



9 August 2017

To: Parliamentary Portfolio Committee on Agriculture, Forestry and Fisheries

Attention: Albertina Kakaza

Timberwatch comments and questions concerning the potential effects of the language and wording contained in the draft Forests Amendment Bill [B11-2016]

Please see below. For enquiries please contact W. Menne at +27 (0)82-4442083

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1) To amend the National Forests Act, 1998, so as to provide for clear definitions of natural forests and woodlands;

Comments:

Timberwatch supports this objective. Our view is that without unambiguous definitions that are clearly and precisely worded, it will not be possible to achieve, or to effectively implement, the overall intent of the Forest Act, which is “the sustainable management and development of **forests**”.

However, we find the proposed amended definitions of “natural forest” and “woodland” in the draft Forests Amendment Bill, to be incongruous, confusing and inaccurate to a point where attempting to understand or to apply them would create uncertainty for most South Africans, and therefore not contribute meaningfully to the constructive involvement of citizens in supporting governments responsibility to legally protect and to preserve South Africa’s forests and woodlands. This is a consequence of attempts to disguise or to misrepresent ecologically harmful and socially disruptive industrial tree plantations as forests, instead of factually presenting them as ‘a necessary evil’ required for producing raw material for the polluting timber, pulp and paper industries.

An underlying reason for this was racially motivated decisions taken by the apartheid government to use tree plantations to displace rural communities from their traditional areas to the so-called “homelands”. This was done in such a way as to secure the most fertile and well-watered land for the benefit of the then mainly state-owned timber production and processing industry. This involved the establishment of vast industrial

tree plantations on land designated as “state forests”, and that today still continue to serve the interests of the timber industry, rather than the original owners of the land.

Therefore, in our view, this draft Forests Amendment Bill fails to achieve what should be its primary objective, of providing unambiguous, clear and precise definitions, and that this also undermines its ability to effectively protect South Africa’s nature-based forest resources through promoting and regulating the sustainable management and development of our forests and woodlands, and the legal enforcement thereof.

1 (b) by the substitution in subsection (1) for the definition of “natural forest” of the following definition:

“ ‘natural forest’ means a group of predominantly indigenous trees—”

Comments:

The above statement contains a contradiction in terms as per the following reasons:

So-called “natural forests” in South Africa should consist of only locally indigenous tree species. The phrase “predominantly indigenous trees” implies that a smaller portion of the trees in a “natural forest” (i.e. less than 50%), could be non-indigenous. In other words, they could be alien tree species that had either invaded, or been purposely planted within the “natural” forest in question.

The intended meaning of "predominantly" is critical in this context. To be accurate, and make proper sense, a short definition of a South African forest should read something like this: 'A naturally occurring heterogeneous mix of locally indigenous plants that consists predominantly of forest tree species'.

What is the exact meaning of "group" in this context? How many trees are needed to make up a “group” as envisaged in the Forest Amendment Bill? If some trees within a “group” are not locally indigenous, then such a “group” could not be called "natural".

How could a “forest” or a “woodland” that does not contain mainly locally indigenous plants be described? One answer is that they should be called ‘un-natural’ rather than ‘natural’. Alternatively, if a “forest” consisted mainly of a single alien tree species, then it would be called something like ‘wattle thicket’ or ‘gum jungle’ or ‘pine infestation’. Similarly, alien tree monocultures (plantations) are sometimes called ‘fake forests’!

1 (b) (a) whose crowns are largely contiguous in its undisturbed state;

Comments:

What does “largely” contiguous mean? Does it mean that a majority of trees in a forest (i.e. more than 50%) are part of an area where their crowns overlap or touch each other? This criterion needs to be explained in detail, which must also be supported by relevant scientific research.

How would “undisturbed” be defined in this context? The presence of non-indigenous or non-local tree species within a forest should definitely constitute ‘ecological disturbance’. However, it is generally accepted that there are few if any genuinely ‘undisturbed’ forests remaining in the world. In fact, it is often acknowledged that higher biodiversity levels in forests can be attributed to the presence of indigenous peoples and local communities.

