

THE FORESTS ACT, 1999

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GOVERNMENT OF ZAMBIA

ACT
No. 7 of 1999

Date of Assent: 4th October, 1999

An Act to establish the Zambia Forestry Commission and define its functions; to provide for the establishment of National Forests, Local Forests and joint forest management areas; to provide for the participation of local communities, traditional institutions, non-governmental organisations and other stakeholders in sustainable forest management; to provide for the conservation and use of forests and trees for the sustainable management of forest ecosystems and biological diversity; to provide for the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the Convention on Wetlands of International Importance Especially as Water Fowl Habitat, the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa; to repeal the Forests Act, 1973; and to provide for matters connected with or incidental to the foregoing.

[8th October, 1999]

Enactment

ENACTED by the parliament of Zambia.

PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Forests Act, 1999, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Interpretation

2. In this Act, unless the context otherwise requires-

“appointed date” means the date appointed by the Minister under section *one*;

“biological diversity” means the variability among living organisms from all sources including, inter alia, genetically modified living organisms, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part;

“Commission” means the Zambia Forestry Commission established under section *four*;

“Committee” means the Forest Management Committee constituted under section *twenty-six*;

“concession” means a concession licence issued under section *forty-three*;

“convert” means to carry out the process of converting wood into any kind of product, and “conversion” shall be construed accordingly;

“coupe” means any site or area for the cutting, felling or taking of forest produce, whether the boundaries thereof are demarcated on the ground or not;

“Court” means a subordinate court or the High Court;

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“customary areas” has the meaning assigned to it under section *two* of the Lands Act;

“demarcated forest” means a National Forest, a Local Forest, a joint management forest area and a forest plantation;

“Director-General” means the Director-General of the Commission appointed under section *six*;

“domestic animal” includes a horse, donkey, mule, camel, cow, sheep, pig, goat or domestic fowl;

“ecosystem” means a dynamic complex of living organisms and their non-living environment interacting in a functional unit;

“firewood” means all woddy parts of a tree which cannot be converted into timber or poles but can be cut into short lengths for use as fuel;

“flora” means all plants and parts thereof in a particular area;

“Forest Department” means the Forest Department of the Government;

“forest development fund” means the fund constituted by the Commission under section *five* comprising revenue from the forest revenue fund and any other source to support wood processing industries and other programmes in the forest sector;

“forest offence” means an offence under this Act;

“forest officer” means the Director-General of the Commission or any other officer appointed by the Commission under section *eight*;

“forest produce” includes plant, timber, bamboos, bark, bedding, bees, honey, beeswax, boards, branchwood, canes, charcoal, chips, climbers, cones, coppice, creepers, fibres, flowers, fruits, fuelwood, fungi, algae, gills, grass, gums, hives, lichens, litter, logs, moss, nursery plants, peat, planks, poles, reeds,

resin, roots, rubber, rushes, sand, sap, sawdust, scantlings, seed, seedlings, slabs, soils, stumps, thatch, thinnings, trees, vegetable-derived oils, vegetable-derived tar and wood spirits;

“Forest Revenue Fund” means the fund established by the Commission under section *five* for revenue received from forest produce under this Act;

Act No. 12 of 1998

“Game Management Area” means an area of land declared a Game Management Area under the Zambia Wildlife Act;

“honorary forest officer” means the person appointed honorary forest officer under section *eight*;

“indigenous forest” means any forest which naturally grows or regenerates in a particular area;

“joint forest management” means the participation of stake-holders in the sustainable management of forest resources and the sharing of benefits derived therefrom;

“joint forest management area” means an area declared a joint forest management area under section *twenty-five*;

“law enforcement officer” means an officer in the Zambia Police Force, a wildlife police officer, an officer of the Anti-Corruption Commission or an officer of the Drug Enforcement Commission;

“licence” means a permit or authorization in writing issued by the Commission under this Act, and “licensee” shall be construed accordingly;

“local authority” means a city council, municipal council, township council or district council within the meaning of the Local Government Act;

Cap. 281

“local community” means the residents within or adjacent to a Local Forest, Joint Forest Management Area or open area who by virtue of their rights over land including customary land tenure invest in and derive benefits from the sustainable utilisation of forest resources in their area;

“Local Forest” means any area declared to be a Local Forest under section *seventeen*;

“major forest produce” means any tree or part thereof other than leaves, flowers, fruits and seeds;

“member” means a member of the Commission appointed under paragraph 1 of the First Schedule;

“minor forest produce” means non-wood forest-produce which is part of a tree or found on its own in the forest;

“National Forest” means any area declared to be a National Forest under section *nine*;

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“national monument” means heritage declared a national monument under the National Heritage and Conservation Commission Act;

“National Park” means an area declared a National Park under the Zambia Wildfire Act;

Act No. 12 of 1998

“open area” means an area outside Local Forests, National Forests, National Parks, Game Management Areas and National Monuments;

“pole” means all sound and reasonably straight parts of a tree which are one point two metres or more long and which are not more than thirty centimetres or less than five centimetres in maximum diameter over bark, unless otherwise specified on any licence;

“protected flora” means any kind or category of flora declared to be protected under section *thirty-six*;

Cap. 464

“public road” means any road of a class described in section *three* of the Roads and Road Traffic Act;

Cap. 453

“rail reserve” means the area of land approved for the construction or operation of a railway under the Railway Act;

Act No. 39 of 1973

“repealed Act” means the Forest Act 1973;

“river” includes lakes, streams, canals and other channels whether natural or artificial;

“saw” includes a hand tool having a toothed blade or any power driven device with rotating disk or moving band, used for cutting wood;

“sawmill” means a factory where wood is processed mechanically into planks or boards using a saw;

“Secretary” means the Secretary of the Commission appointed under section *seven*;

“stakeholder” means a person or group of persons with interest in the utilisation and management of forests;

“State Lands” means all lands in Zambia other than customary areas, National Forests and Local Forests and land the freehold or leasehold which is vested in any person;

“traditional authority” means a Chief recognised under the Chiefs Act or a traditional institution;

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“traditional institution” means any institution recognised under African Customary law to service the Chief or local community in any area;

“timber” unless otherwise defined on any licence, means the part of any felled or fallen tree which has been cut off, or can be cut off, to provide wood whether sawn, split, hewn, sliced, veneered or otherwise fashioned, which is sound and reasonably straight, and which is one point two metres or more long and thirty centimetres or more in minimum diameter under bark; and

“trees” includes bushes, climbers, coppice, palms re-shoots, saplings, seedlings and shrubs of all ages and of all kinds and any part thereof.

Ownership of trees and forest produce

3. The ownership of all trees standing on, and all forest produce derived from, customary areas, National Forests, Local Forests, State Lands and open areas is vested in the President on behalf of the Republic, until lawfully transferred or assigned under this Act or any other written law.

PART II

THE ZAMBIA FORESTRY COMMISSION

Establishment of Commission

4. (1) There is hereby established the Zambia Forestry Commission which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to this Act, to do all such acts and things as a body corporate may by law do or perform.

(2) The First Schedule applies to the Commission.

Functions of Commission

5. (1) Subject to the other provisions of this Act, the functions of the Commission shall be to do all such things as are necessary, for the rationalisation of the exploitation of forest resources and the maintenance of sustainable forest management.

(2) Without prejudice to the generality of subsection (1), the functions of the Commission shall be to—

- (a) advise the Government on areas required to be protected as National Forests, Local Forests or by other means of protection;
- (b) control, manage, conserve, and administer National Forests and Local Forests;
- (c) adopt and promote methods for the sustainability, conservation and preservation of ecosystems and biological diversity in National Forests, Local Forests and open areas;
- (d) collect, compile and disseminate information on forest resource in an area and advise on areas requiring afforestation and protection of flora threatened or in danger of extinction;
- (e) establish and promote the establishment of forest plantation;
- (f) devise and implement participatory forest management approaches, for both indigenous forest and forest plantations, involving local communities, traditional institutions, non-governmental organisations and other stakeholders, which will be based on equitable gender participation;
- (g) develop and implement public education programmes on various aspects of forestry including indigenous knowledge on sustainable use and conservation of forestry resources to ensure better appreciation, management and utilisation of forest resources;
- (h) conduct or support studies on national forest resource requirements and devise the best methods for meeting the demand of the multiple users of forest resources, in an integrated manner compatible with sustainable use and conservation of biological diversity;
- (i) undertake and support adaptive research and development of forest resource management, farm forestry, agroforestry, agriculture and forest products at national, regional and local levels;
- (j) in partnership with local communities, forest management committees, traditional institutions and the private sector, develop and implement management plans for National Forests, Local Forests and open areas;
- (k) issue licences and permits under this Act;
- (l) devise methods for the sharing of costs and benefits from moneys obtained from licences, permits and concessions with local communities and traditional institutions;
- (m) establish a Forest Revenue Fund comprising of moneys obtained from licences and permits issued, concessions granted and services rendered in connection with forest produce;
- (n) establish a forest development fund for the promotion and support of wood processing industry, afforestation and reforestation programmes within the forest sector;
- (o) advise the Minister on regulations required to ensure the conservation and sustainable use of forest resources;

- (p) pay out such money from a forest revenue fund into a fund established by a Joint Forest Management Committee from the use of forest resources within an area of a Committee as the Minister shall prescribe by regulations after consultations with the Commission;
- (q) develop mechanisms for monitoring and evaluating forest resources in the Republic;
- (r) develop mechanisms for monitoring the use of forest resources and developments in the forest sector;
- (s) promote the sustainable utilisation of forest resources for the development of the national economy;
- (t) purchase any land for the purposes of this Act;
- (u) establish and operate effective and systematic management of financial, human and natural resources for the conservation and sustainable use of forest resources and the conservation of biological diversity; and
- (v) register private forest plantations.

