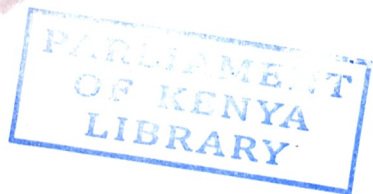


REPUBLIC OF KENYA



NATIONAL ASSEMBLY OF KENYA  
TENTH PARLIAMENT – FOURTH SESSION

DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL  
RESOURCES

**REPORT ON THE NATIONAL LAND  
COMMISSION (Bill No.5), LAND  
REGISTRATION (Bill No.4) AND LAND  
BILL (Bill No.6) OF 2012**

Clerk's chamber,  
Parliament Buildings,  
Nairobi

April 2012

## 1.0 INTRODUCTION

- 1.1. Pursuant to Standing Order No. 111, 114 and 181 of the House and on behalf of Members of the Departmental Committee on Lands and Natural Resources, I feel honoured to present to the House the Committee's Report on the National Land Commission Bill, (Bill No. 5), Land Registration (Bill No. 4) 2012 Land Bill, (Bill No. 6) of 2012.
- 1.2 Pursuant to Article 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Constitution of Kenya, 2010, The Land Bills - National Land Commission Bill, 2012, Land Registration Bill, 2012 and Land Bill, 2012, were published on Friday, 10<sup>th</sup> February 2012 and Monday, 13<sup>th</sup> February 2012 respectively under the hand of the Minister for Lands.
- 1.3 The National Land Commission Bill and Land Registration Bill, 2012 went through the First Reading on Wednesday 15<sup>th</sup> February, 2012. While the Land Bill, 2012 went through the First Reading on Wednesday, 22<sup>nd</sup> February, 2012 and thereafter, Committed to the relevant Parliamentary Committee - (Parliamentary Committee on Lands and Natural Resources) pursuant to House Rules of Procedure.
- 1.4 On, February 23, 29, 2012 and March 7, 2012, following the referral of the Bills to the relevant parliamentary Committee, Parliamentary Committee on Lands and Natural Resources resolved to invited public participation pursuant to Article 118 of the Constitution of Kenya, 2010.
- 1.5 However, due to the unavailability of the two Bills to the Members of the Public and other stakeholders, the Committee sought more time to allow stakeholders to consider and come up with views in form of memoranda's and written submissions.
- 1.6 On February 16 and February 29, 2012, the Committee resolved to invite stakeholder's views on the two bills and submission of the memoranda on Wednesday, February 22, 2012. In addition, undertook public hearings in 20 centres, countrywide from March 19 – 23, 2012. The submissions are herein annexed to the report.

DATE	COUNTY	VENUE
19 <sup>th</sup> March 2012	Marsabit, Wajir and Mandera	Wajir Municipal Hall
19 <sup>th</sup> March 2012	Machakos, Makueni and Kitui	Machakos Municipal Hall
19 <sup>th</sup> March 2012	Turkana	Lodwar Municipal Hall
19 <sup>th</sup> March 2012	Bungoma and Busia	Bungoma Municipal Hall
20 <sup>th</sup> March 2012	Garissa	Garissa Municipal Hall
20 <sup>th</sup> March 2012	Embu, Kirinyaga and Tharaka-Nithi	Embu Municipal Hall
20 <sup>th</sup> March 2012	Kakamega and Vihiga	Kakamega Municipal Hall
21 <sup>st</sup> March 2012	Meru, Laikipia, Samburu and Isiolo	Kamunde Hall, Meru
21 <sup>st</sup> March 2012	Tana River and Kilifi	Malindi Municipal hall
21 <sup>st</sup> March 2012	West Pokot and Trans Nzoia	Kitale Municipal Hall
21 <sup>st</sup> March 2012	Homa Bay and Migori	Homa Bay Municipal Hall
22 <sup>nd</sup> March 2012	Nyeri, Nyandarua and Murang'a	Nyeri Municipal Hall
22 <sup>nd</sup> March 2012	Mombasa and Kwale	Mombasa Municipal Hall
22 <sup>nd</sup> March 2012	Uasin Gishu, Elgeyo/Marakwet and Nandi	Eldoret Municipal Hall
22 <sup>nd</sup> March 2012	Kisii and Nyamira	Kisii Municipal Hall
23 <sup>rd</sup> March 2012	Taita/Taveta	Voi Municipal Hall
23 <sup>rd</sup> March 2012	Nakuru, Baringo and Kericho	Nakuru Municipal Hall
23 <sup>rd</sup> March 2012	Narok and Bomet	Narok University Hall
23 <sup>rd</sup> March 2012	Kisumu and Siaya	Kisumu Municipal Hall
<b>27<sup>th</sup> March 2012</b>	<b>Nairobi City, Kiambu and Kajiado</b>	<b>County Hall, Parliament Buildings</b>

- 1.7 On February 23, 2012, Parliament in its own wisdom extended the timelines set out in the Constitution for 60 days from February 27, 2012, to citing the importance of the land legislation to the Country and therefore the Committee set up a Sub Committee to consider views by stakeholders and prepare a report.
- 1.8 On April 1- 7, 2012, the Committee retreated to consider the public, stakeholder's views, memoranda and other written submissions and the report of the Sub committee – which included amendments.
- 1.9 Earlier, on January 19 -20, 2012 and January 31 –February 3, 2012 the Committee, in conjunction with the Ministry of Lands, other stakeholders and on its own initiative, held awareness session for All

Members of Parliament and its membership on the draft Bills in Mombasa and Naivasha respectively.

