

# **BRIEFING OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, FORESTRY AND FISHERIES ON THE NATIONAL FORESTS AMENDMENT BILL**

**21 FEBRUARY 2017**



**agriculture,  
forestry & fisheries**

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

# PRESENTATION OUTLINE

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- 1. Introduction**
- 2. Problem Statement**
- 3. Objectives of the Bill**
- 4. Alignment of the Bill with Strategic Priorities of Government**
- 5. Proposed Amendments**
- 6. Departments / Stakeholders Consulted**
- 7. Concluding Remarks**



# INTRODUCTION

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- The purpose of the presentation is to brief the Portfolio Committee on the National Forests Amendment Bill.
- The Principal Act was promulgated in 1998 and amended twice; in 2001 and 2005.
- The National Forests Act No. 84 of 1998 aims to:
  - ✓ Provide special measures for the protection of certain forests and trees.
  - ✓ Promote the sustainable use of forests for environmental, economical, educational, recreational, cultural, health and spiritual purposes.
  - ✓ Promote the sustainable management and development of forests for the benefit of all.



# PROBLEM STATEMENT

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- Lack of efficient emergency measures to halt destruction of forests.
- Lack of provisions for appeal processes in the Act.
- Inadequate cooperative governance arrangements.
- Challenges in the interpretation and non-comprehensiveness of some terms in the Act.
- Non-alignment of certain provisions of the Act with the Constitution of the Republic.



# OBJECTIVES OF THE BILL

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The objectives of the National Forests Amendment Bill are to:

- Provide for public trusteeship of the nation's forestry resources.
- Increase the promotion and enforcement of sustainable forest management.
- Increase measures provided for in the Act to control and remedy deforestation.
- Promote equity by inclusion of youth and women in the National Forests Advisory Council (NFAC).



# OBJECTIVES OF THE BILL CONT...

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- Provide for appeal against decisions taken by the Minister and/or person under the Minister's delegated authority.
- Reinforce provisions relating to offences and penalties.
- Enhance alignment with the Constitution and other related environmental legislation.
- Strengthen the provision relating to the appointment and determination of the level of the Forest Officers.



# HOW THE NFA BILL WILL ADDRESS STRATEGIC PRIORITIES OF GOVERNMENT

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The DAFF acknowledges the following strategic priorities of government of transformation, job opportunities and food security:

## TRANSFORMATION

- Through promotion of equity by inclusion of youth and women in the National Forests Advisory Council.
- Through provision of appeal against decision taken under delegated powers and duties.
- Retained Section 29 – deals with Community Forestry – management of plantations by communities through a Community Forestry Agreement
- The Act in Section 27 – Leasing of State Forests – communities have shareholding in the companies currently leasing State forests (four (4) Forestry long-term leases).



# HOW THE NFA BILL WILL ADDRESS STRATEGIC PRIORITIES OF GOVERNMENT

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## JOB CREATION

- The current Bill does not have a direct contribution to job creation, however, the Act already has provisions in place to contribute to job creation; for example:
  - ✓ Section 19: Access for recreational, cultural, spiritual fulfillment and educational purposes – jobs created for local people for the maintenance of hiking trails and other facilities in State forests.
  - ✓ Section 27: Leasing of State forests - through the lease agreements communities have access job opportunities
  - ✓ Section 28: Allows communities to enter into an agreement to sell forest produce.
- All these are allowed to promote participation of previously disadvantaged communities in aspects of forestry as a principle of the Act.





# HOW THE NFA BILL WILL ADDRESS STRATEGIC PRIORITIES OF GOVERNMENT CONT....

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## FOOD SECURITY

- The current Bill does not have a direct contribution food security, however, the Act already has provisions in place to contribute to food security, for example:
  - ✓ Section 7, 15 and 24(6) exemptions allows communities to access forest resources for household purposes, for example mushroom, firewood, fruits (Marula / berries / baobabs), vegetables (miroho) and honey, amongst others.
  - ✓ These exemptions however have some form of regulations attached to them for the sake of balancing between use and protection such as, resources collected may not be for commercial purposes, may only be head loads and safety precautions like accessing during the day.
  