(3) The Commission may, subject to such terms and conditions as it may consider fit, delegate in writing any of its functions under this Act to any committee of the Commission, the Director-General, any member or to the Secretary.

(4) The Minister may give to the Commission such general or special directions with respect to the discharge of its functions as the Minister may consider necessary and the Commission shall give effect to such directions.

Director-General

6. (1) The Commission shall, with the approval of the Minister, appoint a Director-General who, subject to the control of the Commission, shall be the chief executive of the Commission and shall be responsible for the general administration of the affairs of the Commission.

(2) The terms and conditions of service of the Director-General shall be determined by the Commission with the approval of the Minister.

(3) The Director-General shall attend the meetings of the Commission and may attend any meeting of any committee established by the Commission and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director-General to withdraw from the meeting.

(4) The provisions of paragraph 7 of the First Schedule shall apply, with necessary modification, to the Director-General.

Secretary and other staff of Commission

7. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission, on such terms and conditions as the Commission may, with the approval of the Minister, determine.

(2) The Secretary shall be responsible for the administration of the day to day affairs of the Commission under the general supervision of the Director-General.

(3) The Commission may appoint such other staff as it considers necessary for the performance of its functions under this Act on such terms and conditions as the Commission may, with the approval of the Minister, determine.

Appointment of forest officers and honorary forest officers

8. (1) The Commission shall appoint such number of forest officers as are necessary or conducive to the better performance of its functions under this Act.

(2) The Commission shall, with the approval of the Minister, determine the terms and condition of service of the forest officers appointed under subsection (1).

(3) A forest officer shall perform the functions specified by or under this Act or as are assigned to the officer by the Director-General.

(4) The Commission may, by *Gazette* notice, appoint any person to be an honorary forest officer for a period not exceeding three years and may in the like manner renew such appointment.

(5) The Commission may, by *Gazette* notice, revoke any appointment made under subsection (4).

(6) The appointment of an honorary forest officer may be—

- (a) general so as to empower the honorary forest officer to perform functions in any part of the Republic including any National Forest or Local Forest; or
- (b) limited so as to empower the honorary forest officer to perform functions in a part of the Republic or in a National Forest, Local Forest or other area specified in the notice of appointment.

(7) Subject to the provisions of this Act and the terms of the notice of appointment, an honorary forest officer shall discharge the functions and perform the duties of a forest officer, except the executive functions of the Director-General.

PART III

NATIONAL FORESTS

Establishment of National Forest

9. (1) Subject to the provision of subsection (2), the President may, by statutory instrument, declare any area of land within the Republic to be a National Forest and may in like manner declare that any National Forest or part thereof shall cease to be a National Forest or that the boundaries of any National Forest shall be altered or extended.

(2) Where any area proposed to be declared to be a National Forest under subsection (1) lies within the jurisdiction of a local authority, it shall not be declared to be a National Forest unless the local authority has been consulted.

Continuation of existing National Forest

10. Notwithstanding the provisions of this Act, an area declared a National Forest under the repealed Act shall continue to exist as if declared a National Forest under this Act.

Acquisition of land for National Forest Cap. 189

11. The President may, on the recommendation of the Commission, by compulsory acquisition under the Lands Acquisition Act, acquire any land for the purposes of a National Forest, as may be necessary or desirable in the public interest so to do.

Purpose of National Forest

12. Subject to the other provisions of this Act, all land comprised in a National Forest shall be for-

- (a) security of forest resources of national importance;
- (b) the conservation of ecosystems and biological diversity;
- (c) improved forest resource management and sustainable utilisation of forest resources; and
- (b) the management of major water catchments and head waters, subject to any other written law.

Rights in National Forest

13.(1) The President may, if satisfied that any right, easement or profit may reasonably be claimed over any area declared or recommended to be declared a National Forest under section *nine*, direct the Commission to enquire into and determine the existence, nature and extent of such rights, easements or profits.

(2) The Commission may, after proper inquiry, either admit in whole or in part, or reject any claim referred to in subsection (1), as seems just in the circumstances.

(3) For the purposes of this section, the practice of shifting cultivation including fallow stage or previous settlement shall not be deemed to be a right.

(4) Subject to subsection (5), where it appears to the Commission that it is expedient or desirable to commute, in whole or in part, any right, easement or profit admitted under subsection (2), the Commission shall assess the amount of money payable to the holder of such right, easement or profit.

(5) Notwithstanding subsection (4), no amount shall be payable on account of any restriction or prohibition imposed in the interest of forest management or in exercise or enjoyment of any right, easement or profit relating to the collection of forest produce, hunting, fishing, setting any trap, obstructing any river, pasturing any domestic animal or lighting any fire.

(6) Where any rights, easements or profits over an area have been admitted under subsection (2) and the Commission is of the opinion that such area could be excised in whole or in part from the National Forest or an area recommended to be declared a National Forest without materially affecting the proposed management of the forest, the President may so alter the boundaries of the National Forest or an area recommended to be declared a National Forest as to exclude from it such area or part of such area.

(7) The rights, easements or profits which have been admitted under subsection (2) and which have not been commuted under subsection (4) shall, unless the area on, or in relation to, which such rights, easements or profits have been admitted as being excluded from the National Forest under subsection (6), be specified in a statutory instrument, and except for the rights, easements or profits, shall be recognised on or in relation to any land comprised in a National Forest.

(8) Notwithstanding anything to the contrary contained in this Act, the Commission shall not prohibit or restrict the exercise or enjoyment of any rights, easements or profits specified in a statutory instrument made under subsection (7).

Control and management of National Forests

14. Subject to the other provisions of this Act, the Commission shall be responsible for the control and management of National Forests.

Grant of right, title or interest in National Forest

15.(1) Nothing in this Act shall be construed as to prevent or restrict the granting, under any other written law, for any purposes not inconsistent with the provisions of this Act, of any right, title or interest in or in relation to any area of land comprised in a National Forest, subject to any conditions which the Commission, in consultation with the Minister, may impose.

Cap. 204

(2) The conditions imposed by the Commission under subsection (1) shall take into account the provisions of the Environmental Protection and Pollution Control Act.

Restrictions in National Forest

16.(1) Subject to subsection (2), no person shall without a licence issued by the Commission enter any National Forest.

(2) Subsection (1) shall not apply to a person who is a traveller on a public road.

(3) Any person who contravenes subsection (1) shall commit an offence.

PART IV
LOCAL FOREST

Establishment of Local Forest

17.(1) Subject to the provisions of subsection (2), the President may, by statutory instrument, declare any area of land within the Republic to be a Local Forest and may in like manner declare that any local forest or part thereof shall cease to be a local forest or that the boundaries of any such forest shall be altered or extended.

(2) Where any area proposed to be declared a Local Forest under subsection (1) lies within the jurisdiction of a local authority, it shall not be declared to be a Local Forest unless the local authority has been consulted.

Continuation of existing Local Forest

18. Notwithstanding the provisions of this Act, an area declared a Local Forest under the repealed Act shall continue to exist as if declared a Local Forest under this Act.

Acquisition of land for Local Forest Cap. 189

19. The President may, on the recommendation of the Commission, by compulsory acquisition under the Lands Acquisition Act, acquire any land for the purposes of a Local Forest as may be considered necessary or desirable in the public interest so to do.

Purpose of Local Forest

20. Subject to the other provisions of this Act and of any other written law, all land comprised in a Local Forest shall be used for the conservation and development of forests for—

- (a) security of forest resources;
- (b) the protection of ecosystems, particularly the protection of land and water supplies of local strategic importance;
- (c) improved forest resources management and sustainable utilisation of forest resources at local level; and
- (d) meeting the social, cultural and economic needs of the local community.

