What does the Act Address?

The Forest Conservation and Management Act, 2016 came into force 31st August, 2016 and shall apply to all forests on public, community and private lands. The Act gives meaning to a number of Constitutional provisions related to forest resources including conservation and rational utilization for the socio-economic development of the country underpinned by key principles namely; good governance, public participation and community involvement, protection of indigenous knowledge and intellectual property rights of forests resources, international best practices.

The concept of ‘forest’ is expanded to mean land which is declared or registered as a forest, or woody vegetation growing in close proximity in an area of over 0.5 of a hectares including a forest in the process of establishment. Hence in addition to the traditional tropical montane forests found in the highlands, savannah woodlands and thickets that fit into this definition are recognized as forests.

The Act defines “Community” and “forest community” as a clearly defined group of users of forest land identified on the basis of ethnicity, culture or similar community of interests; and a group of persons who have a traditional association with a forest for the purposes of livelihood, culture or religion, respectively.

Forest Community is distinguished from “community forest association (CFAs)”, which are group of local persons who have registered as an association or other organization established to engage in forest management and conservation.

While CFAs derive their forest user rights through registration to be approved by the Cabinet Secretary, a forest community derives its right of use and occupancy from “Customary rights”, which are rights resulting from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.
The Act incorporates a broader understanding of both “forest produce” and “forest resources”. The understanding of forest resources for examples goes beyond our traditional view of commercial, subsistence and recreational resources to encompass social, religious, spiritual aspects.

**“Forest Produce”**

includes bark, animal droppings, beeswax, canes, charcoal, creepers, earth, fibre, firewood, frankincense, fruit, galls, grass, gum, honey, leaves, flowers, limestone, moss, murram, soil, myrrh, peat, plants, reeds, resin,

A public forest Strategy to be reviewed 3-yearly and an annual report on the state of forests prepared by the Cabinet Secretary and County government will be produced to inform plans and programs for the protection, conservation and management of forests and forest resources.

**How is Forest on Public Land Governed/Administered?**
Kenya Forest Service, has the responsibility to:

- Conserve, protect and manage all public forests,
- Management plans, licenses or permits in relation to forest resources and regulate benefit sharing arrangements,
- Develop programmes for tourism and for recreational and ceremonial use of public forests;
- Keep a register of all forest management plans,
- Identify research needs and manage environmental
- Prepare bi-annual Forest Status Report & establishment of public forests on un-alienated public land

The Chief Conservator of forests of the KFS is responsible for the day to day management of the Service, while the Kenya Forestry College, provide forestry education; including vocational and technical. The Kenya Forestry Research Institute (KEFRI) is mandated to develop research and development programmes to provide information and technologies for sustainable development of forestry. And, one of the primary duties of the Chief Conservator of Forests supervision of implementation of Public forest management plans with the County supervising private and community.

County Government plays a role in implementation of national policies on forest management and conservation, manages all forests on public land (formerly trustland forests), prepares annual state of forests reports and supports community and private forestry.

Funding forestry related activities will be from multiple sources, particularly from the newly established Forest Conservation and Management Trust Fund, which will be managed by a Board of Trustees appointed by the Cabinet Secretary.

Under the Act County Government are required to establish and maintain arboreta, green zones or recreational parks for use by persons residing within its area of jurisdiction and in consultation with the KFS prescribe conditions as to the species of trees to be planted in such green zones, arboreta or recreational park. The Act requires establishment of green zones at the rate of at least five percent of the total land area of any housing estate intended to be developed.
What Constitute Community Forests?

This include forest within Group ranches, land that is lawfully held, managed or used by specific communities as community forests; forests on ancestral lands and lands traditionally occupied by hunter-gatherer communities and land lawfully held as trustland by the county governments.

Community forests is vested in the community and shall be registered by the Kenya Forest Service and may seek funding support from the Trust Fund, and exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land.

A community that owns a community forest is expected to prepare a management plan for that community forest or it may request the relevant county government to prepare a management plan for the community forest.