- Furthermore, the Act provide for a conducive environment for investment and therefore job creation in forestry sector. As a result, the more than 158,400 (60,200 direct and indirect 98,200) people employed in the sector are able to access to food.



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit of the amendment
Section 2A: insertion of new interpretation: Public Trusteeship	Unclear level sphere of government where forestry resources are managed.	<u>Public Trusteeship-- As the public trustee of the nation's forest resources the National Government, acting through the Minister, must ensure that these resources, together with the land and related ecosystems which they inhabit, are protected, conserved, developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government."</u>	Public trusteeship-- The National Government, acting through the Minister, must ensure that these resources, together with the land and related ecosystems which they inhabit, are protected, conserved, developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government."	To provide the level sphere of government where forestry resource are managed.



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit/ reason of the amendment
Section 7(1)(b): amendment to include all other vegetation other than trees in a natural forest.	In efficient promotion and enforcement of sustainable forest management.	<p><u>Section 7 (1): No person may</u>            (a) cut, disturb, damage or destroy any indigenous tree in a natural forest; <b>[or]</b>  <u>(b) cut, disturb, damage or destroy any other indigenous vegetation in a natural forest; or</u>            (c) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from a tree contemplated in paragraph <u>(a), or any other forest vegetation, or any forest product derived from such vegetation, contemplated in paragraph (b), except in terms of</u></p>	Section 7 (1): No person may – (a) cut, disturb, damage or destroy any indigenous tree in a natural forest; (b) cut, disturb, damage or destroy any other indigenous vegetation in a natural forest; or (c) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from a tree contemplated in paragraph (a), or any other forest vegetation, or any forest product derived from such vegetation, contemplated in paragraph (b), except in terms of –	Benefit: Increased promotion and enforcement of sustainable forest management.



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit / reason of the amendment
Section 17(13): insertion of a new subsection to remedy deforestation	Deforestation	<p>Section 17 (13) <u>'The Minister may declare a controlled forest area without prior consultation with, or affording a prior hearing to, any affected person but as soon as reasonably possible after the declaration contemplated in section 17 (3)</u></p> <p><u>(i) consult with, and afford a hearing to, any affected person;</u></p> <p><u>(ii) consider any presentation received during such consultation or hearing; and</u></p> <p><u>(iii) confirm, vary or cancel the declaration concerned.</u></p>	<p>Section 17 (13) 'The Minister may declare a controlled forest area without prior consultation with, or affording a prior hearing to, any affected person but as soon as reasonably possible after the declaration contemplated in section 17 (3):</p> <p>(i) consult with, and afford a hearing to, any affected person;</p> <p>(ii) consider any presentation received during such consultation or hearing;</p> <p>and</p> <p>(iii) confirm, vary or cancel the declaration concerned.</p>	Increased measures to remedy deforestation.



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit/ reason of the amendment
Section 34(2): to insert new paragraph (J)	Gender imbalance	<p><i>Section 34" (2) In making the appointments to the Council the Minister must balance the interest of-</i></p> <p>(a) categories of persons disadvantaged by unfair discrimination; .....</p> <p>(b) Communities involved in community forestry;</p> <p>(h) the forest products industries;<b>[and]</b></p> <p>(i) trade unions representing employees in the forest products industry[.]; <u>and"</u>;</p> <p><u>(j) youth and women</u></p>	<p><i>Section 34" (2) In making the appointments to the Council the Minister must balance the interest of-</i></p> <p>(a) categories of persons disadvantaged by unfair discrimination; .....</p> <p>(b) Communities involved in community forestry;</p> <p>(h) the forest products industries;</p> <p>(i) trade unions representing employees in the forest products industry; and";</p> <p>(j)_youth and women</p>	To promote equity by inclusion of women and youth to participate in the National Forests Advisory Council.