Rights of Local Forest

21. Section *thirteen* shall, with necessary modifications, apply to a Local Forest.

Control and management of Local Forests

22. Subject to the other provisions of this Act, the Commission shall be responsible for the control and management of a Local Forest;

Provided that the Minister may, by statutory instrument, on the recommendation of the Commission after consultation with a local community in the area, assign the control and management of a Local Forest to a local community, traditional authority or joint Forest Management Committee, subject to such terms and conditions as the Minister may determine.

Grant of right, title or interest in Local Forest

23. Section *fifteen* shall, with necessary modifications, apply to a Local Forest.

Restrictions in Local Forest

24.(1) Any person who, without a licence issued by the Commission does any of the following acts in a Local Forest—

- (a) fells, cuts, fashions, burns, injures, takes, collects or removes any forest product;
- (b) squats, camps, resides, builds or excavates, constructs or uses any enclosure or constructs, reopens or uses any road other than a public road, or erects or operates any plant, machinery or equipment;
- (c) sets fire to any tree, undergrowth, grass or forest produce, or assists in lighting any fire, or allows any fire lit by any person or the employees or agents of that person to enter a Local Forest;
- (d) grazes domestic animals or allows domestic animals to trespass;
- (e) clears, cultivates or breaks up land for cultivation or other purposes, or grows crops;
- (f) enters or is found in or upon any Local Forest in any manner or for any purpose contrary to an order made by the Commission and published in the *Gazette*, unless the person is a traveller on a public road;
- (g) collects any bees, comb, honey or beeswax, or hangs or places on any tree or elsewhere any beehive or other receptacle for the purpose of obtaining any comb, honey or beeswax, or is found in or upon any Local Forest for the purpose of collecting any bees, comb, honey or beeswax;
- (h) removes or damages any boundary mark, beacon, notice, fence or gate, or removes or damages any mark placed on any tree by or on the authority of a forest officer; or
- (i) deposits or negligently allows to fall over or on such Local Forest, any refuse or debris;

commits an offence.

(2) Notwithstanding subsection (1) the Minister may, by statutory instrument, on the advice of the Commission, permit the doing of any acts described in that subsection, in a Local Forest.

PART V
JOINT FOREST MANAGEMENT

Declaration of Joint Forest Management Area

25.(1) The Minister may, on the recommendation of the Commission, local community or owners or occupiers of an area in a forest, declare by statutory instrument any Local Forest, forest plantation or open area, a Joint Forest Management Area.

(2) Any area proposed to be declared a Joint Forest Management Area under this section shall not be so declared unless the local community has given consent.

Forest Management Committee

26.(1) The Commission may in consultation with a local community living in or adjacent to a Joint Forest Management Area and with the approval of the Minister, constitute a Forest Management Committee for that Area which shall comprise the following members—

- (a) one person who shall be appointed by the Chief in that area to represent the Chief;
- (b) a representative of the Commission;
- (c) three persons representing the villagers in that area elected by the villagers;
- (d) one representative of the local authority in the area;
- (e) one representative of holders of licences under this Act in that area;
- (f) a representative of the Department of Agriculture;
- (g) a representative each from the Department of Water, Lands and Fisheries; and
- (h) a representative of the Zambia Wildlife Authority.

(2) The Chairperson and Vice Chairperson of a Committee shall be elected by the members from amongst themselves.

(3) A Committee constituted under this section may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Committee but such person shall have no vote.

(4) A member of a Committee constituted under this Act shall hold office for a period of three years and may be re-appointed for a further like period.

(5) The Minister may dissolve a Forest Management Committee constituted under this section if satisfied that the Committee—

- (a) has mismanaged the finances of the Committee;
- (b) has failed to render a report to the Commission or has misrepresented facts in a report submitted under section *twenty-eight*; or
- (c) is engaged in activities inconsistent with the functions of the Committee specified in section *twenty-seven*.

Functions of Forest Management Committee

27.(1) The functions of a Committee shall be to manage and develop the Joint Forest Management Area and distribute the benefits amongst the local communities.

(2) Without prejudice to the generality of subsection (1) a Committee shall have power to—

- (a) develop and implement, in consultation with the Commission, management plans for the Joint forest Management area aimed at reconciling the various uses of land in that area;
- (b) negotiate, in conjunction with the Commission Co-Management Agreements with other stakeholders; and
- (c) perform such other functions as the Commission or the Director-General may delegate to it.

(3) The development and implementation of management plans in a Joint Forest Management Area shall be in accordance with such regulations as the Minister may, in consultation with the Commission, prescribe.

Financial provisions

28.(1) Subject to the other provisions of this Act, a percentage of the revenues payable under this Act as determined by the Commission, in respect of licences issued, concessions granted or services rendered from the use of forest resources within a Joint Forest Management Area shall be payable to a fund set up by a Committee for this purpose.

(2) There shall be paid out of the funds of a Committee such money as may be required to meet the cost of technical and administrative services including that provided by the Commission.

(3) There shall be paid into the funds of a Committee such moneys as the Committee may, with the approval of the Commission, accept by way of grants and donations from any source within and outside Zambia.

(4) A Committee shall cause to be kept proper books of account and other records relating to its accounts.

(5) The accounts referred to in subsection (3) shall be opened for inspection by the Commission, the Director-General and any member from that local community.

(6) A Committee shall, not later than one hundred and eighty days after the end of the financial year, submit to the local community and to the Commission, through the Director-General-

- (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and
 - (c) a report concerning its activities during that financial year.
- (7) Any person who misuses any money belonging to a Committee shall be liable to a surcharge.

PART VI

MANAGEMENT PLANS AND CONSERVATION ORDERS

Preparation of management plans

29.(1) The Commission, in consultation with a local authority, local community, traditional authority, Committee and any other stakeholders in the area shall cause to be prepared a management plan for each National Forest, Local Forest or Joint Forest Management Area or forest plantation according to the purposes for which they are established under this Act.

(2) A management plan shall—

- (a) include such maps and descriptive matter as may be necessary to illustrate the proposals in the management plan;
- (b) provide for all the matters referred to in the Second Schedule as may be necessary for the purposes of this Act; and
- (c) state the institution or authority responsible for the actions necessary to implement management plans.

National and local inquiries

30. For the purpose of preparing a management plan under this Part, the Commission shall conduct national and local inquiries on a management plan and its implementation as may be necessary to obtain representation from a local community, Committee, traditional authority and any other stakeholder.

Consultation with holders of rights, title or interest in Local Forest or Joint Forest Management Area

31.(1) To facilitate the preparation of a management plan, the Commission shall consult holders of rights, title or interest in the Local Forest or Joint Forest Management Area.

(2) In preparing the management plan the Commission shall take into account of the submissions of—

- (a) any holders of rights referred to in subsection (1);
- (b) a Committee; and
- (c) the local community in the area.

Management plan to be published in *Gazette*

32.(1) The Commission shall cause a notice of the completion of a management plan to be published in the *Gazette*.

(2) A notice published under subsection (1) shall state the time and place at which the management plan may be inspected by members of the public, and shall request for objections in writing to be lodged with the Commission within thirty days from the date of the publication of the notice in the *Gazette*.

(3) Where no objections to a management plan are lodged with the Commission under subsection (2), the Commission shall notify the Minister accordingly.

(4) The Minister shall hear and determine any objection lodged with the Commission under subsection (2) and shall cause the decision to be published in the *Gazette*.

Registration of management plans

33.(1) The Minister may, after notice under subsection (3), or after the hearing of an objection under subsection (4) of section *thirty-two*—

- (a) cause the management plan to be registered in such register as the Minister may prescribe and publish a notice of the registration in the *Gazette*;
- (b) publish a notification of a rejection of a management plan in the *Gazette*; or
- (c) cause the management plan as varied by the Minister or any court, to be registered in such register as may be prescribed by the Minister and publish a notice of the registration in the *Gazette*.

(2) The Minister may not reject a management plan under this section except on the grounds that it is contrary to the purposes of this Act.

Management plan binding on registration

34. The provisions of a management plan shall, from the date of publication of the registration under section *thirty-three*, apply to the National Forest, Local Forest, Joint Forest Management Area or forest plantation concerned.

Conservation orders

35.(1) The Minister may, on the recommendation of the Commission and after consultation with a local authority and other stakeholders in the area, and subject to subsection (8) issue by statutory instrument orders to the occupier of any land to undertake or adopt such measures as the Commission may deem necessary for the

conservation of natural resources on land in an open area and the prevention of injury to natural resources by acts or omissions of the occupier.

(2) The Minister shall issue such orders as the Minister may consider necessary to ensure that the occupier of land affected by a management plan registered under the provisions of section *thirty-three* complies with the provisions of such plan.