How is Community Participation in Conservation and Management of Public Forests envisioned?

Overall, KFS is required by law to consider the interests of the local communities in the management of public forests. In the administrative arrangement of the forest service, communities are represented through nominee from a national body representing community forest associations and one person nominated by the Council of Governors.

The main mechanism for community participation in public Forest conservation and management is the Community Forest Associations and Forest Conservation Committees.
Community Forest Association is a group of member of a forest community and or any other persons resident in the same area, registered as an association with interest in a particular forest granted permission by KFS to participate in the conservation and management of a public forest, subject to certain conditions. Once registered the CFAs enter into a management agreement with the KFS, which may be terminated under certain circumstances by Chief Conservator of Forests.

The forest user rights granted to CFAs are meant to be consistent with the traditional forest user rights of the relevant forest community including protection of sacred groves and protected trees.

The forest user rights granted, range from access to grazing areas, harvesting of fuel wood, honey, medicinal herbs to educational, ecotourism and recreational activities, including establishment of plantations.

Cultural use and heritage including sacred trees or groves is recognized as a fundamental right to be considered in forestry management decisions such as approving Quarrying activities on forest lands. Private Sector investors in forests are required to share the benefits of their investment with local communities by applying various options including but not limited to infrastructure, education, employment and social amenities.

What are some of the Potential Areas for challenges and Tensions?

• The cabinet secretary is granted power through consultation with County government and stakeholders to declare any national, county, community or private forest, as a nature reserve with prior arrangements for compensation to the forest owner – community or private for cultural or scientific purposes and or declare any tree species or family of tree species to be protected in the whole country.
• The chief conservator of forests may seize, detain and auction any livestock (at the expiry of seven days if the owner does not reclaim it) found in a national, county or provisional forest without any person in charge of them, since building livestock enclosures and harvesting/collecting any forest products without permission from KFS is a criminal offence.

• Private sector will be incentivized to participate in the sustainable management of forests through a combination of approaches including forest conservation easement, tax waivers and exemption applicable land rates.

• Power is granted to the Board of KFS to establish and manage a “provisional forest” in collaboration with the owner thereof for a period of three years subject to review, which should revert to the owner once rehabilitation is achieved and plans to sustainably manage it put in place it.

What are some of the means of enforcing compliance/implementation of the Act?

• KFS shall manage a chain-of-custody system for the verification of the origin of forest products from public, community and private forests and the compliance of license holders and support counties.

• It shall also regulate import, export, re-export or introduction of any forest products into or from Kenya.

• On Dispute resolution, County based structures of conflict and dispute resolution are first-line of remedy. Any unresolved matters at the County level are then referred to the National Environment Tribunal for determination and ultimately to Environment and Land Court as established under the Environment and Land Court Act, 2011.
Points to Note for Action:

• Capacity building for all forest sector stakeholders and right-holders is essential if the spirit and letter of the Forest Conservation and Management Act is to be realized.

• Registration of all forests categories with KFS, including Community forests, is the first critical step towards legal recognition and security of forest tenure rights in the Country.

• Forests management Plans, Strategic plans and annual Forest status reports are primary instruments for sustainable management including monitoring of all categories forests in the Country. Community must therefore pro-actively engage and monitor these instruments.

• Given the centrality of Community Forest Associations (CFAs) as the main avenue for community participation and accessing benefit in Public forests, Forest Communities may need to re-examine their involvement in CFAs and how to address inherent weakness and prevailing concerns.

• Community should be alive to the power bestowed on the Cabinet Secretary to declare sections of forests “nature reserves” and that of the KFS Board of Trustees to establish “forest conservation areas”, so as to ensure strategic and meaningful engagement in case of this eventuality.

• Group Ranches that still own forests on communally owned land should take advantage of the provision of the Act to secure Community forests land, including reforestations within their ranches.

• Communities should also pro-actively monitor incentives extended to Private sector for purposes of contributing to sustainable management of forests to guard against abuse such arrangements through corruption.