SUMMARY OF THE CLIMATE CHANGE ACT, 2016

I. Introduction

The Climate Change Act is a comprehensive law for enhanced resilience to climate change and low carbon climate development. The Act gives effect to Article 42 and 70 of the Constitution on the right to a clean and healthy environment, and Article 69 on the obligations of the state with regard to the environment. The Act aims to:

- Mainstream climate change responses into development planning, decision making and implementation;
- Build resilience and enhance adaptive capacity to the impacts of climate change;
- Mainstream and reinforce climate change disaster risk reduction in strategies and actions of public and private entities;
- Mainstream intergenerational and gender equity in all aspects of climate change responses;
- Provide incentives and obligations for private sector contributions to achieving low carbon climate resilient development;
- Promote low carbon technologies to improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;
- Facilitate capacity development for public participation in climate change responses;
- Mobilize and transparently manage public and other financial resources for climate change response;
- Provide mechanisms for, and facilitate climate change research and development, training and capacity building;
- Mainstream the principle of sustainable development into the planning for and decision making on climate change response; and
- Integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between National government and County governments.

The Act establishes the National Climate Change Council, chaired by the President, to coordinate climate change efforts in the country (Section 5). It also establishes the Climate Change Directorate, which is the Secretariat to the Council and the lead agency of government
in charge of national climate change plans and actions. The prerogatives of the National Climate Change Council are as follows (Section 6):

- Ensure the mainstreaming of the climate change function by the national and county governments;
- Approve and oversee implementation of the national climate change action plan;
- Advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;
- Approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;
- Provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate change to the national and county governments, the public and other stakeholders;
- Provide guidance on review, amendment and harmonization of sectorial laws and policies in order to achieve the objectives of the act;
- Administer the climate change fund;
- Set the targets for the regulation of greenhouse gas emissions.

II. Provisions of the Act relevant to forestry

a) The National Climate Change Action Plan

The Act requires the Cabinet Secretary to formulate a National Climate Change Action Plan, to be updated every five years, with implementation review conducted every two years (Section 13 part 7 & 8). The Action Plan is expected to address all sectors of the economy, and provide mechanisms for mainstreaming of the National Climate Change Action Plan into those sectors (Section 13 part 4). The Action plan is binding to all public bodies, and any person or entity engaged in climate change governance and administration (Section 13, Part 9).

b) Climate change obligations of Public and Private Entities

Part 5 of Section 15 sets out duties imposed on each state department and national government entity relating to climate change. The duties are as follows:

- Integration of the climate change action plan into their functions.
• Reporting on their emission factors and activity data for the national inventory.
• Designating a climate change unit to coordinate mainstreaming into sectoral strategies.
• Regular monitoring of the performance of integrated climate change functions.
• Ensuring sustainability of sectoral mandates.
• Annual reporting to the council on the status and progress of assigned duties.

The Act allows the Council to impose climate change obligations on private entities including Public Benefits Organizations (Section 16). It also stipulates investigation, monitoring and enforcement powers on the National Environment Management Authority (NEMA) (Section 17).

c) The precautionary principle in addressing climate change

An important provision of the Act is that it allows citizens to apply to the Environment and Land Court if they allege that “A person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change”. The court may order a discontinuance or prevention of these actions, and may “provide compensation to a victim of a violation relating to climate change duties.” It is stipulated under the Act that no proof of loss or injury by the applicant is necessary (Section 23).

d) National and County government roles in Climate Change adaptation and mitigation

Section 18 of the Act provides for the identification of priority climate change strategies and actions of disaster risk reduction and incorporation of the same into functions and budgets of national and county governments and other associated entities. It also provides for the development of a public safety component for disaster reduction and management of emergency responses. County governments are required under the Act to integrate and mainstream climate change actions into County Development Plans and the County Sectoral Plans (Section 19). They are also mandated to designate a County Environment Officer to coordinate climate change affairs. Moreover, the Act allows formulation of subsidiary County legislation to further define implementation of its climate change obligations. The Act also requires that a report of the progress of county implementation of climate change actions be submitted annually to the County assembly for debate and a report forwarded to the Directorate for information purposes (Section 18).
The NEMA is charged with the integration of climate change assessments and for that purpose liaises with lead agencies for technical advice (Section 20). Moreover, the Act provides for the integration of climate change into the National Education Curricula at all levels (Section 21).

e) Public participation in addressing Climate change

The Act explicitly provides for public participation in the development of strategies, laws and policies related to climate change. This is by undertaking public awareness and conducting public consultations (Section 24, 1). The Act provides that the council shall publish regulations on the design and procedure to ensure that they make an impact on the threshold of decision making on climate change at all levels of government (Section 24, 2).

f) Climate Financing

I. The Climate Change Fund

The Act establishes the Climate Change Fund as the financing mechanism for priority climate change actions and interventions approved by the council (Section 25). The Fund’s revenue should come from:

- Monies appropriated from the Consolidated Fund by an Act of Parliament;
- Monies received by the Fund in the form of donations, endowments, grants and gifts and;
- Monies under and Act payable to the Fund.

Section 25 (9) provides for the development of a strategy and regulations within one year of the Act coming into force, to identify sources of climate finance, monitor uses of the fund, enhance integrity and eliminate corrupt practices.

II. Incentives for promoting climate change initiatives

The Act provides for incentives to promote climate change initiatives (Section 26). Such grants are given to persons who put in place measures to reduce green gas emissions (e.g. use renewable energy), mitigate climate change and train accredited programmes aimed at eliminating climate change.