(3) Orders given under subsection (1) or (2) may relate only to—

- (a) the allocation of the uses of land for arable, pasture, woodland or forest purposes, or for water catchment;
- (b) the construction and maintenance of works for conserving water or soil, and other works to preserve or improve natural resources;
- (c) the prohibition or restriction of cultivation of any part of the land;
- (d) the method of cultivation of land and the system of farming to be used on the land;
- (e) the manner of watering, managing, pasturing and moving stock;
- (f) the preservation and protection of the source, course and banks of any stream;
- (g) the control of water including storm water, drainage water and floods;

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- (h) the prevention of pollution or fouling of public water as defined in the Water Act;
- (i) the preservation of trees and other vegetation and the method and systems by which forest produce may be taken and used;
- (j) measures to prevent, control or combat fires, including the making of firebreaks and carrying out control burning; and
- (k) measures to be taken to ensure compliance with a management plan registered under the provisions of section *thirty-three*.

(4) If any occupier of land fails or neglects to carry out any order given under subsection (1) or (2) within such reasonable time as may be fixed by the Minister and stated in the order, the person shall be guilty of an offence and a court shall, in addition to any other penalty which it may impose, make an order requiring the occupier to carry out within a specified time the order of the Minister.

(5) Where it is necessary for an occupier of land to construct any works to give effect to an order made under this section, the Minister may, upon the advice of the Commission, cause such works to be carried out and completed on behalf of the occupier.

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(6) Subject to the other provisions of this section, where costs are incurred under the provisions of subsection (5), the amount of such costs shall be a debt due to the Republic by the occupier concerned and, until discharged, interest shall be payable thereon at such rate as is charged by a court on judgement debt under the Judgement Act.

(7) The Minister may reduce the amount of costs payable under subsection (6) by such amount as the Minister determines to be the value to the public of such works.

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(8) The Minister shall not, in any area referred to in subsection (2) of section *twenty-two* of the Town and Country Planning Act, give an order under this section unless and until there has been consultation with the planning authority for the area, or with the Minister responsible for local government, as the case may be, in connection with such order.

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(9) Where, after consultation in accordance with the provisions of subsection (8), the Minister gives an order, no permission shall be required under the Town and Country Planning Act to do anything which is required to be done under that order or in respect of anything done under this section to give effect to that order.

(10) An order made under this section shall be deemed to be sufficiently served if sent by registered post to an occupier at the last known address of the occupier.

(11) An occupier may apply to the Minister to apportion any sum spent by the person or for which the person has become liable by reason of the provisions of this section between that person and the other persons having an interest in the land.

(12) An application under subsection (11) shall be in writing and shall state the names and addresses of the other persons having an interest in the land.

(13) Where an application is made under subsection (11) the Minister shall—

- (a) appoint a Committee to hear the matter which shall fix a date for hearing of the application;
- (b) notify the occupier and the other persons named in the application;
- (c) afford the occupier and other persons named in the application full opportunity to be heard; and
- (d) report on the matter to the Minister.

(14) The Minister shall, on the advice of the Committee appointed under subsection (13), apportion the sums spent by the occupier or for which the occupier has become liable by reason of the provisions of this section

between the occupier and the other persons named in the application in such manner as the Minister considers just having regard to the respective interests in the land.

(15) Any sum apportioned on any person other than the occupier shall become a debt due by such person to the occupier and, until discharged, interest thereon shall be paid at the rate prescribed under subsection (6).

(16) The Commission may apportion such sums from the Forest Development Fund to assist occupiers of land, on application, to meet the costs payable under subsection (6).

PART VII

PROTECTED FLORA

Declaration of protected flora

36.(1) For the purposes of conserving any species of flora, particularly having regard to its rarity, economic significance or its role in assessing the health of an ecosystem and generally for the conservation of biological diversity, the Minister may by statutory instrument, on the recommendation of the Commission—

- (a) declare a kind or category of flora to be protected flora; and
- (b) prohibit or regulate the felling, cutting, burning, injury, taking or removal of any protected flora either generally or during a specified period and whether throughout the Republic or in a specified area of the Republic.

(2) Any order made under subsection (1), may apply to any kind or category of flora, which though abundant so closely resemble the protected flora within the specified area.

(3) The statutory order specifying protected flora may be at the initiative of a petition from any interested person lodged with the Commission.

(4) The Minister shall, by statutory order, prescribe the process and criteria for determining protected flora; and the form of petition under subsection (3).

Recovery plans for protected flora

37.(1) The Commission, in consultation with the relevant local community, Committee, traditional authority and any other stakeholder, shall develop and implement recovery plans for the conservation and survival of protected flora.

(2) In this section “recovery plan” means a plan for promoting the regeneration, growth and survival of protected flora.

PART VIII

MAJOR FOREST PRODUCE IN STATE LANDS AND CUSTOMARY AREAS

Purpose of conserving trees on State Lands and Customary areas

38.(1) Major forest produce in State Lands and Customary areas shall be conserved for the use and benefit of the inhabitants of such lands:

Provided that—

- (i) trees may be felled and land cleared by or for such inhabitants for the purpose of agricultural and other developments; and
- (ii) any major forest produce which, in the opinion of the Commission, is not required to be conserved or would be wasted or destroyed if left, may be felled and sold under a licence.

(2) Any person who without a licence fells, cuts or works any major forest produce or does any other act so that wanton or unnecessary destruction of major forest produce results, commits an offence.

Restrictions on manufacture of charcoal

39. Subject to the other provisions of this Act or any other written law, any person who, not being a holder of a licence or permit under this Act, manufactures wood into charcoal or offers for sale, sells or removes charcoal in or from any State land or customary area commits an offence:

Provided that this section shall not apply to any person who within the State land, customary area or open area—

- (a) manufactures charcoal for personal use only;
- (b) is the owner of land and is in possession of a valid licence, authorising the licensee to do any of such act or to manufacture charcoal;
- (c) has obtained the permission of the owner of the land so to do and is in possession of a valid licence authorising that person to manufacture charcoal and do any such act; or
- (d) is a forest officer or honorary officer while acting under instructions in performance of that officer's functions under this Act.

Removal, etc. of major forest produce

40.(1) No person shall, without a licence fell, cut, work, take, collect or remove any major forest produce in or from any State Lands, Customary area or open area.

(2) No person shall without a licence sell, offer for sale, barter or otherwise deal in any major forest produce from any State Land, customary area or open area.

(3) Any person who does any of the act prohibited under subsections (1) and (2) commits an offence:
Provided that this section shall not apply to any person who within such State land, customary area or open area—

- (a) does any of the prohibited act for personal use only;
- (b) is the owner of the land and is in possession of a valid licence, authorising the licensee to do any of the prohibited acts;
- (c) has obtained the permission of the owner so to do and is in possession of a valid licence authoring that person to do any of the prohibited acts: or
- (d) is a forest officer or honorary forest officer while acting under instructions in performing that officer's functions under this Act.

Control and management in State Lands and Customary areas

41. Subject to the other provisions of this Act, the control and management of the licensed felling, cutting, taking and removal of major forest produce on State Lands and Customary areas shall vest in the Commission.

PART IX LICENCES

Restriction on cutting etc., forest produce

42. Except as otherwise provided in this Act, any person who cuts, or takes or otherwise deals with any forest produce or does any other act the doing of which requires a licence, without a licence, commits an offence.

Licences

43.(1) The following classes of licences may be issued under this part—

- (a) sawmill licence;
- (b) pitsawing licence;
- (c) concession licence;
- (d) casual licence;
- (e) conveyance licence; and
- (f) any other licence which the Minister may, on the recommendation of the Commission, prescribe.

(2) A sawmill licence may be issued by the Commission to authorise a licensee for a period not exceeding five years to process timber using a sawmill or any other wood processing equipment.

(3) A pitsawing licence may be issued by the Commission to authorise a licensee for a period not exceeding three years to use a pitsaw to cut, fell or process timber or to remove or sell such timber from a specified forest area.

(4) A concession licence may be issued by the Commission authorising the holder of a sawmill or pitsawing licence to operate in a specified forest area.

(5) A casual licence may be issued by the Commission authorising a licensee for a period of two weeks to collect or sell forest produce other than major produce from a specified forest area.

(6) A conveyance licence may be issued by the Commission authorising the licensee to transport forest produce.

Fees for licences

44. The Minister shall on the recommendation of the Commission, prescribe the fees to be paid for the various types of licences issued under this Act.

Delegation to Director-General

45. Subject to any regulations made under this Act and to the general or special directions of the Commission, the Director-General may offer forest produce for sale and sell produce by auction, tender or estimate.

Issue of licences and conditions of licences

46.(1) Subject to the provisions of this Act, the power of the Commission to issue licences shall be exercised by the Director-General, any forest officer authorised by the Director-General so to do, subject to such conditions as the Commission may determine.