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit/ reason of the amendment
<p>Section 58(6): Amendment to increase the penalty for 5<sup>th</sup> category offence.</p>	<p>Ineffectiveness of penalties versus the offences</p>	<p>Section 58(6) A person who is guilty of a fifth category offence referred to in section 61 may <b>[not]</b> be sentenced to imprisonment, but may be sentenced to a fine <b>[up to]</b> not exceeding <b>[R50 000]</b> <u>R10 million or both.</u></p>	<p>Section 58(6) A person who is guilty of a fifth category offence referred to in section 61 may be sentenced to a fine not exceeding R 10 million or imprisonment for a period of up to 10 years or both fine and such imprisonment.</p>	<p>Reinforcement of offences and penalties</p>



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit/ reason of the amendment
Section 57 A: to provide for an appeal process in the Act	To provide for an appeal process not previously provided in the Act	<p>Appeal against decision or action against the Licensing Officer Section 57A (1)(a) where a difference or disagreement arises concerning any decision or action taken by the Licensing Officer in terms of this Act an appeal may be lodged to the Minister against such decision or action.</p> <p>(b) Before whom an appeal arising from a difference or disagreement regarding a decision or action taken by a licensing officer under this Act, consideration of a conciliation must be done if considered appropriate or</p> <p>(c) refer the matter to the Minister.</p> <p>(2)(a) The Minister Must—</p> <p>(i) Appoint a conciliator to the appeal with time-limits, that he or she may determine: or</p> <p>(ii) If he, she considers conciliation inappropriate or if conciliation has failed, he or she must make a decision provided that there will be no conflict with provisions of other laws.</p>	<p>Part 3: Appeals</p> <p>(1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated in terms of this Act.</p> <p>(2) An appeal under subsection (1) must be noted and shall be dealt with in the manner and in accordance with the procedure prescribed by the Minister in the Regulations.</p> <p>(3) The Minister shall consider any mater submitted to him or her on appeal, after giving every person with an interest in the mater an opportunity to state his or her case.</p>	To have an appeal process in place for aggrieved stakeholders.



# PROPOSED AMENDMENTS

Section to be amended	Gaps/ challenges that will be addressed through the amendments	Amendments that will be made	What it will read like when amended	The benefit / reason of the amendment
Section 65: to amend to include different levels of Forest Officers.	Ineffective enforcement measures	Section 65. The Director-General may— (a) designate posts in the Department or in any provincial administration or municipality, whose incumbents are forest officers; <b>[and]</b> <i>(b) appoint any other suitably qualified persons as forest officers[.];</i> <i>(c) define different levels of forest officers; and</i> <i>(d) determine qualification criteria for forest officers."</i>	Section 65 . The Director General may-- (a) designate posts in the Department or in any provincial administration or municipality, whose incumbents are forest officers; (b) appoint any other suitably qualified persons as forest officers; (c) define different levels of forest officers; and (d) determine qualification criteria for forest officers.	To strengthen enforcement measures





## DEPARTMENTS / STAKEHOLDERS CONSULTED

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Consultations have been conducted with stakeholders that include amongst others:

- ✓ Eskom
- ✓ Government Departments
- ✓ SANRAL
- ✓ Forestry Industry – Forestry South Africa (FSA); Lessees (MTO Pty Ltd, Siyaqhubeka, Amathole Forestry Company and Singisi Forest Products)
- ✓ Tourism and Parks Boards / Conservation Agencies e.g. South African National Parks, South African Biodiversity Institute (SANBI)



## DEPARTMENTS / STAKEHOLDERS CONSULTED CONT...

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- ✓ NEDLAC (National Economic Development and Labour Council)
- ✓ Mining companies
- ✓ National Forests Advisory Council (NFAC)
- ✓ Forest Sector Transformation Charter Council
- ✓ Academic Institutions / Universities
- ✓ National House of Traditional Leaders
- ✓ Research Institutions - Council for Scientific and Industrial Research (CSIR) and Institute for Commercial Forestry Research (ICFR)



## CONCLUDING REMARKS

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- The Amendment Bill during its review has been aligned to the Constitution and other environmental legislation to ensure effective enforcement.
- Consultation has been conducted with various stakeholders, including other relevant government Departments (for example, DEA) to ensure that there is no overlapping of mandates.
- The Amendment Bill is structured such that there is no increase in financial contribution that is required for its administration.
- Department has set aside resources for the enforcement of the Bill and will rely on collaboration with other government institutions for enforcement.
- It is requested that the Portfolio Committee consider endorsing the Amendment Bill for further processing.



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# THANK YOU



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Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA