SUMMARY OF THE LAND LAWS (AMENDMENT) ACT, 2016

I. Introduction

The Land Laws (Amendment) Act, 2016 brings about amendments to the Land Act, 2012, Land Registration Act, 2012 and the National Land Commission Act, 2012. The Act gives effect to Articles 68(c) (i) and 67(2) (e) of the Constitution and provides for the sustainable and productive management of land resources. The Act applies to public land, private land and community land as categorized in Articles 62, 63 and 64 of the constitution.

The National Land Commission (NLC) established under Article 67 of the Constitution is tasked with the management of public land on behalf of the National and County governments (Section 8 of the Land Act). To this effect, the NLC is responsible for the maintenance of records and data in respect of public land. The Land Act also provides that a lease or license for public land shall be issued by the NLC and shall be registered by the Chief Lands Registrar.

II. Provisions of the Act relevant to forestry

a) Roles of the National and County governments in relation to the management of forests on public land

Forests on public land identified under Article 62 (1) (g) of the Constitution vests in the National Government and are administered by the National Land commission (NLC), while public land identified under Article 62 (2) (a) and (b) vests in the County Governments and is administered by the NLC on their behalf. Implementation of forestry policies and programs for these forests on public land is the responsibility of each level of government.

b) The Environment and Land Court

The Land Act provides jurisdiction for the Land and Environment Court to determine land related disputes (Section 128). The Act also provides that subordinate courts will have jurisdiction to deal with claims and disputes concerning land.

c) Protection of ecologically sensitive areas

Section 11 (2) of the Act provides that the NLC shall take appropriate action to identify and protect ecologically sensitive areas that are within public lands and demarcate or take any other
justified action on those areas and act to prevent environmental degradation and climate change. The NLC is also required by the Act to consult existing institutions dealing with conservation.

d) **Prohibition of the allocation of forest land and other areas of environmental significance**

Section 12 of the Act, on allocation of public land provides that public land that falls within forest and wildlife reserves, mangroves and wetlands or their buffer zones as well as environmentally sensitive areas will not be allocated.

e) **Environmental Impact Assessment (EIA) to accompany land development plans**

The Act provides that before any development plans are made on any reserved public land, the management bodies must consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land. They are also required to submit an EIA report to the NLC (Section 17, 2).

f) **Conservation of land-based natural resources**

The Act requires the NLC to undertake an inventory of all land based natural resources (Section 15, 3). Section 19 expressly provides for the conservation of land-based natural resources. The rules and regulations made by the NLC to this effect may contain: measures to protect critical ecosystems and habitats; incentives for communities and individuals to invest in income generating natural resource conservation programmes; measures to facilitate access, use and co-management of forests, water and other resources by communities who have customary rights to these resources; procedures for the involvement of stakeholders in the management and utilization of land-based natural resources and measures to ensure benefit sharing with the affected communities.

g) **Land Settlement Fund**

The Land Laws (Amendment) Act, 2016 amends section 135 of the Land Act, 2012 to establish the Land Settlement Fund. The fund is administered by the Land Settlement Fund Board of Trustees. The Board constitutes among others the Cabinet Secretary responsible for the environment and natural resources.
The Land Settlement Fund is established to access land for conservation among other functions (Section 135, 3a). The Land Settlement Fund will consist of monies from national budgetary allocations, donors, grants/donations, loans, payments by beneficiaries of the scheme and other payments made to the Board of the Land Settlement Fund Trustee (Section 135, 2).