SUMMARY OF THE CONSTITUTION OF KENYA, 2010

Introduction

The Constitution of Kenya (GoK, 2010) is the Supreme Law of the land. It binds all persons and State Organs at National and County levels. The Constitution is based on national values such as public participation, devolution, the rule of law, democracy, integrity, equity, good governance, transparency and accountability, sustainable development, social justice, and the bill of rights (Article 10). The constitution introduces the two ties of government, that is the National government and the County government. The National government provides an oversight influence on environmental conservation and management. The 47 County governments are devolved governments to enable increased self-governance of environmental resources at the local level. The Constitution describes the two levels of government as distinct and interdependent and it requires the two levels of government to cooperate and liaise with each other for purposes of exchanging information, coordinating policies, administration and enhancing policy.

Provisions of the Constitution relevant to forestry

- **Environmental rights and freedoms**: Article 42 of the Constitution stipulates the right to a clean and healthy environment for all citizens. Article 70 enforces this rights and recognizes actions that may be taken by responsible people in order to ensure a clean and healthy environment. The Article provides that the government may compensate citizens who are deprived of their right to a clean and healthy environment. Article 162 enables the enforcement of these environmental rights.

- **Increasing Tree cover**: The constitution recognizes the obligation of the state including its organs to ensure that the present tree cover is increased to at least 10% of the land area. (Article 69(1) (b).

- **Sustainable Environmental management and climate change mitigation**: Article 69 of the Constitution provides for the sustainable use, management and conservation of the environment and natural resources.

- **Equitable benefit sharing**: Article 69 gives provisions for equitable sharing of benefits derived from the environment.
• **Public participation:** Article 69 also provides for public participation in the management, protection and conservation of the environment.

• **Intellectual property rights and indigenous knowledge:** Article 69 (c) gives provisions for safeguards on indigenous knowledge systems and their role in biological diversity.

• **Genetic resources and Biological diversity:** Article 69 requires the state to protect genetic resources and biological diversity.

• **Environmental impact assessment, Audit and Monitoring:** Article 69 (f) gives provisions for the establishment of systems to further support EIA and environmental audit and monitoring.

• **Environmental Integrity:** Article 69 (g) provides that the continued developments in Kenya shall not compromise the environmental foundation on which it is based.

• **Benefits of the Environment to the people of Kenya:** Article 69(h) confirms the Government’s commitment to ensure that the environment and natural resources are utilised for the benefit of the people of Kenya and urges further action in that direction.

• **Individual commitment to Environmental protection:** The second part of Article 69 provides for sustainable management by the state, with support from the citizens.

• **Agreements relating to natural resources:** Article 2 requires that international environmental agreements, protocols and conventions to which Kenya is a signatory be domesticated and implemented within sectoral policies and laws. Article 71 expounds on these agreements by subjecting the exploitation of natural resources to further scrutiny by Parliament, thereby increasing control on the use of natural resources in the country.

• **Values and principles of public service:** Article 232 of the Constitution requires public officials to have high standards of professional ethics, proper use of natural resources, and involvement of people in policy making, accountability and transparency, sharing of information among others.

• **Provisions on land use:** Related to environmental issues are land use and rights issues. The Constitution of 2010 addresses land issues in Article 60. It stipulates that land should be used in a sustainable and equitable way, and thus ecologically sensitive areas ought to be protected. Article 67 makes way for the creation of the National Land Commission (NLC) to realize the requirements of Article 60.
• **The right of access to information.** Article 35 states in part, “every citizen has the right of access to information held by the State; and the State shall publicize any important information affecting the nation” (Constitution of Kenya, Article 35 (1) (a), (3)).

• **Distribution of functions between the National and County governments:** The Fourth Schedule of the Constitution provides for the distribution of functions between the two tiers of government. Further it gives the County Governments powers to ensure and coordinate the participation of communities and locations in governance at the local level.