1.10 The reports on all session, workshops and retreat are all annexed to this report on the three Land Bills.

## 2.0 BACKGROUND – PROVISIONS

The Constitution (2010) presents a radical shift in the Policy and Law governing land and in particular, Chapter Five of the Constitution on '**Land and Environment**' is specific on the reforms needed to be implemented. The key relevant provisions include:-

- 1) **Article 60**; the development of legislations on land that reflects Principles of Land Policy;
- 2) **Articles 61-64**; the development of legislations on land that reflects land tenure systems, namely Public Land, Community land and private land;
- 3) **Article 65**; the development of legislations on land relating to limits on land ownership by non-citizens;
- 4) **Article 66**; the development of legislations on Regulation of Land Use and Property;
- 5) **Article 67**; the development of legislation to establish the National Land Commission; and
- 6) **Article 68**; the development of legislations on land in respect of the following:-
  - a) revise, consolidate and rationalise existing land laws;
  - b) revise sectoral land use laws in accordance with the principles set out in Article 60 (1); and
  - c) **enact legislation —**
    - i) **to prescribe minimum and maximum land holding acreages in respect of private land;**
    - ii) **to regulate the manner in which any land may be converted from one category to another;**

- iii) to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage;
- iv) to protect, conserve and provide access to all public land;
- v) to enable the review of all grants or dispositions of public land to establish their propriety or legality;
- vi) to protect the dependants of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land; and
- vii) to provide for any other matter necessary to give effect to the provisions of this Chapter.

### 3.0 MEMORANDA OF OBJECT AND REASON OF THE BILLS.

#### NATIONAL LAND COMMISSION BILL, 2012

3.1 The Memorandum of Objects and Reasons of the **National Land Commission Bill, 2012** is to make further provisions with regard to the National Land Commission established under Article 67 of the Constitution., the bill provides for: -

1. additional functions of the Commission which include the alienation of public land on behalf of the national and county governments, the monitoring of registration of rights and interests in land and the development and maintenance of an effective land information management system at the national and county levels.
2. the general powers of the Commission which are in addition to the powers conferred to all Commissions under Article 252 of the Constitution.
3. deals with the composition and administration of the Commission - provides for the qualifications of members to the Commission. The circumstances under which a vacancy may arise in the Commission and the manner in which such a vacancy shall be filled.

4. powers of the Commission to review all grants and dispositions of land to establish their propriety in accordance with Article 68(c) (v) of the Constitution.
5. powers of the Commission to establish committees for the better performance of its functions while;
6. the setting out of the financial provisions in relation to the Commission. Outlines the monies that shall constitute the funds of the Commission and provides for the financial year of the Commission. Preparation of annual estimates of the Commission before the end of each financial year and the submission of the estimates to the Cabinet Secretary for tabling in the National Assembly.
7. the report of the Commission and the matters that should be contained therein in respect to each financial year.
8. the creation of offences by prohibiting a person from obstructing, hindering, assaulting or threatening a member or staff of the Commission; submitting false information or misrepresenting or misleading a member or staff of the Commission.
9. the Commission to make Regulations.
10. The **First Schedule** on the procedure for appointment of the chairperson and member of the Commission.
11. The **Second Schedule** on the oath or affirmation to be taken by the members and the secretary of the Commission in line with clause 9 and 20 (3) (c) of the Bill.
12. The **Third Schedule which** contains the oath or affirmation to be taken by the members of the county Land Management Board in line with clause 18 (6) of the Bill.
13. The **Fourth Schedule** on the manner in which the meetings of the Commission shall be conducted.

## LAND REGISTRATION BILL, 2012

- 3.2 The Memorandum of Objects and Reasons of the **Land Registration Bill, 2012** is to revise consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and provides:-
1. **Part I** contains the preliminary provisions.

2. **Part II** for the establishment of land registration units, land registry, the maintenance of community land registers and the appointment the Chief Land Registrar and other officers and the powers of the land registrars.
  - **Clause 14** - the qualification for appointment as the Chief Land Registrar.
  - **Clauses 16-24** contain provisions relating to maps, parcels and boundaries, and the effect of registration and certificates of lease and searches. The clauses provide for the preparation of the cadastral maps, boundaries, the maintenance of boundaries, alteration of boundaries, interference with boundary features and combination, subdivision and reparation of parcels of land.
  - **Clause 22** creates offences relating to the interference with boundary features and prescribes the penalty for the offence.
  - **Clause 25-27** provide for the effect of registration, the rights of a proprietor and the title, and the holding of a title to be prima facie evidence of proprietorship of the land.
  - **Clause 31-36** provides for the issuance of certificate of title and certificate of lease, the loss or destruction of certificates and searches. Clause 36 provides for the presumption that purported to be signed or certified, or an entry purported to be made by the registrar shall be presumed unless the contrary is proven.
3. **Part III** provides for the dispositions involving land, including transfers, leases and charges. It provides for the instruments for disposition, the manner of execution of the documents of disposition.
  - **Clause 51-54** provides for dispositions that are prejudicial.
  - **Clause 51** gives the Court the powers to make orders that protect interests acquired through prejudicial dispositions.
4. **Part IV** contains provisions relating to leases;
5. **Part V** contains provisions relating to the form and effects of charges, including the second and subsequent charges.
6. **Part VI** contains provisions relating to transmissions upon death, bankruptcy, liquidation of a company and in other instances.
7. **Part VII** contains provisions relating to restraints on dispositions, including inhibitions, cautions and restrictions

8. **Part VIII** provides for the rectification of the land registers, by the land registrars and by order of court.
9. **Part IX** deals with co-tenancy, including joint tenancy and tenancy in common and partition of shares held in land or a lease.
10. **Part X** provides for the creation of easements and other rights relating to land.
11. **Part XI** contains miscellaneous provisions including the jurisdiction of the Environment and Land Court, fees, offences under the Act, repeal of Acts of Parliament relating to registration of title to land, savings and transitional clauses.

## **LAND BILL, 2012**

**3.3** The Memorandum of Objects and Reasons of the **Land Bill, 2012** is to operationalize the provisions relating to the management and administration of land and land based resources under Article 68 of the Constitution. **It aims at consolidating the laws relating to land and providing a legal framework for its management and administration by the National Land Commission and outlines the objectives as follows:-**

1. **Part I** of the Bill relates to the preliminary provisions of the Bill. It deals with the short title and interpretation of words and expressions used in the Bill. It also outlines the values and principles guiding the management and administration of land by the Commission and the forms of land tenure under the Bill and the methods by which title to land may be acquired.
2. **Part II** of the Bill deals with the management of public land by the Commission on behalf of the national and county governments.
  - **Clause 10** provides for the guidelines in the management of public land. This Part provides for the allocation of public land by the Commission and the factors to be considered during such allocation. It also provides for the reservation of public land with
  - **clause 15** providing for the vesting of the care, control and management of reserved land in a management body as shall be determined by the Commission.
  - **Clause 16** provides for the preparation and submission of development plans by a management body for the management of the reserved land. This Part also provides for the



conservation of the land based natural resources within the public land.

