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STATUTE NOTE

The Forest Act, 2002 (Tanzania)

During the 1980s and 1990s there were two major changes to forest management objectives in Tanzania. Firstly, it was recognized that some of the forests, notably those on mountains in the east of the country and the coastal plain, are exceptionally rich in species of restricted distribution.[1] Recent analysis has even placed these forests amongst the most important biodiversity hotspots world-wide.[2] Secondly, there was a recognition that communities needed to be much more involved in forest management.[3] The Forest Act, 2002,[4] which replaces the 1957 Forest Ordinance, tackles both of these objectives and introduces some new concepts of forest ownership. Moreover it makes arrangements for establishing a fund that promotes protection of biodiversity and sustainable development of forest resources. This note first briefly reviews the history of forest law in Tanzania and then discusses innovations introduced by the 2002 Act.

A State-controlled forest estate was initially established under German colonial administration during the period 1891–1919 to protect forest resources from clearance both by settlers and local inhabitants.[5] Following transfer of German territories to British control, the 1921 Forest Ordinance,[6] which was based on that used in adjacent Kenya colony, reinstated Forest Reserves delimited by the Germans and placed restrictions on access to, and use of, forest products. These restrictions were not in the spirit of the 1922 League of Nations Mandate for Tanganyika Territory. Under the mandate, interests of the local inhabitants were paramount and indirect rule was planned to lead to independence. For example, the preamble of the 1923 Land Ordinance stated:[7]

> "WHEREAS it is expedient that the existing customary rights of the native of the Tanganyika Territory to use and enjoy the land of the Territory and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families and their posterity should be assured, protected and preserved."

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[1] National Research Council, *Research Priorities in Tropical Biology*, National Academy of Sciences, Washington, D.C., 1980; J.C. Lovett, "Endemism and affinities of the Tanzanian montane forest flora", (1988) 25 *Monographs in Systematic Botany from the Missouri Botanical Garden* 591–598. R. Bensted-Smith and T.H. Msangi, *Report on the Conservation of Ecosystems and Genetic Resources*, Tanzania Forestry Action Plan, United Republic of Tanzania, 1989; J.C. Lovett and S.K. Wasser (eds.), *Biogeography and Ecology of the Rainforests of Eastern Africa*, Cambridge, 1993.

[2] N. Myers, R.A. Mittermeier, C.G. Mittermeier, G.A.B. da Fonseca and J. Kent, "Biodiversity hotspots for conservation priorities", (2000) 403 *Nature* 853–858.

[3] U. von Mitzlaff, *Managing the Catchment Forest Reserves, Who is to be Involved? A Socio-Economic Study Prepared for the Catchment Forestry Project*. Forest and Beekeeping Division, Ministry of Tourism, Natural Resources and Environment, Dar es Salaam, 1991; J.C. Lovett, *Udzungwa Forest Management Project Identification Mission*. Forest and Beekeeping Division, Ministry of Tourism, Natural Resources and Environment, and DANIDA, Dar es Salaam, 1992.

[4] Forest Act, 2002. Gazette of the United Republic of Tanzania No. 23. Vol. 83, 7 June, 2002.

[5] H. Sippel, "Aspects of Colonial Land Law in German East Africa" in R. Debusmann and S. Arnold (eds.), *Land Law and Land Ownership in Africa*, Bayreuth African Studies 41, Bayreuth University, 1996, 3–38; H.G. Schabel, "Tanganyika forestry under German colonial administration, 1891–1919", (1990) 34 *Forest and Conservation History* 130–141.

[6] An Ordinance to provide for the Conservancy and Management of Forests No. 32 of 1921. 17 August, 1921.

[7] Land Ordinance, 1923. No. 3 of 1923. 25 January, 1923.

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The strict nature of the 1921 Forest Ordinance was later modified to permit greater access to "*natural fruits*" (in the sense of the 1923 Land Ordinance) by modifications in 1926 and 1930.[8] However, these entitlements were again restricted in a new Forest Ordinance passed in 1933[9] aimed at protecting forests for water catchment and preventing forest loss from fire and grazing. Restrictions in the 1933 Forest Ordinance were retained in the 1957 Forest Ordinance and the objectives of forest policy during the remainder of the British Administration were essentially two-fold. Firstly for timber production in plantations, and secondly for protection of natural forest for water catchment. It was in pursuance of this latter policy that the State-controlled forest estate was expanded, particularly during the 1950s, to cover most of the natural closed forests not originally gazetted by the Germans. Following independence in 1961 the new government retained most of the State-controlled forest estate, continued to use the 1957 Forest Ordinance and maintained a forest policy primarily geared to protection of natural closed forest for catchment and plantations of exotics for production.

