sector Plan

9. (1) The Chief Forestry Officer shall prepare a draft Forestry Sector Plan and submit it to the Minister for approval.
- (2) In preparing the draft plan, the Chief Forestry Officer shall take into account the views of the Ministry of Planning, the Department of Water Affairs and the Lesotho National Environment Protection Agency. The Plan shall be available to members of the public for comments, if any.
- (3) The Forestry Sector Plan shall —
 - (a) describe the forests in the State sector including indigenous forests and forests created by “*matsema*” on the basis of the latest inventory and other relevant information;
 - (b) assess the present and future demands for forest produce having regard to the need to protect the environment and to fulfill the economic development objectives that may be specified to the Chief Forestry Officer;
 - (c) specify the nature, extent and kind of permissible harvesting, post-harvesting, planting and processing practices in a forest; and
 - (d) prepare a budget for sustainable development of the forestry sector.
- (4) The Chief Forestry Officer shall prepare a report in each calendar year reviewing the implementation of the Forestry Sector Plan and propose any revisions to the plan that, in the light of the experience, may have become necessary.
- (5) Any substantial revision of the plan shall be in accordance with subsection (2) of this section

- (6) The Chief Forestry Officer shall submit the report referred to in subsection (4) to the Minister.

Power to collect information

10. (1) For the purposes of preparing a Forestry Sector Plan, the Chief Forestry Officer shall have the authority to collect relevant information on forests and forestry resources from any person or institution, whether public or private.
- (2) Any person or institution, whether public or private, that does not, within 60 days of a written request under subsection (1) of this section, provide information requested by the Chief Forestry Officer, commits an offence and on conviction shall be liable to a fine not exceeding M5 000.
- (3) If the information sought by the Chief Forestry Officer under subsection (1), from any person or institution is regarded by that person or institution as confidential, then the matter shall be referred to the Minister.

PART V

FOREST RESERVES, PRIVATE FORESTS AND COOPERATIVE FORESTS

Existing forest reserves

11. (1) All forest reserves established under the Forest Act, 1978, and listed in Schedule' shall be deemed to be forest reserves established under this Act.
- (2) The Chief Forestry Officer shall manage the forest reserves either through the Forestry Department or under written arrangements under which individuals, groups of individuals, communities, organisations or cooperatives as the case may be, are entrusted with the responsibility to manage the forest reserves in terms of a plan approved by the Chief Forestry Officer.
- (3) The Chief Forestry Officer, after consulting the appropriate Local Authority, shall advise the Minister on the transfer of ownership, control and management of any forest reserve to individuals, groups of individuals, communities organisations or cooperatives, as the case may be, by notice published in the Gazette, when, in his opinion, such individuals, groups of individuals, communities, organisations or cooperatives, as the case may be, have the required resources and management expertise in this regard.
- (4) The transfer shall be embodied in a written agreement that shall be binding on both the parties and shall provide that the Minister shall have a right to reclaim the forest reserve if the said agreement is breached materially.
- (5) The Minister may, by notice published in the Gazette, amend the Schedule referred to in subsection (1).

Declaration of forest reserves on the request of land authority

12. (1) Upon a written request by the appropriate Local Authority for the establishment of a forest reserve on land within its area of jurisdiction,

the Minister may direct the Chief Forestry Officer to carry out, or cause to be carried out, an examination of the land concerned and report on its suitability and financial viability as a forest reserve.

- (2) If the report is favourable to the establishment of a forest reserve, the Minister may, by notice published in the Gazette —
 - (a) declare the area of land concerned to be a forest reserve from a specified date;
 - (b) specify the boundaries and extent of the forest reserve; and
 - (c) specify rights and obligations of the Local Authority in such reserve.
- (3) After the publication of the notice in the Gazette, the Chief Forestry Officer shall cause to be posted in prominent positions on or near the boundaries of the land specified in the Gazette notices drawing attention to the fact that it has been declared a forest reserve.

Declaration of forest reserves on State land

13. The Minister may, by notice published in the Gazette, declare any land held by the State to be a forest reserve after due consultations as may be required under the Land Act, 1979⁴, or any other law.

Map or plan for each forest reserve

14. (1) The Chief Forestry Officer shall cause a map or plan of each forest reserve to be prepared and such map or plan shall be deposited in the office of the Commissioner of Lands where it shall be made available for public inspection on request.
- (2) Copies of the map or plan shall be made available on payment of a prescribed fee.

Classification of reserves

15. (1) The Minister may, by notice published in the Gazette, classify forest reserves as production or protection reserves.
- (2) Production reserves shall be maintained for the primary purpose of

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