3. **Part III** provides for the administration of public land by the Commission.
  - **Clause 19** provides for the issuance of temporary licences to unalienated public land with the removal of any temporary structures erected during the licence period. This Part also provides for the forfeiture of a licence where a person fails to pay any rent or tax due under the licence or fails to comply with a condition of the licence. This part also specified the covenants and conditions that are implied in a lease or licence issued under the Act as well as obligations of parties to a lease or licence under the Act.
  - **Clause 31** provides for the forfeiture of a lease where rent is unpaid or a licensee fails to comply with a condition of a lease with the acceptance of any money due under the lease by the Commission not being deemed to operate as a waiver of any forfeiture accruing by reason of any breach by a licensee.
  - **Clause 36** mandates the Commission to avail to Parliament and the public, a report on the allocation of public land, agreements for the use of such land and any revenues generated thereof.
4. **Part IV** provides for the management of community land in accordance with Article 63 of the Constitution.
5. **Part V** provides for the administration and management of private land.
  - **Clause 38** provides for the requirements of a contract for the disposition of land upon which any suit is founded.
  - **Clause 39** outlines the procedure for regaining possession of land and obtaining a court order where obtaining possession peaceably is not possible by vendor where the purchaser has entered into possession of the land.
  - **Clause 40** confers on such a vendor the right to claim damages for breach with **clause 43** conferring a right on a purchaser to apply for a relief where the court does not order specific performance and the purchaser is not entitled under the agreement to rescind or repudiate the contract.

- **Clauses 44 to 50** of this Part deals with the transfer of land which is to take place immediately and not upon the happening of a future event. It provides for the transfer of a portion of land upon its subdivision as well as transfer of leases.
  - Clause 45 implies an agreement by the transferee to pay any interest secured by a charge in the case of a transfer subject to a lease.
  - Clause 50 deals with transfers subject to a lease.
  - **Clauses 51 to 56** deal with transmissions of land.
  - **Clause 52** provides for process of registration of a proprietor's personal representative as proprietor where a sole proprietor or proprietor in common dies.
  - **Clause 53** provides for the registration of a trustee in bankruptcy as proprietor of any land lease or charge where a bankrupt proprietor dies while
  - **clause 55** provides for the appointment by the Registrar of companies and subsequent registration of a liquidator as proprietor of land held by a company that is being wound up.
6. **Part VI** deals with co-tenancies and partitions. It provides for the meaning, partitioning and disposition of land that is owned either as a joint tenancy or tenancy in common. It also provides for co-ownership between spouses in which land held for the use of both spouses is presumed to be held by the spouses as tenants in common.
- **Clause 64 to 78** deals with general provisions relating to leases. It provides for the characteristics of periodic and short term leases as well as the termination of leases on the occurrence of a future event. It provides for the presumption a month to month lease where a lessee remains in possession of land upon the expiry of a lease and without the consent of a lessor, with all the obligations under the lease continuing in force till vacation of the land by the lessee. This Part also provides for implied covenants and conditions in a lease on the part of the lessor and lessee respectively.
  - **Clauses 79 to 82** deal with transfers and assignment of leases and the implications on a lessee and assignee.

- **Clause 83 to 93** deals with remedies and relief for breach of the terms of a lease under this Part. This Part provides for procedure for the termination of a lease for non-payment of rent as well as manner in which notices to terminate a lease for non-payment of rent or breach of any other covenant under the lease are issued. It also provides for the application for an order to terminate a lease by a lessor or for a relief against an order for termination by a lessee or persons interested under the lease.
  - **Clause 90** provides for the commencement of an action by a lessor for damages, specific performance, an injunction or recovery of any rent arrears instead of terminating a lease. **Clauses 94 to 101** deals with charges. It provides for the tacking, consolidation, variation and transfer of charges.
  - **Clause 101** makes it mandatory to obtain consent where a charge contains a prohibition of the transfer of a charge.
  - **Clauses 102 to 120** deals with covenants, conditions and powers implied in a charge and provides for the remedies of a lender where a chargor defaults or breaches a covenant in a charge including entry and possession of charged land by the charge under **clause 108**;
  - **Clause 110** confers on the charge the right to exercise the power of sale
  - **clause 111** conferring on the charge a duty to exercise due care in obtaining the best price obtainable at the time of sale with a breach of this duty being implied where the sale price is at twenty five percent below the market price. This Part provides for the protection of the interests of the purchaser and the powers of a court in granting relief under this Part.
7. **Part VII** provides for the compulsory acquisition of interest in land and the process to be followed in the issuance of a notice and the determination and award of compensation upon acquisition.
  8. **Part VIII** provides for the establishment of settlement schemes by the Commission on behalf of the national and county governments.
  9. **Part IX** deals with easements and analogous rights and provides for their enjoyment and cancellation or extinguishment.

- **Clause 156** confers power on the Commission to create public rights of way with this Part providing for the process and compensation where applicable and the powers of a court to enforce such rights.
10. **Part X** contains miscellaneous matters. It provides for the jurisdiction of the Environment and Land Court in dealing with disputes under this Act.
- **Clause 166** provides for the establishment of the Land Compensation Fund for the purpose of compensating persons affected by the implementation of this Act leading to loss of land or interest in land.
  - This part creates offences and provides for transactions that may be considered as corrupt under clause 171.
  - This Part also confers on the Commission and the Cabinet Secretary power to make regulations for the purpose of operationalising the Act and also deals with savings and transitional provisions.
11. The **First Schedule** contains the existing legislation that is to be repealed upon the coming into force of this Act.

#### 4.0 **MANDATE OF THE COMMITTEE**

- 4.1 The Departmental Committee No. J on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
- i.) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
  - ii.) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
  - iii.) to study and review all legislation referred to it;
  - iv.) to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - v.) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem

necessary, and as may be referred to them by the House or a Minister; and

vi.) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

4.2 The Committee is mandated to consider:-

- Lands and settlement,
- forestry, water resource management and development,
- irrigation;
- environment,
- wildlife,
- Mining and natural resources.