1 (b) (b) which may represent any successional stage or state of forest degradation, in which case crowns may not be contiguous;

Comments:

The state of a forest’s canopy can be affected by various commonplace temporary disturbances that could be caused by wildfires, storm damage, insect or animal damage, or diseases that cause a tree’s leaves to drop. Forests are dynamic plant and animal communities, where, as with human populations, there is a state of constant variation determined by many different internal and external factors, such as species increases or die-off, climate variability, migration, etc. It is also known that old trees need to die in order to allow sunlight to reach the forest floor, and to stimulate the growth of younger trees so that they can take their place in the forest canopy.

These important processes have nothing to do with succession or degradation!

1 (b) (c) which occur in association with characteristic plants or animals recognised in vegetation science as diagnostic species of a specific natural forest type; or

Comments:

Forests do not “occur in association with” any living thing. Forests are the sum total of their biotic and abiotic components.

“Diagnostic” is not the right word to use here. It refers to a characteristic feature of a species or genus. A better term to use when attempting to categorise different kinds of forests, would be ‘indicator species’.

1 (b) (d) which have been declared by the Minister to be a natural forest in accordance with section 7(2);” and

Comments:

Using such a ‘top-down’ approach when attempting to describe forests would only increase the confusion and conflict. In order to avoid this, it would be best to develop definitions and terms that clearly separate forests and woodlands from plantations, orchards, groves, hedges, wind-breaks and screens that have been created by planting either alien or indigenous plants. This separation would require a thorough revision of the existing legislation, including the possible transfer of jurisdiction over forests and woodlands to the South African National Biodiversity Institute (SANBI).

The word “natural” can be taken as meaning ‘derived from nature’, and could therefore be applied to any number of ‘natural-looking’ plant combinations, including many very un-natural, but wild-looking indigenous and non-indigenous gardens. As with ‘beauty’, the perception of “natural” lies within the eye of the beholder, and can therefore not be relied upon as a definitive adjective in relation to “forest”.

1 (c) by the substitution in subsection (1) for the definition of “woodland” of the following definition:

“ ‘woodland’ means a group of indigenous trees which are not a natural forest, but whose crowns cover [more than] at least five per cent of the area [bounded by trees forming the perimeter of the group] they occupy, and which may, in a degraded state have a crown cover of less than five per cent.”.

Comments:

This simplistic “definition” could open the door to the arbitrary removal of those trees occupying more than the minimum “crown cover” of “five per cent” of the woodland. There needs to be scientific justification for saying “*whose crowns cover [more than] at least five per cent of the area*”. Why is this not four per cent?

Woodlands often include single trees dotted across the landscape, but which do not form part of a “group” or of a “forest”. Some parts of a woodland may include trees concentrated in clusters, and depending on their appearance, these components of a woodland could be described variously as ‘bush-clumps’, ‘thickets’ or ‘forest patches’.

There is an urgent need to revisit how woodlands and forests are to be described or defined, and this exercise must also include the removal of the on-going conflict and confusion that arises as a direct result of the biased, outdated and conceptually flawed assumption that a “forest” includes “a plantation”. This anomaly can be demonstrated by the multiple negative impacts that industrial tree plantations have on forests when they are established in close proximity. These impacts include increased soil erosion, excessive water consumption, a greatly increased risk of fire damage to the forest, and of course the invasion of the forest by alien species, especially the uncontrolled offspring of plantation trees, but also others such as bramble and bugweed that are

associated with the disturbance caused by the expansion of tree plantations. To this must be added the ill-effects of tree plantations on forest-edge dynamics.