(2) Without prejudice to the generality of subsection (1), the Minister may, on the recommendation of the Commission, prescribe the conditions attached to a licence which may specify—

- (a) the circumstances under which licences issued under this Act may be suspended, cancelled or extended;
- (b) the fees and penalties for non-payment of fees;
- (c) the conditions under which the felling, cutting, taking, removal, conversion, processing, transport or sale of forest produce may be carried out;
- (d) the erection of buildings and the construction of roads, tracks, tramways, waterways, bridges, sawmills, depots and water installations relating to the forest sector;
- (e) the activities for prevention and fighting of fires;
- (f) the form of records and returns to be submitted by persons engaged in the cutting, taking, removal, conversion, processing, transportation, sale or use of forest produce;

- (g) the payment of compensation for damage to trees, growing crops, roads, tracks, paths, bridges, waterways and other improvements;
- (h) the making good of any damage to land;
- (i) the conduct of any silvicultural activities;
- (j) the limits of the amounts of forest produce to be harvested;
- (k) the requirements for afforestation and reforestation; and
- (l) any other issues which the Commission may recommend in accordance with the provisions of this Act.

Damage and waste by licensee

47.(1) A licensee shall fell, cut, take, covert and perform other operations under a licence in such manner as to cause the least possible waste of, or damage to, trees and forest produce.

(2) Where a licensee causes waste or damage to trees and forest produce under subsection (1), the licensee shall be liable to pay such value for the trees or any forest damaged or wasted as may be assessed by the Commission.

Transfer of licence

48. A licence or any rights conferred under this Part shall not be transferred or assigned by the licensee to any other person without the written consent of the Director-General.

Suspension of licence

49.(1) The Commission may suspend a licence in accordance with the regulations made under section *forty-six*.

(2) A licensee may, within thirty days of being notified of the suspension of the licence under subsection (1), appeal to the Minister.

Cancellation of licence

50.(1) The Commission may cancel a licence, in accordance with the regulations made under section *forty-six*.

(2) Whenever the Commission cancels a licence under subsection (1), it shall, as soon as possible after cancelling the licence, notify the licensee in writing of such cancellation, stating therein that the licensee has a right to appeal against the cancellation under section *fifty-one*.

Appeal against cancellation of licence

51. A licensee may, within thirty days of being notified of the cancellation of the licence under section *fifty*, appeal to the Minister.

Ownership of forest produce on cancellation of licence

52. On the cancellation of a licence, any forest produce belonging to the licensee and lying within a licence area shall become the property of the Republic.

Extension of licence

53. The Commission may, on the expiry of a licence issued under this Act, extend the licence for such period and on such conditions as it may determine.

No exclusive right unless stated and no right of compensation

54.(1) A licence shall not, unless a contrary intention is expressly stated thereon, grant any exclusive right, or confer on the licensee any right to compensation—

- (a) for any works or improvements effected by the licensee;
- (b) for any loss suffered by the licensee as a result of the suspension or cancellation of the licence; or
- (c) for the inability of the licensee to take away any produce within the period of the validity of the licence, or for any damage to, or loss of, any produce before its removal from the licence area or coupe.

(2) Notwithstanding subsection (1) a licence shall not be granted in an area which is the subject of another licence.

Limitations of licences

55. Unless a contrary intention is expressly stated on the licence, rights under a licence shall not extend to—

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- (a) any land dedicated as a place of burial;
- (b) any National Park as defined in the Zambia Wildlife Act;
- (c) any land within thirty metres of the centre line of any public road;
- (d) any land within thirty metres of the boundary of any rail reserve;
- (e) any land within fifty metres of a bank or edge of any river; or
- (f) any land within thirty metres of a power line.

Supply of information

56. A licensee shall, when so requested by a forest officer, furnish such information concerning the operations, conversion, processing, transport, sale, manufacture, export or use of the forest produce by the licensee as the forest officer may reasonably require.

Licensee's record and returns

57. A licensee shall keep such records and submit such returns to the Commission as may be prescribed by the Minister, on the recommendation of the Commission.

PART X
REMOVAL OF FOREST PRODUCE

Removal of forest produce

58. No forest produce cut or taken under a licence shall, unless a forest officer by endorsement on the licence or by separate writing otherwise permits, be removed from any coupe until the produce has been measured or checked by the forest officer and has been marked by that forest officer with the imprint of the Commission timber marking hammer or instrument or any other mark of the Commission.

Mixing of marked forest produce with unmarked an offence

59. Any person who wilfully mixes forest produce marked by the Commission with that which is unmarked with intent to mislead a forest officer or law enforcement officer commits an offence.

Offences of forest officer

60. Any forest officer who wilfully or negligently permits the removal from a coupe of unmarked produce commits an offence.

PART XI
IMPORT AND EXPORT OF FOREST PRODUCE

Import of forest produce

61. Any person who imports any forest produce except in accordance with a valid import certificate issued under section *sixty-two* commits an offence.

Certificate to import forest produce

62.(1) The Commission may issue to any person a certificate in the prescribed form, to import any plant or timber of any tree species or any forest produce, subject to—

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- (a) the production of a phytosanitary certificate issued under the Plants, Pests and Diseases Act; and
- (b) any other conditions which the Commission may impose.

(2) A certificate issued under subsection (1) shall be valid for such period as the Commission may determine.

(3) Any certificate issued under this section shall not be in substitution of any permit or certificate to import any forest produce required by or under any other written law; nor shall any such certificate be deemed to relieve any person from any restriction on or prohibition of the importation of any forest produce imposed by or under any other written law.

Offence of importing forest produce without certificate

63.(1) Any person who imports or who attempts to import forest produce except—

- (a) through a customs port of entry;
- (b) on the production to the customs officer satisfactory evidence that such plant, timber or forest produce has been lawfully exported from the country of origin; and
- (c) on the production to the customs officer of a valid certificate to import the forest produce issued under section *sixty-two*;

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commits an offence.

(2) Any person who imports through a customs port of entry any forest produce, but who at the time of such import is unable to adduce the evidence required under paragraph (b) of subsection (1) or has not in that person's possession the import certificate required to be produced under paragraph (c) of subsection (1), shall have the forest produce detained by the forest officer or customs officer until the production, within a period of not more than fourteen days, of the evidence or the certificate to the forestry officer or customs officer.

(3) The expenditure incurred on account of the detention of the forest produce under subsection (2) shall be borne by the person importing the plant, timber or forest produce and shall be recoverable from such person as a civil debt to the Commission.

(4) If the country from which any forest produce is exported is not the country of origin, it shall be sufficient for the purposes of paragraph (b) of subsection (1) if there is produced to the forest officer or customs officer documentary evidence that the plant, timber or forest produce was lawfully exported from the country of origin.

(5) Where any person is convicted of an offence under this section, the Court may, at the request of the prosecution and in addition to any other penalty imposed, declare any forest produce so imported or so attempted to be imported, to be forfeited or order it to be destroyed without compensation, or may both declare it to be forfeited and order it to be so destroyed, without compensation.

(6) Any forest produce declared to be forfeited under subsection (5), but not ordered to be destroyed, may be disposed of as the Director-General may direct.

Export of forest produce

64. Any person who exports any forest produce except in accordance with a valid export certificate issued under section *sixty-five* commits an offence.

Certificate to export forest produce

65.(1) The Commission may issue to any person a certificate, in the prescribed form, to export plant or timber of any tree species or any forest produce.

(2) The certificate issued under subsection (1) may be subject to any conditions which the Commission may impose and shall be valid for such period as the Commission may determine.

(3) Any certificate issued under this section shall not be in substitution of any permit to export any such forest produce required by or under any other written law, nor shall any such certificate, be deemed to relieve any person from any restriction on, or prohibition of, the export of any such forest produce imposed by or under any other written law.

Offence of exporting forest produce without permit

66.(1) Any person who exports or attempts to export any forest produce except—

(a) through a customs port of entry; and

(b) under and in accordance with the conditions of an export certificate issued in respect of the forest produce, plant or timber under section *sixty-five*;

commits an offence.

(2) Any person who exports or attempts to export any forest produce, plant or timber shall produce to the customs officer or forest officer for inspection the export certificate issued in respect thereof under section *sixty-five*.

(3) Where a person is not in possession of the export certificate in respect of forest produce at the time of the export or attempted export, the person shall have the forest produce detained by the customs officer or forest officer until the production of export certificate within fourteen days to the customs officer or forest officer.

(4) The expenditure incurred on account of the detention or destruction of forest produce under subsection (3) shall be borne by the person exporting the forest produce, plant or timber and shall be recoverable from such person as a civil debt to the Commission.