**Mr. Speaker Sir,**

#### 4.3 **OVERSIGHT**

In executing its mandate, The Committee oversees the following Government Ministries; namely: -

4.3.1 Ministry of Water and Irrigation;

4.3.2 Ministry of Environment and Minerals Resources;

4.3.3 Ministry of Lands; and

4.3.4 Ministry of Forestry and Wildlife.

#### **4.4 COMMITTEE COMPOSITION**

The Departmental Committee on Lands and Natural Resources was constituted on June 17<sup>th</sup> 2009 and its membership is as follows:-

4.4.1 Hon. Mutava Musyimi, M.P. – **Chairman**

4.4.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**

4.4.3 Hon. Benjamin Jomo Washiali, M.P.

4.4.4 Hon. Silas Ruteere Muriuki, M.P.

4.4.5 Hon. Benedict Fondo Gunda, M.P.

4.4.6 Hon. Martin Ogindo, M.P.

4.4.7 Hon. Njuguna Gitau, M.P.

4.4.8 Hon. Mohammed Affey, M.P.

4.4.9 Hon. Omar Zonga, M.P.

4.4.10 Hon. Kiema Kilonzo, M.P.

4.4.11 Hon. Dr. Erastus K. Mureithi, MBS, HSC, MP

**Mr. Spear Sir,**

## **5.0 Committee undertakings and submission gathering**

5.1.1 During its consideration on the Bills, The Committee held eighteen (18) sittings both as a committee, subcommittee and meeting with stakeholders, to deliberate on the Bills.

5.1.2 As the Chairperson of the Committee, I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.

5.1.3 The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

**Mr. Spear Sir,**

## **6.0 The Report**

**The Committee Report on Land Bills has annexes to it and includes:-**

1. Report on public hearings with summary attached;
2. Report of the Committee retreat with the final Committee amendments attached.
3. The proposed amendments;

## **7.0 RECOMMENDATIONS AND PROPOSED AMENDMENTS TO THE THREE LAND BILLS**

### **7.1 RECOMENDATIONS**

In amending the Land Bills, the Committee makes the following recommendations, that: -

- i. **The Attorney General pursuant to powers conferred to him by the Interpretation Act, Cap 2 laws of Kenya, should immediately on passage of the Land and Land Registration Bills, 2012, merged the two to one.**  
**This based on the amendments deleted in on bill for instance, Co-tenancy:** Amendments deleted all provisions on co-tenancy, presumably to avoid repetition with the Land Registration Bill. If the bills remain separate, it will be important to have a framework for co-tenancy in the Land Bill in order to clarify spousal rights to land. Also, a critical issue remains in the way that the co-tenancy provisions are written in the Land Registration Bill;
- ii. **The Minister for lands should fastrack discussion and immediately bring to the house for enactment the proposed community Land bill;**
- iii. **The proposed amendments be adopted;**

## 7.2 AMENDMENTS

### 7.2.1 NATIONAL LAND COMMISSION BILL, 2012

#### Clause 2

**THAT** clause 2 of the Bill be amended

(a) in the definition of the word "irregularly" by deleting the definition and "irregular" in relation to grant or disposition of land means in an undertaking in a manner that does not conform to standards, procedures or criteria set out under this Act or any other law"

(a) by deleting the definition of the word "unlawful".

#### Clause 5

**THAT** clause 5 of the Bill be amended-

(a) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c);

(d) Manage and administer unregistered all trust land and unregistered community land on behalf of the county government;

- (e) Encouraging, development and Supporting Alternative Dispute Resolutions, including developing guidelines on land dispute Alternative Dispute Resolutions, and developing Alternative Dispute Resolutions capacity within NLC county offices and/or through County Land Boards;
- (b) by inserting the following new sub-clause immediately after sub-clause 2-

“(3) Notwithstanding the provisions of this section, the Commission shall ensure that all unregistered land is registered within 10 years from the commencement of this Act.

(4) Parliament may, after taking into account the progress of registration, extend the period set by the Commission under sub-section (2) (d).

#### **Clause 14**

**THAT** clause 14 of the Bill be amended-

(a) in sub-clause (5), by deleting paragraph (a) and (b); and inserting the words “to the Registrar, the revocation of the title” after the words “recommend” appearing on the third line of the sub-clause;

(b) in sub-clause (7) by inserting the words “and where such title is revoked, the national government or the county government, where applicable, shall compensate the *bona fide* purchaser”

#### **Clause 16**

**THAT** clause 16 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)-

“(4) The Commission may pay persons co-opted to the committees such allowances, and other expenses as it may determine from time to time.”

#### **Clause 17**

**THAT** clause 17 of the Bill be amended-

(a) in the marginal note by deleting the word “ Consultation” and substituting therefor the words “ Establishment of County Land Management Boards”

(b) in sub-clause (1) by inserting the words “and subject to Article 10 and Article 232 of the Constitution” after the words “and county governments”.

(c) by deleting sub-clause (2).

#### **Clause 18**

**THAT** clause 18 of the Bill be amended-



(a) in the marginal note by deleting the phrase "Composition of and appointment of County Land Management Boards" and substituting therefor the words "Establishment and composition of county land management Boards"

(b) by deleting sub-clause (1) and inserting the following new sub-clauses-

"(1) The Commission shall, in consultation and co-operation with the national and county governments, establish county land management boards for purposes of the management of public land"

"(2) A county land management board shall comprise-

(a) not less than three and not more than seven members appointed by the Commission; and

(b) a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the governor and who shall be an *ex-officio* member.

(c) in sub-clause (5) by inserting the words "and Article 232" immediately after the words "Article 10";

(d) in sub-clause (7) by deleting the words "guided by" appearing immediately after the words "boards shall be" and substituting therefor the words "comply with".

#### **Clause 20**

**THAT** clause 20 of the Bill be amended

(a) in sub-clause (1) by inserting the words "and transparent" immediately after the words "through a competitive"

(b) in sub-clause (2) by inserting the following new sub-paragraph immediately after sub-paragraph (2) (d) (vi)

"(vii) any other relevant field;

#### **CLAUSE 21**

**THAT** clause 21 of the Bill be amended in paragraph (d) of sub-clause (1) by inserting the words "or any other law" at the end of the paragraph.