The National Forest Act appears to have no descriptive definition for a “forest”, nor for the three sub-categories it lists in a ‘rough rule of thumb’ opinion, expressed thus:

“Chapter 1 (INTRODUCTORY PROVISIONS)

(x) “forest” includes—

- (a) a natural forest, a woodland and a plantation;**
- (b) the forest produce in it; and**
- (c) the ecosystems which it makes up;”**

How ecologically destructive industrial tree plantations can possibly be considered a part of the ecosystem that it has irreversibly damaged or destroyed defies logic. The alien tree species used in timber plantations are declared invasive species that also require water use permits to be cultivated, yet due to lax regulation, they are allowed to cause an enormous amount of damage to the natural environment, and this puts them in conflict with the South African Constitution.

Conversely, an ecosystem can be defined as: “*a biological community of interacting organisms and their physical environment*”, within which industrial plantations of alien invasive trees can never be considered a beneficial part.

Below: A Sappi tree plantation in Mpumalanga Province after logging and burning



2. To provide for public trusteeship of the nation's forestry resources

2 A. The National Government, as the public trustee of the nation's forestry resources, 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.”.

Comments:

If the word “public” is to be used here, then it should be fully and clearly defined as to who it includes, and details provided of how the rights and interests of those affected individual members of the public will be protected by the state in its role as trustee of the nation's forests and woodlands.

What is the meaning of "forestry resources"? The word “forestry” is used to green-wash the environmental damage caused by tree plantations, as well as the associated pollution and environmental degradation caused by the processing of logs from tree plantations into planks, pulp, paper and packaging, which should not be tolerated.

Tree plantations are not forests, and tree plantation managers are not foresters!

OBJECTS OF BILL

The objects of the Bill are to—

- **provide clear definitions of terms;**
- **increase promotion and enforcement of sustainable forest management;**

Comments:

If one of the main “objects” of the Bill is really to “provide clear definitions of terms”, why not start with the most ambiguous one: “sustainable forest management”.

What exactly is "sustainable forest management" supposed to mean? Why not rather say 'sustainable management of forests', which sounds more explicit in its meaning (if it can be assumed that 'forests' excludes tree plantations)? This question has been debated globally for years, and there is general consensus that these two seemingly similar terms actually have distinctly different meanings. This distinction has become more relevant since the timber industry started using “sustainable forest management (SFM)” in order to green-wash its tree plantations.

4) To increase the measures provided for in the Act to control and remedy deforestation;

Comments:

There needs to be a clear and precise definition of "deforestation", which can provide absolute certainty in terms of how large an area of forest would have to be removed or destroyed, and to what degree, and whether temporary or permanently, in order to qualify as "deforestation". If such a definition existed, who would be the judge of this?

Global forest loss is increasing just as fast as demand for products that eradicate forests, such as palm oil, paper, soy and meat, continue to grow apace with human numbers. There would seem to be no end in sight for this 'endless growth', and the race is on for multinational corporations to 'grab' as much arable land as possible so as to increase their production and global market share.

However, this could never "remedy deforestation" as suggested above, because of the knock-on effect on new areas caused by the displacement of communities from their land.

The global pulp and paper industry is competing for whatever cheap land and labour might be available, particularly in sub-Saharan Africa, and foreign-promoted schemes to plant trees on vast areas of African land are becoming commonplace.

See: <http://www.wri.org/our-work/project/AFR100/about-afr100> and [HERE](#)

5) To provide for appeals against decisions taken under delegated powers and duties;

and

6) To reinforce offences and penalties; and to provide for matter(s) connected therewith.

Comments:

The technical language (terminology) used in the draft Forests Amendment Bill is often inaccurate or imprecise, to the point of being extremely vague, and therefore be wide open to mis-interpretation.

This could also prejudice the outcomes of any future legal actions by the designated enforcement authorities, and thus render the legislation ineffective.

4. GOVERNMENT (NATIONAL, PROVINCIAL AND LOCAL), PUBLIC ENTITIES AND THIRD PARTY STAKEHOLDERS CONSULTED

- *Wildlife and Environment Society of South Africa;*

Comments:

The WESSA national organisation is not a member of the Timberwatch Coalition. Why were they alone, and no other civil society organisations, including Timberwatch and its members, contacted or consulted?

