SUMMARY OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (AMENDMENT) ACT, 2015

I. Introduction

The Environmental Management and Coordination Act, 1999, was amended to comply with the Constitution and integrate emerging environmental issues. The Environmental Management and Coordination (Amendment) Act (EMCA) provides the framework law for environmental conservation, management and coordination. Through EMCA, the government has attempted to harmonize policy regulations for the management of natural resources in Kenya. The EMCA provides for the protection of forests and Environmental Impact Assessment (EIA) of forestry related developments.

II. Institutions established under EMCA

- National Environment Management Authority,
- National Environmental Complaints Committee,
- National Environment Tribunal,
- National Environment Action Plan Committees and;
- County Environment Committees.

The National Environment Management Authority (NEMA) was established as the lead agency of government charged with the implementation of all policies relating to the environment, and to exercise general supervision and coordination over all matters relating to the environment. In consultation with lead agencies, like KFS, NEMA is empowered to develop regulations, prescribe measures and standards and, issue guidelines for the management and conservation of natural resources and the environment.

III. Provisions of the Act relevant to forestry

   a) Environmental Protection

The right to a clean and healthy environment was first acknowledged in the EMCA, 1999. This right has now been elevated to constitutional status. The EMCA provides for environmental protection through; Environmental Impact Assessments, Strategic Environmental Assessments, Environmental Audits and monitoring as well as environmental restoration orders, conservation orders, and easements. The Act is based on principles such as: the
precautionary principle, the polluter-pays principle, environmental restoration and compensation to victims of pollution. These principles also apply in the Forest Conservation and Management Act (FCMA, 2016). Section 44 provides that the KFS must consider the aforementioned before granting concessions and mining permits within a forest reserve. Section 28 of EMCA also provides that persons engaged in activities that are most likely to have adverse environmental effects must pay deposit bonds equivalent to the cost of environmental restoration. This is the Environmental Protection Bond in the FCMA, 2016. The Amendment Act is also based on principles of sustainable development such as public participation, cultural and social principles, the principle of international co-operation in the case of shared environmental resources and the principle of intra-generational and intergenerational equity.

b) Protection of the rights of forest adjacent communities

Traditional interests of forest adjacent communities are also protected in the EMCA (Section 43). The Act also promotes community conservation of forests.

c) The roles of County governments in environmental management

The EMCA has included the role of County governments in forest management through formation of a County Environment Committee (CEC) in Section 29. The committee will be in charge of proper management of the environment within the county for which it is appointed, including forestry functions such as provision of extension services to individuals and communities within their jurisdiction.

d) Functions of NEMA related to forestry

The NEMA, which is the lead implementing agency of EMCA, is mandated to promote the integration of environmental considerations into national development goals, conduct the valuation of natural resources in the country, review land use guidelines in consultation with other lead agencies and make recommendations to the relevant authorities. It is also mandated to promote environmental education, public awareness and public participation in environmental management, encourage incentives for voluntary environmental conservation practices and work with other lead agencies to issue guidelines and prescribe measures for the attainment of at least 10% tree cover of the land area of Kenya.
e) **Registration of forests**

Section 48 of EMCA outlines the procedure regarding registration of forests. NEMA and the Chief Conservator of Forests, following consultations, may enter into contractual arrangements with private owners for the registration of land as forest land.

f) **Climate change mitigation and adaptation**

The EMCA expressly provides for climate change mitigation and adaptation. Section 56 states that the Cabinet Secretary, in consultation with relevant lead agencies will issue guidelines and prescribe measures on climate change. The Act also has provisions for the protection of wetlands in Section 42. The Act restricts introduction of alien species to the environment, which coincides with the provisions of the FCMA, 2016.

g) **Dispute resolution mechanisms under the Act**

The EMCA gives power to citizens to apply for redress on environmental issues, whether affected directly or indirectly. Specifically, the establishment of the National Environmental Complaints Committee in Section 31 and the National Environment Tribunal in Article 125 to address environmental grievances. The Land and Environment Court formed under the Environment and Land Act, 2011 will also be charged with handling appeals of environmental grievances as well as forest-based conflicts. These institutions were established to provide the link between environmental management and the judiciary.

h) **Forest conservation and management**

Section 124A of the Act provides for the development of legislation by NEMA and lead institutions. In collaboration with KFS, NEMA will develop, issue and implement regulations, procedures, guidelines and measures for the sustainable use of forests, to control harvesting, protect water catchment areas, prevent soil erosion and regulate human settlement. Article 46 of the Act requires that every County Environment Committee (CEC) should identify areas for afforestation and reforestation as well as encourage community members to plant trees. Article 49 (d) of EMCA also provides for the promotion of renewable energy through planting of trees and woodlots by individual, communities and institutions.
i) Conservation of biodiversity

Sections 50 and 51 of the Act provides for the conservation of biological diversity. The Act requires NEMA to prepare an inventory on biological diversity and specific conservation measures, including *in situ* and *ex situ* conservation, identifying endangered, rare or threatened species, identifying potential threats to biodiversity, prohibiting and controlling the introduction of alien species into natural habitats and protection of indigenous knowledge among others. Section 8 of the FCMA, 2016 has a similar provision. The EMCA also provides for the protection of genetic resources and environmentally significant areas (Section 53 and 54).