#### **Clause 31**

**THAT** clause 31 of the Bill be amended-

(a) in sub-clause (1)-

- (i) deleting the word "functions" appearing immediately after the words "departments whose" and substituting therefor the word "services"; and
- (b) in sub-clause (2)-
  - (i) by inserting the words "subject to Article 252(1)(c) of the Constitution and" at the beginning of the sub-clause"; and
- (c) in sub-clause (4) by deleting the words "and the services of such applicant with the Commission shall be terminated in accordance with the terms of the contract of employment".

### **Clause 33**

**THAT** clause 33 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (b)-

- "(ba) information relating to the progress made in the registration of title in land";
- "(bb) recommendations made by the Commission to the county or national governments or to any state agency or organ and the action taken on such recommendations";
- "(bc) any impediments to the work of the Commission; and".

### **Clause 34**

**THAT** clause 34 of the Bill be amended by inserting the words "within six months" immediately after the words "Commission shall".

### **Clause 35**

**THAT** clause 35 of the Bill be amended by inserting the words "or any other provision of this Act where no specific penalty is provided," after the words "contravenes sub-section (1)".

### **Clause 36**

**THAT** clause 36 of the Bill be amended by inserting the words "and such regulations shall be tabled before Parliament for approval".

## **FIRST SCHEDULE**

**THAT** the First Schedule of the Bill be amended-

- (a) in paragraph 1 by inserting the words "and whenever a vacancy arises" immediately after the words "commencement of this Act";
- (b) in sub-paragraph (a) of paragraph 1 by deleting the words "Public Service Commission" and substituting therefor the words "Office of the President"; and
- (c) in sub-paragraph (e) of paragraph 1-

- (i) by deleting the words "two persons, of opposite gender, who are citizens of Kenya " and substituting therefor the words "one person who is a citizen of Kenya" ; and
  - (ii) by deleting the word "have" appearing immediately after the words " organizations who" and substituting therefor the word "has"
- (d) in sub-paragraph (f) of paragraph 1 by deleting the words "a nominee of the Kenya National Human Rights Commission" and substituting therefor the words "a nominee of the Association of Professional Societies in East' Africa",
- (e) in sub-paragraph (g) by deleting the words "a nominee of the National Gender and Equality Commission" and substituting therefor the words "a nominee of the Kenya Livestock Marketing Council"

#### **FOURTH SCHEDULE**

**THAT** the Fourth Schedule of the Bill be amended-

- (a) in sub-paragraph (1) of paragraph 3 by deleting the word "appointed" appearing immediately after the words "half of the"; and
- (b) in sub-paragraph (2) of paragraph 3 by deleting the word "appointed" appearing immediately after the words "less than three".
- (c) in paragraph 4 by deleting the words "with a supporting vote of at least two thirds of members present" and inserting the words "by a majority of the Members".

#### **7.2.2 LAND REGISTRATION BILL, 2012**

##### **CLAUSE 2**

**THAT** clause 2 of the Bill be amended by deleting the definition of the word "public purposes".

##### **CLAUSE 9**

**THAT**, clause 9 be amended-

- (a) in sub-clause (1) , by deleting the word "may" and substituting therefor the word "shall";
- (b) in sub-clause (2) by inserting the words " where necessary" immediately after the words "authorized and" appearing in paragraph (b).

##### **CLAUSE 10**

**THAT**, clause 10 be deleted.

##### **CLAUSE 11**

**THAT**, clause 11 be amended by deleting the words "and on conditions satisfactory to the Registrar" and substituting therefor the words "as the Chief Land Registrar may reasonably prescribe".

**CLAUSE 15**

**THAT**, clause 15 be amended-

(a) by deleting the word "Deputy Land Registrar" appearing immediately after the words "The Chief Land Registrar";

(b) by deleting the words "administer oath or take declarations" appearing in paragraph (d) and substituting therefor the words "cause oaths to be administered or declarations taken".

**CLAUSE 19**

**THAT**, clause 19 be amended by inserting the word "with" immediately after the words "in accordance: appearing in sub-clause (2).

**CLAUSE 21**

**THAT**, clause 21 be amended in sub-clause (2), by deleting the words "in a permanent manner:" appearing immediately after the words "any boundary" and substituting therefor the word "mark."

**CLAUSE 28**

**THAT**, clause 28 be amended in the marginal note by deleting the words "voluntary transfer" and substituting therefor the words "Transfer without valuable consideration".

**CLAUSE 29**

**THAT**, clause 29 of the Bill be amended in paragraph (a) by deleting the words "spousal rights over matrimonial property" and substituting therefor the word "interest of spouses in actual occupation of the land or home, during and on termination of marriage"

**CLAUSE 34**

**THAT**, clause 34 be amended-

(a) in sub-clauses (1) by deleting the word "new" appearing immediately after the words "issue of a" and substituting therefor the word "duplicate";

(b) in sub-clauses (3) by deleting the word "new" appearing immediately after the words "Registrar may issue" and substituting therefor the word "duplicate"

**CLAUSE 37**

**THAT**, clause 37 be amended in sub-clause (4) by inserting the words "of the Constitution" immediately after the expression "Subject to Article 67(2) (c)".

**CLAUSE 38**

**THAT**, clause 38 of the Bill be amended in sub-clause (1) by inserting the words "or in such other form as the Registrar may in any particular case approve" immediately after the words "prescribed form".

**CLAUSE 40**

**THAT**, clause 40 be amended in sub-clause (1) –

- (a) by deleting the word "a" appearing immediately after the word "create" and substituting therefor the word "an"; and
- (b) by deleting the words "or that the land is freehold" appearing immediately after the words "of the land" in the fifth line.

**CLAUSE 43**

**THAT**, clause 43 of the Bill be amended by deleting the words "new registers have been opened in respect of each subdivision" and substituting therefor the words "duly registered each new subdivision"

**CLAUSE 45**

**THAT**, clause 45 be amended in sub-clause (5) –

- (a) by deleting the word "pin" appearing immediately after the words "a copy of " in paragraph (b) and substituting therefor the words " Personal Identification Number".
- (b) by deleting the word " be" appearing immediately after the word "may" in paragraph (e).