Application

67. This Part shall not apply to any forest produce, plant or timber—

(a) in transit through Zambia if the forest produce, plant or timber is accompanied by the necessary transit customs documents issued in the country of origin or of export of forest produce including a phytosanitary certificate or its equivalent and is entered through a customs port of entry; or

(b) accompanied by any person who is in possession of, and surrenders to the forest officer or customs officer, a certificate or permit issued by the country of origin or of export of forest produce stating that the person is lawfully authorised to export the forest produce and the person satisfies the customs officer or forest officer:

(i) that the certificate or permit was issued to that person;

(ii) that the person is exporting the forest produce from the country of origin or export; and

(iii) that the forest produce being exported is subject to a phytosanitary certificate or its equivalent.

Regulations on import and export of forest products

68. Notwithstanding the other provisions of this Act, the Minister may, on the advice of the Commission and in consultation with the Minister responsible for trade and industry, by statutory instrument, regulate the import or export of any forest produce and such regulations may incorporate the requirements of the Convention on International Trade in Endangered Species of Flora and Fauna.

PART XII

MARKING OF TIMBER

Issue of licence by Commission for manufacture and use of timber marking instruments

69.(1) The Commission shall approve such timber marking hammer or instrument for the marking of timber for the purposes of this Act.

(2) The Commission may, on the application of any person submitted in such form and on payment of such fees as may be prescribed, issue a licence for the manufacture of a timber marking hammer or instrument of the Commission or for any other person licensed under this Act, subject to such conditions as the Commission shall determine.

(3) Notwithstanding subsection (1), the holder of a licence may, subject to the approval of the Commission, use such timber marking hammer or instrument for the purpose of identification by that licensee.

(4) The timber marking instrument of a holder of a licence under this Act and a licence issued under subsection (2) shall be registered by the Commission.

Use of Commission's or other licensees' timber marking hammer or instrument prohibited

70.(1) Any person who is not a forest officer who possesses or uses the Commission's timber marking instrument commits an offence.

(2) Any person who is not the owner of a timber marking instrument under subsections (3) and (4) of section *sixty-nine* who uses a timber marking hammer or instrument commits an offence.

Alteration and defacement of marks on timber or tree stumps

71. No mark made on any timber or tree stump by a timber marking hammer or other instrument shall be altered, defaced, obliterated or removed without the consent of the owner of the tree stump or timber and the consent of a forest officer.

Timber for export to have marks

72. All timber being exported shall be hammer marked in such manner as the Commission may determine.

PART XIII

POWERS OF FOREST OFFICERS AND LAW ENFORCEMENT OFFICERS

Demanding production of licence

73. A forest officer or law enforcement officer may demand from any person engaged in doing or causing to be done anything for which a licence is required under this Act to produce the licence, and, if such person fails to produce the licence, restrain such person and the employees and agents of that person from doing such thing until the licence is produced.

Prevention of offences

74.(1) A forest officer or law enforcement officer may take such measures and do such acts for preventing the commission of a forest offence as the forest officer or law enforcement officer may deem necessary and in so doing may use reasonable force.

(2) Without prejudice to the generality of subsection (1), a forest officer may—

(a) inspect forest produce, and for the purpose of detecting pests or disease, expose the roots of plants, remove bark or cut any part of forest produce or open any container or package or wrapping suspected to contain the forest produce liable to harbour the pests or diseases;

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(b) order the application of measures which are necessary or prescribed for the eradication or prevention of the spread of a pest or disease in accordance with the Plants, Pests and Diseases Act;

(c) order the destruction at any time of any forest produce infested with any harmful agent, pest or disease; and

(d) declare a nursery, plantation or any part of a forest estate with a pest or disease or such portion thereof as an infected area until such time as the nursery or portion thereof is free from the pest or disease.

Search with warrant

75.(1) Subject to subsection (2), where any forest officer or law enforcement officer suspects that any person has committed a forest offence or is in possession of any forest produce in respect of which such offence has been committed, the law enforcement officer or forest officer may with a warrant—

(a) enter upon and inspect lands, buildings, tents, structures or enclosures on or in which forest produce, plants or timber which is the subject of a forest offence may be found;

(b) search any baggage, package, parcel, vehicle, vessel, tent, under the control of such a person or the employee or agent of that person.

(2) Notwithstanding subsection (1), no private dwelling house shall be entered except in the presence of the occupier or of a person over the apparent age of eighteen years who resides therein as a member of the occupier's family.

Power of arrest

76.(1) When any person is found committing any offence or is reasonably suspected of having committed an offence under this Act, a forest officer or law enforcement officer may demand the person's name and address, and if such person refuses to furnish such information to the satisfaction of the forest officer or law enforcement officer, or if the forest officer or law enforcement officer has reasonable grounds to believe that unless arrested the person will escape or cause an unreasonable amount of delay, trouble or expense in being made answerable to justice, that officer may arrest such person without a warrant and keep that person in custody.

(2) Subject to subsection (3) any person arrested under subsection (1) shall be taken as soon as practicable before a court and shall not be detained for longer than is reasonably necessary for that purpose.

(3) Where any person is arrested under subsection (1), a forest officer or law enforcement officer may, in any case, and shall, if it does not appear practicable to bring that person before a court within twenty-four hours after the person was so taken into custody, inquire into the case, and unless the offence appears to the officer to be of a serious nature, release the person, on that person executing a bond with or without sureties, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond; but where any person is detained in custody, the person shall be brought before a court as soon as practicable.

(4) Notwithstanding anything contained in this section, a forest officer or law enforcement officer may release a person arrested under subsection (1) when, after the forest officer or law enforcement officer's inquiries under subsection (3) insufficient evidence is, in the opinion of the forest officer or law enforcement officer, disclosed on which to proceed with the charge.

Prosecution by officers

77.(1) The Director of Public Prosecutions may at the request of the Commission, in writing, appoint by name or rank any forest officer to undertake and prosecute criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act, and may at any time, without assigning any reason, cancel any such appointment.

(2) In undertaking or prosecuting any proceedings under subsection (1), the officer shall act in accordance with the general or special instructions of the Director of Public Prosecutions, and shall for the purpose of any such prosecution, have the powers of a public prosecutor appointed under any law for the time being in force.

Seizure of property

78. Where there is reason to believe that a forest offence has been committed, any major forest produce involved in the offence and all tools, instruments, plant, machinery, equipment, vehicles and other property suspected of having been used in the commission of the offence may be seized by any forest officer or law enforcement officer and detained until an order of the Court as to the disposal thereof is made.

Restoration of property

79.(1) If any person from whom possession of any forest produce or other property has been seized under section *seventy-eight* is found not guilty, or the proceedings against that person are withdrawn—

- (a) the Commission shall without unnecessary delay, restore such produce or property to that person; or
- (b) where the Commission is satisfied that the person cannot be found or is unwilling to receive back such produce or property, the Commission shall apply to the court for an order of forfeiture of the forest produce or property.

(2) The court shall not make an order of forfeiture under subsection (1) unless—

- (a) the Commission has given notice by publication in the *Gazette* and in one national newspaper to the effect that the forest produce or property which has been seized under this Act shall vest in the State if it is not claimed within three months; and
- (b) three months after the giving of the notice under paragraph (a) the forest produce or property remains unclaimed.

(3) Where a claim in writing is made by any person that is lawfully entitled to the forest produce or property seized under this Act that the forest produce or property is not liable to forfeiture under this Act, the Commission may order the release of the forest produce or property to the claimant if satisfied that there is no dispute as to ownership of the forest produce or property and that it is not liable for forfeiture.

(4) Where a claim of ownership is made in relation to forest produce or property seized under this Act and the Commission finds that—

- (a) there is a dispute as to the ownership of forest produce or property;
- (b) there is insufficient evidence to determine the ownership of forest produce or property; or
- (c) the Commission is unable to ascertain whether the forest produce or property is liable to forfeiture or not;

the Commission shall refer the claim to the High Court.

Loss of, or damage to seized property

80. The Commission shall not be liable for any loss or damage caused to any property in the course of its seizure or during its detention, and no forest officer or law enforcement officer shall be liable for any such loss or damage, unless the law enforcement officer or forest officer caused the same maliciously or fraudulently.

Calling for assistance in extinguishing fires

81.(1) In the case of fire, other than any controlled fire started by or on the authority of a forest officer, or in the case of other accident or emergency involving danger to a National Forest or Local Forest, every person of not less than eighteen years of age normally resident within ten kilometres of the boundary of any such forest shall be bound forthwith to assist any forest officer who reasonably demands aid from the person in extinguishing such a fire or averting such a danger, and the forest officer may pay to that person consideration as the Minister may prescribe.