The list of stakeholders includes many names of timber industry and government organisations, but none at all from affected worker unions. There should have been a comprehensive consultation process with relevant worker organisations (unions) that are associated with the timber production, conservation and tourism industrial sectors.

5. IMPLICATIONS FOR NATIONAL GOVERNMENT (OTHER DEPARTMENTS, PUBLIC ENTITIES, ETC)

Most poor people and vulnerable groups located mainly in rural areas of the country rely on forestry for their livelihoods. The proposed amendments will make the legislation more responsive and relevant and thus will assist in ensuring improved sustainable forest management for the benefit of poor and vulnerable communities. These amendments will also ensure more effective compliance and enforcement between the Department and other enforcement agencies at national, provincial and local level.

Comments:

The first sentence of this statement is not correct.

Based on our research, it would probably be true to say that most rural people and vulnerable groups are poorer because of the negative environmental impacts of "forestry" tree plantations that also reduce their access to water and take over arable land that could be put to far better use producing healthy, fresh food.

It is also pushing the "sustainable forest management" myth that tree plantations can be a solution to poverty. However, this could well be true for Mondi and Sappi!

6. IMPLICATIONS FOR DEPARTMENT

The Department is responsible for the creation of a comprehensive regulatory framework through policies and legislation to improve sustainable forest management in the country. It is therefore of critical importance to ensure that where necessary, amendments should be effected to ensure that there are no legislative or policy vacuums or conflict that hinder effective sustainable forest management.

Comments:

The Department (DAFF) appears to be narrowly focussed on promoting “sustainable forest management” (industrial tree plantations) rather than concentrating its efforts on conserving forests for the value of the ecological services that they render to society, including clean air and water, biodiversity and spiritual, recreational and educational opportunities. There needs to be less bias and greater transparency in this regard.

There can be little doubt that the propaganda-like repetitive use of this misleading term is mainly intended to serve the interests of the timber industry in South Africa, in which various government structures (IDC, DTI, SAFCOL, DAFF, PIC etc.) and ruling party members hold substantial financial shares.

Former Minister of Water Affairs and Forestry, Kader Asmal (now deceased), was aware of how state ownership of tree plantations could undermine its role as regulator, and tried to find external buyers for the plantations so that government could perform its duties without having a conflict of interest. However these plans failed, and many organs of government presently hold shares in, or loans to, timber industry players such as Sappi, Merensky, Komatiland, York Timbers, etc..

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8.5 The Bill seeks to ensure sustainable forest management; to provide for public trusteeship of the nation's forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act in order to control and remedy deforestation; align the provisions of assignment in terms of section 47 of the Act with sections 99 of the Constitution; to promote equity by inclusion of participation into the National Forests Advisory Council by vulnerable and previously disadvantaged groups (women and youth); to provide for the appeals against decisions taken under delegated powers and duties; to reinforce offences and penalties.

Comments:

The use of ambiguous terms such as “sustainable forest management” alters the stated purpose of the original Forest Act - which is "sustainable management and development of forests"

There is other problematic language used in this section. “Forestry resources” should rather read 'forest resources'. The generally accepted meaning of "forestry" is the art or science of the conservation and wise utilisation of forests. True 'forestry' is not about the destructive exploitation of forests. Therefore, the use of the term "forestry resources" appears to be inappropriate.

In general, the language used in this section appears to suggest that it might be acceptable for forests to be replaced by tree plantations as a remedy to deforestation. Thus, by enforcing “sustainable forest management” which is a euphemism for the expansion of tree plantations, it would legitimise the on-going destruction of forests,

woodlands and grasslands through their conversion to plantations. Tree plantations damage and degrade forests, and should therefore not have been included in the existing Forest Act as a “forest type”.