**CLAUSE 55**

**THAT**, clause 55 be amended-

- (a) by inserting the following new sub-clause immediately after sub-clause (3)-

"(3a) The land register maintained under clause 7 of this Act, shall be deemed to be the land register for purposes of the Sectional Properties Act."

- (b) by deleting sub-clause (4) and substituting therefor the following new sub-clause-

"(4) The registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land".

**CLAUSE 56**

**THAT**, clause 56 be amended-

(a) by deleting paragraph (1);

(b) by renumbering the existing sub-clause (2) as clause 56.

**CLAUSE 57**

**THAT**, clause 57 be deleted.

**CLAUSE 58**

**THAT**, clause 58 be amended in sub-clause (6) –

(a) by deleting the word "charge" appearing immediately after the words "the exercise by the" and substituting therefor the word "chargee".

(b) by deleting the word "harge" appearing immediately after the words "payment to the" and substituting therefor the word "chargee".

**CLAUSE 61**

**THAT**, clause 61 be amended by deleting the word "willnot" and substituting therefor the word "will not".

**CLAUSE 75**

**THAT**, clause 75 be amended in sub-clause (5) –

(a) by deleting the word "chargor" wherever it occurs and substituting therefor the word "chargee".

(b) by deleting the expression "section 95 of the Land Act" and substituting therefor the expression "the law relating to land".

**CLAUSE 81**

**THAT**, clause 81 be amended in paragraph (c) of sub-clause (1)-

(a) by deleting the word "but" appearing immediately after the word "incorrect"; and

(b) by inserting the words "in writing" immediately after the word "notice".

**CLAUSE 83**

**THAT**, clause 83 be amended in the proviso by deleting the words "be indemnified by the Government out of Funds provided by Parliament" and substituting therefor the words "indemnity".

**CLAUSE 93**

**THAT**, clause 93 be amended in sub-clause (8) by deleting the word "an" appearing immediately after the words "shall take effect" and substituting therefor the word "a".

**CLAUSE 95**

**THAT**, clause 95 be amended

(a) in sub-clause (1)(a) by deleting the word "tenants in common" appearing immediately after the words "land as" and substituting therefor the word "joint tenants".

(b) in sub-clause (1)(b) by deleting the word "tenants in common" appearing immediately after the words "spouses as" and substituting therefor the word "joint tenants".

(c) In sub-clause (4) by deleting the word "voidable" and substituting therefor the words "void".

#### **CLAUSE 106**

**THAT**, clause 106 be amended in the marginal note by deleting the word "SavingRegisters" and substituting therefor the words "Saving Registers".

#### **CLAUSE 107**

**THAT**, Clause 107(2) (b) be amended by deleting the clause and substituting therefor with the new sub clause:

(2) In compiling the land register, the Registrar shall register—

(a) The Commission in trust for the county and national government as the proprietor of all public land in the area; and

(b) subject to the Land Adjudication Act and the Land Consolidation Act, the Commission as the proprietor of all unregistered trust land and unregistered community land in the area, subject in each case to any grant or lease affecting the land.

#### **CLAUSE 110**

**THAT**, clause 110 be deleted and replaced by the following new clause-

Saving and transitional provisions with respect to rules, orders e.t.c

**110.** Until the Cabinet Secretary makes the regulations contemplated under section 112 , any rules, orders, regulations, directions, notices forms, notifications or other administrative acts made , given, issued or undertaken before the commencement of this Act under any of the Acts of Parliament repealed by this Act or any other law, shall continue in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act"

#### **CLAUSE 112**

**THAT**, clause 112 be amended by deleting the word "may" appearing immediately after the words "Cabinet Secretary" and substituting therefor the word "shall" .

## CLAUSE 113

THAT, clause 113 of the Bill be deleted.

### 7.2.3 LAND BILL, 2012

#### Clause 2

THAT clause 2 of the Bill be amended-

(a) by inserting the following new definition in proper alphabetical sequence-

"county executive committee member" means the county executive committee member responsible for matters of land"

**(bb)** by inserting the definition of freehold –

"freehold" means the unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs.

(b) in the definition of "dwelling house" by deleting the word "cartilage" and substituting therefor the word " curtilage";

(c) by deleting the definition of "joint tenancy" and substituting therefor the following definition-

"joint tenancy" means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners".

(d) by deleting the definition of the word "land administration";

(e) by deleting the definition of the word " land management";

(f) by deleting the definition of "lease" and substituting therefor the following new definition-

"lease" means the grant , with or without consideration, by the proprietor of land of the right to the exclusive possession of his or her land, and includes the right so granted and the instrument granting it , and also includes a sublease but does not include an agreement for lease".

(g) by deleting the definition of the word "leasehold";

(h) by deleting the definition of "licence" and substituting therefor the following new definition-

"licence" means a permission given by the Commissioner in respect of public land or proprietor in respect of private or community land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit".

(i) by deleting the definition of the word "licensee";

(j) by deleting the definition of "register" and substituting therefore the following new definition-



"register" has the meaning assigned to it under the law relating to land registration".

(k) by deleting the definition of "tenancy in common" and substituting therefore the following new definition-

"tenancy in common" means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest".

(l) by deleting the definition of the word "peri-urban area"

(m) by deleting the definition of the word "temporary purpose".

(j) by deleting the definition of the word "Rules committee"

#### **CLAUSE 4**

THAT, clause 4 be amended in sub-clause (2) -

(a) by deleting the word "and" appearing at the end of paragraph (j)

(b) By inserting the following new paragraphs immediately after paragraph (j)-

"(ja)affording equal opportunities to members of all ethnic groups";

"(jb) non-discrimination and protection of the marginalized"; and

"(jc) democracy, inclusiveness and participation of the people

#### **CLAUSE 5**

THAT, clause 5 be amended in sub-clause (1) by deleting paragraph (c).

#### **CLAUSE 7**

THAT, clause 7 be amended in paragraph (h) by inserting the words "exceeding 21 years" immediately after the words "leases"

#### **CLAUSE 8**

THAT, clause 8 be amended-

(a)by inserting the following new paragraph after paragraph (a)-

"(aa) shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning";

(b)in paragraph (b) by deleting the words "stakeholders" and substituting therefor the words " the public and relevant institutions";

#### **NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 8-

Conversion of land. 8A. (1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

(2) Without prejudice to the generality of subsection (1) –

(a) public land may be converted to private land by alienation;

(b) subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;

(c) private land may be converted to public land by–

(i) compulsory acquisition;

(ii) reversion of leasehold interest to government after the expiry of a lease; and

(iii) transfers; or

(iv) surrender.