(2) It shall be a condition of every licence that, in the event of an outbreak of fire through whatever cause in any National Forest or Local Forest or in any other land in which forest produce is being cut, carried or stored under licence, a licensee shall, when called upon to do so by a forest officer, forthwith provide all available employees, tools, plant, machinery and equipment which the licensee may have in the vicinity of such forest or land to assist in extinguishing such fire, and the licensee may be paid such consideration therefore as the Commission may think adequate:

Provided that consideration under this section shall not be paid if the fire was, in the opinion of the Director-General occasioned wilfully by, or through the carelessness or neglect of, the licensee or the employees or agents of the licensee.

PART XIV
FOREST OFFENCES, PENALTIES AND FORFEITURES

Offences and penalties

82.(1) A person commits an offence if that person-

- (a) contravenes any of the provisions of this Act or regulations, or any order made thereunder or any condition of a licence;
- (b) does any act so that wanton or unnecessary destruction of major forest produce results;
- (c) in exercising his rights under this Act through his employees or agents, fails to give any such employee or agent such instructions as would, if followed, avoid the commission of a forest offence, and such employee or agent, due to want of such instructions, commits a forest offence;
- (d) knowingly receives or is in possession of any forest produce in respect of which a forest offence has been committed;
- (e) without being authorised under this Act to do so, makes upon, or fixes to any forest produce, a mark of the Commission used to indicate that forest produce has been inspected or measured or to indicate that forest produce may lawfully be cut or removed;
- (f) counterfeits any timber marking hammer or instrument of the Commission or of a person authorised under this Act or counterfeits any mark made by such hammer or instrument;
- (g) without being authorised under this Act to do so, alters, defaces, obliterates or removes any stamp, mark or sign placed upon forest produce or upon a tree stump by a forest officer;
- (h) being liable under section *eighty-one* to render assistance in the case of a fire, accident or other danger in a National Forest or Local Forest, refuses or fails to do so, without reasonable excuse, when called upon by a forest officer or law enforcement officer;
- (i) without being authorised under this Act to do so, removes, damages or defaces any boundary mark, beacon, notice, fence or gate posted or erected by or on the authority of a forest officer;
- (j) subject to other written laws, intentionally damages any plant, machinery, equipment, road, track, tramway, bridge, water installation, power-line, telephone-line, drain or other improvement in a National Forest or Local Forest; or
- (k) without authority, wears or is in possession of any uniform or part of a uniform or any badge, mark or identity document issued by or on behalf of the Commission to be worn or possessed by a forest officer;

and shall be liable, upon conviction-

- (i) if the offence was committed within, or in connection with, a National Forest, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding two years or to both; and
- (ii) in all other cases, to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding six months or to both.

(2) A person who commits an offence under this Act for which no penalty is provided shall be liable, upon conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding six months or to both.

Payment of fine without appearing in court

83.(1) Where in respect of an offence under this Act any person has been arrested by a forest officer or law enforcement officer, or informed by a forest officer or law enforcement officer that there is intention to institute criminal proceedings against that person for an offence under paragraphs (d), (g), (h) and (i) of section *twenty-four*, that person may sign and submit to the forest officer or law enforcement officer a document admitting the person's guilt and pay to that officer such amount as that officer may determine but not exceeding three hundred penalty units.

(2) The document referred to in subsection (1) when signed and submitted under that subsection, shall forthwith be transferred to the clerk of the court before which such person would otherwise have been charged and tried and shall be entered into the records of the court.

(3) Any forest officer or law enforcement officer who fails to remit the admission of guilt fines to the court, shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term of not less than six months but not exceeding three years without the option of a fine.

Additional powers of Court

84.(1) When a person has been convicted of a forest offence, the Court may, in addition to any other penalty provided for in this Act-

- (a) order the cancellation of the licence of that person;

- (b) assess the amount of compensation for any loss or damage caused by that person in the course of the offence and cause the same to be recovered from that person as if it were a debt due and payable to the Commission;
- (c) order the removal or demolition, within such time as the Court may determine, any unauthorised establishments, buildings, structures, plant, machinery, equipment, crops and other works set up or grown by that person, and the restoration, as far as possible, of all places and things to their former state, and if the removal, demolition and restoration is not effected within the time fixed by the Court, the Director-General shall cause the same to be done and the cost incurred thereon shall be recovered by the Commission from the person convicted; or
- (d) order the confiscation of any forest produce in respect of which the offence was committed and of any livestock, tools, plant, machinery, equipment, vehicles or other property used in the commission of the offence.

(2) The Commission may sell or otherwise dispose of any property confiscated under subsection (1) and handed over to the Commission by order of the Court and any moneys received from the sale or disposal of such property shall be paid into the Forest Revenue Fund.

Civil remedy reserved

85. Nothing in this Act shall be so construed as to take away or interfere with the right of the Republic or of any person to sue for and recover at common law or otherwise compensation for or in respect of any damage or injury caused by a forest offence:

Provided that in assessing such compensation the court shall take into account the amount of any compensation recovered under section *eighty-four*.

Evidence

86. Whenever in any proceedings under this Act the question arises whether any forest produce is the property of the Republic, it shall be presumed to be the property of the Republic unless the contrary is proved.

Exhibits

87. Where in any proceedings under this Act it becomes necessary for a forest officer or law enforcement officer to produce in evidence any forest produce and, in the opinion of such officer, production of the whole of such produce would be impracticable or involve unnecessary expense or undue delay, it shall be sufficient for such officer to produce in the court any piece or sample of the forest produce.

PART XV GENERAL

Power to make regulations

88.(1) The Minister may, by statutory instrument, on the recommendation of the Commission, prescribe anything which by this Act is required to be prescribed or is necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations providing for—

- (a) the survey and demarcation of National Forests and Local Forests;
- (b) the protection and management of flora in National Forests, Local Forests and open areas;
- (c) joint forest management areas and management committees;
- (d) the development and implementation of management plans by the Commission and local communities, committees, traditional institutions and other relevant institutions;
- (e) the form of participation of local communities and traditional authorities which ensures equitable gender participation;
- (f) the register for management plans made under Part VI and for licences issued under this Act;
- (g) the establishment of commercial plantations and small estates;
- (h) the marking of timber from private plantations and the conveyance fees to be paid for such timber;
- (i) the import and export of forest produce;
- (j) the utilisation, conservation and planting of trees in State Lands, customary areas and open areas;
- (k) the prohibition and regulation of the cutting and taking of forest produce;
- (l) the management of Local Forests by local communities, traditional authorities, local authorities and the other stakeholders;
- (m) the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the Convention on Wetlands of International Importance Especially as Water Fowl Habitat, the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought or Desertification, particularly in Africa;
- (n) the sharing of forest revenue with local communities raised from Local Forests and open areas;
- (o) the fees to be paid for licences, certificates and any other authorisation issued by the Commission under this Act;
- (p) the conditions under which forest produce may be imported or exported under this Act; and

(q) the regulation of areas declared as infected areas under section *seventy-four*.

Repeal and Savings Act No. 39 of 1973

89.(1) Subject to the other provisions of this Act, the Forests Act, 1973, is hereby repealed.

(2) Notwithstanding the repeal of the Forests Act, any licence issued under that Act before the commencement of this Act shall remain in force or be capable of acquiring force, as the case may be, subject to the provisions of this Act, as if it were a licence issued under this Act.

FIRST SCHEDULE

(Section 4)

ADMINISTRATION OF COMMISSION

Composition of Commission

1. (1) The Commission shall consist of members appointed by the Minister as follows—

- (a) a representative of the Ministry responsible for agriculture;
- (b) the Director of the Environmental Council of Zambia;
- (c) a person with wide experience in the timber industry;
- (d) the Commissioner of Lands;

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- (e) two Chiefs recognised under the Chiefs Act;
- (f) the Principal of the Zambia Forestry College;
- (g) a person representing the farming community;
- (h) the Director-General of the Zambia Wildlife Authority;
- (i) the Commissioner of Town and Country Planning;
- (j) a representative of the Ministry responsible for legal affairs;
- (k) a representative of the Ministry responsible for water resources;
- (l) the Permanent Secretary responsible for natural resources;
- (m) a representative of the Gender in Development Division; and
- (n) one person appointed by the Minister.

(2) The Minister may reject a nomination made under subsection (1) by any organisation and may direct that the organisation nominate another representative in that member's stead.

(3) The Chairperson shall be appointed by the Minister and the Vice-Chairperson of the Commission shall be elected by the members from amongst themselves.

(4) The Minister may, by statutory instrument, on the recommendation of the Commission, make regulations establishing provincial, district and village forestry committees and provide for their functions.

Tenure of office and vacancies

2. (1) A member, other than an ex-officio member, shall hold office for a period of three years and may be eligible for re-appointment to a further one term.