Instead of trying to “promote equity” for “vulnerable and previously disadvantaged groups” by weakening the legislation, the state should rather pursue the equitable distribution of a big slice of the state-owned land occupied by tree plantations (previously administered by SAFCOL) to qualifying members of these groups, who have the required appropriate experience.

8.6 The proposed amendments as reflected in the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution. As indicated above, the stated general purpose of the Bill is to ensure sustainable forest management.

Comment:

The "stated general purpose" of the Bill could in fact turn out to be one that is very different from its actual intended purpose, which appears to be to facilitate greater exploitation of forest resources by holders of permits issued by the Minister!

8.9 The Office of the Chief State Law Adviser is also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Comments:

Local community access to forests and forest resources is an important part of their cultural traditions, especially in terms of customary beliefs and the use of forest biodiversity as food and/or medicine.

Therefore, any changes to the existing Forests Act should be open to full scrutiny by bona fide representatives of traditional communities, and also referred to the National House of Traditional Leaders as a matter of courtesy.

General Conclusions

The impression obtained from the changes contemplated in the draft Amendment Bill is that they will most probably result in the usefulness of the Forests Act of 1998 being substantially reduced, rather than being strengthened as per the stated intentions made in respect of the proposed amendments.

The Forests Act suffers from a fundamental weakness in that it still fails to recognise how alien tree plantations, sometimes referred to incorrectly as “forestry” or “planted

forests”, and in this instance misrepresented as “sustainable forest management” (also known as SFM), and which are planted for the specific purpose of producing logs as an industrial raw material, are actually far more responsible for deforestation and harm being inflicted upon forests than natural causes.

One of the underlying causes of damage to forests is localised drought and water shortages such as are currently being experienced in the Western Cape Province, which together with the recent mega wildfires that occurred in the Southern Cape, were to a large extent caused or exacerbated by mismanaged tree plantations, and the infestations of feral pine, gum and wattle trees that have become established in the region.

The misguided application of the words “forest”, afforestation” and “forestry” when defining, describing or referring to industrial tree plantations must also be held up as a reason for local communities having been systematically brain-washed and lulled into believing that extensive plantings of highly flammable, drought-inducing and invasive alien trees are also ‘forests’. On the other hand, most of our forest tree species do not burn easily and actually help to prevent the spread of wildfires. Tree plantations are an integral part of an industrial production system that pollutes our planet, and cannot be likened to a forest ecosystem.

The Amendment Bill appears to be mainly intended to further entrench the deliberately misleading use of the term “sustainable forest management” when actually referring to industrial tree plantations. It appears 17 times in the text of the draft Amendment Bill.

This situation can be likened to the manner in which Apartheid era legislators used positive-sounding terms such as “separate development”, “mother-tongue education”, and “independent homelands”, in devious attempts to rob our people of their rights, and to fool the world.

timberwatch.org



National Forests Amendment Bill [B11-2016]

Call for comments opened 17 July 2017 Share this page:

Submissions must be received by no later than 04 August 2017

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The Portfolio Committee on Agriculture, Forestry and Fisheries invites you to submit written submissions on the [National Forests Amendment Bill \[B11-2016\]](#).

The Bill seeks to amend the National Forests Act, 1998 (Act No. 84 of 1998), so as to provide for clear definitions of natural forests and woodlands; to provide for public trusteeship of the nation's forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act to control and remedy deforestation; to provide for appeals against decisions taken under delegated powers and duties; to reinforce offences and penalties; and to provide for matters connected therewith.

Public Hearings on the Bill will be held on Tuesday, 15 and Wednesday, 16 August 2017.

Comments can be emailed to akakaza@parliament.gov.za by no later than **Friday, 04 August 2017**.

Persons interested in making oral submissions should indicate this

Enquiries can be sent to akakaza@parliament.gov.za or fax: 086 694 3529, telephone: (021) 403 3765 or 083 709 8391