(d) Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.

(3) Any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or County Assembly as the case may be.

(4) The Commission shall cause a register to be kept containing the following particulars -

(a) public land converted to private land by alienation;

- (b) names and addresses of all persons whose land has converted to public land through compulsory acquisition or reversion of leasehold;
- (c) community land converted to either private or public ;and
- (d) such other details as the Commission may direct.

(5) The Commission may make Rules for the better carrying out of the provisions of this section, and, without prejudice to the generality of the foregoing, the rules may provide for the following—

- (a) prescribing substantial transactions requiring approval of the National Assembly or the County Assembly as the case may be;
- (b) prescribing anything required to be prescribed under this section;
- (c) regulating and controlling the conversion of land from one category to another;
- (d) prescribing the factors to be applied or taken into account in determining land that is to be converted;

(6) Rules made under this section may contain—

- (a) different provisions for different parts of Kenya;
- (b) different provisions for different categories of conversion or kinds of transactions; or
- (c) exemptions or conditional exemptions from the operation of any rule made under this section.

(7) Any Rules made by the Commission under subsection (5) shall, be tabled before Parliament, for approval.

**CLAUSE 9**

**THAT,** clause 9 be deleted.

## **CLAUSE 10**

**THAT**, Clause 10 be amended in sub-clause (3) by deleting the expression "10(3)" and substituting therefor the expression "10(2)".

## **CLAUSE 11**

**THAT**, clause 11 be amended in sub-clause (3) by inserting the word "with" immediately after the word "dealing".

## **CLAUSE 12**

**THAT**, clause 12 be amended –

(a) in sub-clause (1)-

(i) by inserting the word "public" at the beginning of paragraph "(a)

(ii) by inserting the words " in order to ameliorate their disadvantaged position" immediately after the word "groups" appearing in paragraph (b).

(b) in sub-clause (2) by deleting paragraph "(e)" and substituting therefor the following new paragraph"

"(e) Natural, cultural, and historical features of exceptional national value falling within public lands"

(c) in sub-clause (3) by inserting the words " subject to Article 65 of the Constitution" at the beginning of the sub-clause .

(d) in sub-clause (4) by deleting the expression "subsection (4)" and substituting therefor the expression" subsection (3)".

(e) by deleting sub-clause (6);

(f) in sub-clause (8) by deleting the word "allocate" appearing immediately after the words "not be" and substituting therefor the word "allocated"

(g) by deleting sub-clause (10) and substituting therefor with a new sub clause

*"12(10) where the land allocated under sub section (9) is not developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be."*

(h) in sub-clause (11) by deleting the word "disposition" and substituting therefor the word " allocation"

(i) by deleting sub-clause (12) and substituting therefor the following new sub-clause-

"(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe-

- (i) forms of ownership and access to land under all tenure systems;
- (ii) the procedure and manner of setting aside land for investments;
- (iii) procedures to be followed with respect to auction and disposition of land;
- (iv) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and
- (v) Mechanisms of benefit sharing with local communities whose land have been set aside for investment.

**NEW CLAUSE**

**THAT**, the following new clause be inserted immediately after clause 12-

Lessee  
pre-  
12A (1) Where any land reverts back to the national or county government after expiry of the Leasehold tenure the Commission shall offer to the immediate past holder of the Leasehold interest pre-emptive rights to allocation of the land provided that such Lessee is a Kenya citizen and

emptive rights to allocation. that the land is not required by the national or the county government for public purposes.

(2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following.

- a) prescribing the procedures for applying for extension of leases before their expiry.
- (b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the Lease or re-allocate the land to the Lessee.
- (c) the stand premium and or the annual rent to be paid by the Lessee in consideration of extension of the Lease or re-allocation of the Land.
- (d) other covenants and conditions to be observed by the Lessee.

**CLAUSE 13**

**THAT**, clause 13 be amended –

- (a) in sub-clause (1) by inserting the words "public and" immediately before the words " interested parties"
- (b) in sub-clause (4) by deleting the word "be" appearing immediately after the words "the Commission shall"
- (c) in sub-clause (5) by deleting the words "current land users and community based organizations" and substituting therefor the words " persons in actual occupation of the land".

**CLAUSE 14**

**THAT**, clause 14 be amended in sub-clause (1) by deleting the expression "Subject to Article 66(2)" appearing at the beginning of the sub-clause and substituting therefore the expression "Subject to Article 66(1)."

**CLAUSE 15**

**THAT**, clause 15 be amended-

- (a) in paragraph (a) of sub-clause (1) by deleting the expression "section 15" and substituting therefor the expression " section 14";

(b) by deleting sub-clause (4) (a) and(b).

#### **CLAUSE 19**

**THAT**, clause 19 be amended-

(a) in the marginal note by deleting the words "Licence for temporary purposes specified in the lease" and substituting therefore the words "Licence for temporary purposes"

(b) in sub-clause (1) by deleting the words " temporary purposes" and substituting therefor the words " a period not exceeding five years";

(c) by deleting sub-clause (2);

(d) in sub-clause (4) by deleting the words " rent" and substituting therefor the words "fee";

#### **CLAUSE 21**

**THAT**, clause 21 be amended-

(a) in the marginal note by deleting the word "rent" and substituting therefor the words "fees".

(b) in paragraph (a) by deleting the word "rent" and substituting therefor the words "fees".

#### **CLAUSE 22**

**THAT**, clause 22 be amended by deleting the marginal note and substituting therefor the following-

"Implied covenants and conditions by grantor or lessor".

#### **CLAUSE 26**

**THAT**, clause 26 be deleted and replaced by the following new clause-

Obligations **26.** A child shall be capable of holding title to land through a

of children. trustee and such child shall be in the same position as an adult with regard to the child's liability and obligations to the land.

**CLAUSE 36**

**THAT**, clause 36 be deleted.

**CLAUSE 37**

**THAT**, clause 37 be deleted and replaced by the following new clause-

Community land shall be managed in accordance with the law relating to community land enacted pursuant to Article 63 of the Constitution.