(2) A member may resign by giving one month's notice in writing to the Minister and may be removed by the Minister at any time.

(3) The office of a member shall become vacant-

- (a) on the death of the member;
- (b) on being declared to be of unsound mind;
- (c) on being declared bankrupt;
- (d) on being convicted of an offence involving dishonesty;
- (e) on being sentenced to imprisonment for a period exceeding six months;
- (f) on resignation or being removed under sub-paragraph (2);
- (g) on ceasing to hold the office by virtue of which the member was appointed member under paragraph 1; or
- (h) on being absent without reasonable cause from three consecutive meetings of the Commission of which the member had notice.

(4) If the office of a member falls vacant before the expiry of the term of office, the Minister may appoint another member who shall hold office only for the unexpired part of the term.

Remuneration and allowances

3. There shall be paid to a member of the Commission or a committee such remuneration or allowances as the Commission may, with the approval of the Minister, determine.

Seal of Commission

4. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Commission.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Commission by the Secretary or any other person generally or specifically authorised by the Commission in that behalf.

(4) Any document purporting to be a document under the seal of the Commission or issued on behalf of the Commission shall be received in evidence without further proof, unless the contrary is provided.

Proceedings of Commission

5. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of its business at least once every three months and at such places and times as the Chairperson may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Commission may be called by the Chairperson, and shall be called if not less than seven members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving at least twenty-four hours notice.

(4) A quorum at a meeting of the Commission shall be one half of the members.

(5) There shall preside at any meeting of the Commission—

(a) the Chairperson;

(b) in the absence of the Chairperson the Vice-Chairperson; or

(c) in the absence of the Chairperson and Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Commission on any question shall be by majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(7) The Commission may invite any person whose presence is in its opinion desirable, to attend and participate in the deliberations of a meeting but the person shall have no vote.

(8) The validity of any proceedings, act or decision of the Commission shall not be affected by any vacancy in its membership or by any defect in the appointment of any member or because any person not entitled to do so took part in the proceedings.

(9) The Commission shall cause to be kept minutes of the proceedings of every meeting of the Commission and of every meeting of any committee constituted by the Commission.

Committees of Commission

6. (1) The Commission may for the purpose of performing its functions under this Act constitute committees, the Chairperson of which shall be a member of the Commission, and may delegate to such committees any of its functions.

(2) The Commission may appoint as members of a committee established under subsection (1) persons who are or are not members of the Commission and those persons shall hold office for such period as the Commission may determine:

Provided that at least half of the members of the committee shall be members of the Commission.

(3) Subject to any specific or general directions of the Commission, any committee established under subsection (1) may regulate its own procedure.

Disclosure of interest

7. (1) If any person is present at a meeting of the Commission or a committee at which any matter in which that person or any member or their immediate family is directly or indirectly interested in a private capacity is the subject of consideration, that person shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of or vote on any question touching the matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Prohibition of, publication or disclosure of information to unauthorised person

8. (1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever which relates to, and which had come to their knowledge in the course of their duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

(3) If any person having information which to their knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, that person shall

be liable, upon conviction, to a fine not exceeding fifty thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

Immunity of members

9. No action or other proceeding shall lie against any member of the Commission or member of any committee or member of staff of the Commission for anything done or omitted to be done in good faith in the exercise or purported exercise of their functions under this Act or any regulations made thereunder.

Transfer of staff

10.(1) On or after the appointed date, the Minister may, by statutory instrument, approve arrangements under which all or some of the public officers from the Forest Department shall be transferred to the Commission from the public service.

(2) Where a person is transferred in accordance with the arrangements made under subsection (1), the terms and conditions of that person with the Commission shall be no less favourable than those enjoyed while in the public service, and for the purposes of determining rights to, or eligibility for, any pension, gratuity, leave or other benefits, the pensionable service of that person with the public service shall be treated as continuous service.

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(3) The employees of the Commission shall continue to contribute to the Public Service Pension Scheme under the Public Service Pensions Act.

Transfer of assets and liabilities

11.(1) On the appointed date, there shall transfer to, and vest in, or subsist against, the Commission by virtue of this Act and without further assurance-

- (a) the affairs of the Forest Department; and
- (b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Government in respect of the Forest Department.

(2) Except as provided for in this Act, every deed, bond or agreement (other than an agreement for personal service) to which the Government was a party immediately before the commencement of this Act in respect of the Forest Department, whether in writing or not, and whether or not of such nature that rights and obligations thereunder could be assigned shall, unless its subject-matter or terms makes it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the assignment thereof as if-

- (a) the Commission had been a party thereto;
- (b) for any reference to the Government there were substituted, as respects anything to be done on or after the commencement of this Act, a reference to the Commission;
- (c) for any reference to an officer of the Forest Department not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Commission as the Commission shall determine.

(3) Subject to subsection (2), documents other than those referred to in that subsection which refer especially or generally to the Forest Department shall be construed in accordance with subparagraph (2) as far as possible.

Registration of property

12. Where under this Act any property, rights or obligations of the Government through the Forest Department are deemed transferred in respect of which transfer any written law provides for registration, the Commission shall make an application in writing to the appropriate registration authority for registration of such transfer and such authority shall make such entries in the appropriate register as shall give effect to such transfer and, where appropriate, issue the transferee concerned a certificate of title in respect of the said property or make necessary amendments to the register, as the case may be, and if presented therefore, make endorsement on the deed relating to the title, right or obligation concerned, and no registration fee, stamp duty or other duties shall be payable in respect of it.

Legal proceedings

13.(1) Without prejudice to the other provisions of the Act, where any right or obligation vests in, or subsists against, the Commission by virtue of this Act, the Commission and all other persons affected thereby shall, as from the commencement of this Act, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right or obligation as they would have had if it had at all times been a right or obligation of the Commission.

(2) Any legal proceedings or application of any authority pending immediately before the commencement of this Act by or against the Government in respect of the Forest Department may be continued by or against the Commission.

(3) After the commencement of this Act, proceedings in any respect of any right or obligation which was vested in, held, enjoyed, incurred, suffered by, or sustained against the Government in respect of the Forest Department may be continued by or against the Commission.

Funds of Commission

14.(1) The funds of the Commission shall be such monies as may—

- (a) be appropriated by Parliament for the purposes of the Commission;
- (b) be paid to the Commission by way of fees, grants or donations.

(2) The Commission may—

- (a) accept monies by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia;
- (b) with the approval of the Minister, raise by way of loans or otherwise such monies as it may require for the discharge of its functions;
- (c) in accordance with regulations made under this Act, charge and collect fees in respect of consultancy and other services provided by the Commission; and
- (d) charge and collect fees in respect of programmes and seminars conducted by the Commission.

(3) There shall be paid from the funds of the Commission—

- (a) the salaries, allowances and loans to staff of the Commission;
- (b) such reasonable travelling and subsistence allowances for members or members of any committee when engaged on the business of the Commission and at such rates as the Commission may determine; and
- (c) any other expenses incurred by the Commission in the performance of its functions.

Investment of funds

15. The Commission may invest, in such manner as it considers fit, any of its funds which it does not immediately require for the performance of its functions.

Financial year

16. The financial year of the Commission shall be a period of twelve months ending on 31st December in each year.

Accounts

17. The Commission shall cause to be kept proper books of account and other records relating to its accounts.

Annual reports

18.(1) As soon as practicable but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during such financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to it—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information regarding activities undertaken during the year as the Minister may require.

(3) The report referred to in subsection (2) shall specifically record the extent to which the objectives defined in the annual workplan and budget have been attained.

(4) The Minister shall, not later than fourteen days after the sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay it before the National Assembly.

SECOND SCHEDULE

(Section 29)

MATTERS FOR WHICH A MANAGEMENT PLAN MAY MAKE PROVISION

1. The conservation of biological diversity taking into account all other users of the forest resources.
2. The protection of ecosystems, species protection, including those species which indicate the health of an ecosystem.
3. The designation of nature reserves and areas of stabilization of watersheds.
4. Designation of areas for agroforestry, traditional agriculture and recreation areas to provide buffer zones to National and Local Forests.
5. Commercial timber production and commercial agriculture on the edges of National and Local Forests.
6. Afforestation and reforestation.
7. The restoration and rehabilitation of degraded ecosystems.
8. The requirements of environmental impact assessments under the Environmental Protection and Pollution Control Act (Cap. 204).
9. The use of traditional knowledge and practices conducive to the rational utilization of forest resources and the conservation of biological diversity and the equitable sharing of benefits arising from the use of such knowledge with the affected communities.
10. The designation of sites for social amenities for the local communities.
11. The designation of areas for the protection of relics and other national heritage.
12. Reinvestment in the forestry sector including in the welfare of local communities.