There were some exceptions to continuation of British forest policy. In 1963, 12,000 ha. of Shume-Magamba forest reserve were transferred to village ownership and deforested.[10] In 1969 centrally controlled forest reserves were placed under district authorities, but this decision was reversed in 1976 when it was realized that districts were using timber from the forests as a means of relieving financial pressures;[11] and in the mid-1980s there was extensive mechanized logging in the natural forests of the East Usambara and lowland Udzungwa mountains, supported by the Finnish and Chinese governments respectively. This foreign aid-assisted logging caused an international outcry from conservationists[12] and the East Usambara logging operation was converted into a Finnish-funded forest conservation project. This placed biodiversity high on the Forest Department's agenda and it was included as an integral part of a developing new forest policy and the 1989 Tanzanian Forest Action Plan.[13] The new Forest Policy was finally approved in 1998. The two main changes from previous approaches were inclusion of biodiversity conservation as a policy objective, and a recognition of the importance of community forestry. There were other important changes in Tanzanian natural resource policy taking place at the same time. A new Wildlife Policy was also approved in 1998, and the 1923 Land Ordinance was replaced (after nearly 80 years of service) by two new land laws in February 1999, the Land Act, 1999, and the Village Land Act, 1999, which came into force on 1 May, 2001. After much discussion, and four years after publication of the Forest Policy, in 2002 the new Forest Act came into force.

The Forest Act, 2002, not only replaces the 1957 Forest Ordinance, but also the Export of Timber Ordinance (Cap. 288) and Grass Fires Ordinance (Cap.

[8] GN No. 86 of 20 August, 1926; GN No. 163 of 9 October, 1930.
[9] GN No. 119 of 4 August, 1933.
[10] B. Lundgren, *Soil Conditions and Nutrient Cycling under Natural and Plantation Forests in Tanzanian Highlands*, Department of Forest Soils, Swedish University of Agricultural Science, Reports in Forest Ecology and Forest Soils 31, 1978, 1–429.
[11] J.E. Hermansen and F. Benedict, *Catchment Forestry in Tanzania, Status and Management*, Institute for Environmental Analysis, Bo, Norway, 1985.
[12] A.C. Hamilton and R. Bensted-Smith (eds.), *Forest Conservation in the East Usambara Mountains, Tanzania*. IUCN, Gland, 1989.
[13] W.A. Rodgers, "The conservation of the forest resources of eastern Africa: past influences, present practices and future needs" in J.C. Lovett and S.K. Wasser (eds.), *Biogeography and Ecology of the Forests of Eastern Africa*, Cambridge, 1993, 283–331.

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135). Inclusion of fire control brings a widespread activity under the remit of the Forest Act, even though burning is usually practised in connection with agriculture, hunting or grazing. However the most significant changes are concerned with biodiversity conservation and community forest management. Biodiversity protection is included throughout the Act. Provision is made for establishment of a fund which includes the purpose of assisting Tanzania to benefit from international initiatives and funds for biodiversity conservation. Environmental impact assessments are required in forested areas and watersheds for certain developments. National forest reserves may be declared as nature forest reserves to maintain and enhance biodiversity and genetic resources. Outside the reserves, conservation of trees includes both protection of natural water supplies and biodiversity; and provision is made for protection of wild plants and animals listed in the government gazette. Sovereignty over "biological resources, their derivative products and intangible components"[14] is also affirmed.

Forest management plans are required to be drawn up for each forest reserve. The plans not only have to contain provisions for protection of wild animals and plants, but also details on involvement of communities in the use and management of forest resources. In establishing new national forest reserves, consideration has to be given to whether it is better to establish a village or community forest reserve as the most efficient and equitable way to maintain the balance between existing rights and protection of forest resources. Village reserves may be owned and managed by one or more villagers, and community forest reserves are managed by a group of people who are members of a village or live in or near a forest. This approach to forest management, although it has been used in other countries such as Nepal for more than 20 years,[15] is a radical departure from the previous system in Tanzania. Initially pioneered in Singida in the early 1990s,[16] the aim is to meet a wide range of objectives from equitable access to sustainable utilization and protection of forest resources. In this way, the intent of the 1923 Land Ordinance, in terms of sustainable access to natural fruits, is finally being realized for Tanzania's forests. However, critics of community involvement in natural resource management have suggested that this is simply a way of government passing on costs from central to local level.[17] Ultimately it may be impossible to reconcile the local need for forest products and global interests for biodiversity conservation. In this case equity could be restored through direct payments for conservation,[18] which could be routed through the fund established under the new Forest Act. Though whether or not this type of payment will reappear at the village level is open to question.

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[14] Art. 69 The Forest Act, 2002.
[15] Community Forestry (CF) Legislation and Decentralization Act (1982), Nepal.
[16] L. Wily, *Collaborative Forest Management Villagers and Government: The Case of Mgori Forest, Tanzania*, http://www-trees.slu.se/publ/online/wilycove.htm, 2001.
[17] A.N. Songorwa, "Community-based wildlife management (CWM) in Tanzania: are the communities Interested?", (1999) 27 *World Development* 2061–2079.
[18] P.J. Ferraro and A. Kiss, "Direct payments to conserve biodiversity", (2002) 298 *Science* 1718–1719.

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