**CLAUSE 39**

**THAT**, clause 39 be amended-

- (a) in the marginal note by deleting the words "procedure for regaining possession" and substituting therefor the words "Vendor's right to regain possession".
- (b) by deleting the word "only" appearing immediately after the words "the contract by the purchaser"

**CLAUSE 40**

**THAT**, clause 40 be amended in sub-clause (1) by inserting the words "and mesne profits" immediately after the words "claiming damages"

**CLAUSE 41**

**THAT**, clause 41 be amended by deleting paragraph (f).

**CLAUSE 42**

**THAT**, clause 42 be deleted.

**CLAUSE 43**

**THAT**, clause 43 be deleted.

**CLAUSE 46**

**THAT**, clause 46 be deleted.

**CLAUSE 48**

**THAT**, clause 48 be amended in sub-clause (1) by deleting the word "transfer and substituting therefor the word "transferee".

**CLAUSE 49**

**THAT**, clause 49 be amended by inserting the words "where applicable," immediately after the words "pay the interest".



**SUB TITLE** – **That**, words “Part VI – CO-TENANCY AND PARTITION” appearing immediately after clause 56 be deleted.

**CLAUSE 57**

**THAT**, clause 57 of the Bill be deleted.

**CLAUSE 58**

**THAT**, clause 58 of the Bill be deleted.

**CLAUSE 59**

**THAT**, clause 59 of the Bill be deleted.

**CLAUSE 60**

**THAT**, clause 60 of the Bill be deleted

**CLAUSE 61**

**THAT**, clause 61 of the Bill be deleted

**CLAUSE 62**

**THAT**, clause 62 of the Bill be deleted.

**CLAUSE 63**

**THAT**, clause 63 of the Bill be deleted.

**CLAUSE 67**

**THAT**, clause 67 be amended in sub-clause (1), paragraph (b) by inserting the word “lease” immediately after the word “periodic”

**CLAUSE 68**

**THAT**, clause 68 of the Bill be amended by deleting the words “by reason of the fact” and substituting therefor the word “provided”

**CLAUSE 70**

**THAT**, clause 70 be amended in sub-clause (1) by deleting the word “a” appearing immediately after the words “a lease of”

**CLAUSE 71**

**THAT**, clause 71 be deleted.

**CLAUSE 73**

**THAT**, clause 73 be amended-

- (a) in sub-clause (1) by deleting the "comma" appearing immediately after the word "Act";
- (b) in sub-clause (2) by deleting the word "sublease" appearing after the word "the" on the second line and substituting therefor the words "sub lessee";
- (c) in sub-clause (3) by deleting paragraph (c);
- (d) by deleting sub-clause (4).

**CLAUSE 75**

**THAT**, clause 75 be amended in sub-clause (1)-

- (a) by deleting the word "to" appearing at the beginning of the sentence in paragraph (a) and substituting therefor the words "that";
- (b) by deleting the word "lawful" appearing immediately after the words "without any" in paragraph (a).
- (c) by deleting the word "tenancy" and substituting therefor the words "lease" in paragraph (d).
- (d) by deleting the word "to" appearing immediately after the words "one months notice" at the end of the sentence in paragraph (e).

**CLAUSE 76**

**THAT**, clause 76 be amended in sub-clause (1) by deleting the words "other than a short term lease".

**CLAUSE 78**

**THAT**, clause 78 be amended by inserting the word "the owner" immediately after the words "head lease to" appearing on the first line.

**CLAUSE 82**

**THAT**, clause 82 of the Bill be amended-

- (a) by deleting sub-clause (2);
- (b) by renumbering sub-clause (3) as sub-clause (2);

**CLAUSE 83**

**THAT**, clause 83 be deleted and replaced with the following new clauses-

Lessor's right of	83A. (1) Subject to the provisions of section 83D and to any provisions to the contrary in the lease, the lessor shall have the
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forfeiture. right to forfeit the lease if the lessee –

(a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or

(b) is adjudicated bankrupt; or

(c) being a company, goes into liquidation.

(2) The right of forfeiture may be –

(a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(b) Enforced by action in the court.

(3) The acceptance by the lessor of any rent after the service of a notice of forfeiture under section 83C does not operate as a waiver of the lessor's right of forfeiture unless the lessor has by any other positive act shown an intention to treat the lease as subsisting.

Effect of forfeiture on subleases 83B The forfeiture of a lease determines every sublease and every other interest appearing in the register relating to that lease, but –

(a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or

(b) where the court grants relief against the forfeiture under section 83D, every such sublease and other interest shall be deemed not to have determined.

Notice before forfeiture.

83C. Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less than 30 days:- –

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief  
against  
forfeiture.

83D. (1) A lessee upon whom a notice has been served under section 83C, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

#### **CLAUSE 84**

**THAT**, clause 84 of the Bill be deleted.

#### **CLAUSE 85**

**THAT**, clause 85 of the Bill be deleted.

**CLAUSE 86**

**THAT**, clause 86 of the Bill be deleted

**CLAUSE 87**

**THAT**, clause 87 of the Bill be deleted.

**CLAUSE 88**

**THAT**, clause 88 of the Bill be deleted.

**CLAUSE 89**

**THAT**, clause 89 of the Bill be deleted.

**CLAUSE 90**

**THAT**, clause 90 of the Bill be deleted.

**CLAUSE 91**

**THAT**, clause 91 be amended by inserting the following proviso at the end of sub-clause (2)-

"Provided that a lessee who is aggrieved as a result of unlawful eviction under this section may commence an action against the lessor for remedies"

**CLAUSE 93**

**THAT**, clause 93 be amended-

- (a) in the marginal note by deleting the words "power to create charge" and substituting therefor the words " Informal charges";
- (b) in sub-clause (3) by deleting the word " signed" and substituting therefor the words " executed";
- (c) in sub-clause (5) by inserting the word "formal" immediately after the word "A" appearing at the beginning of the sub-clause.
- (d) by deleting sub-clause (6) and substituting therefor the following new sub-clause-

**(6)** An informal charge may be created where -

- (a) a chargee accepts a written and witnessed undertaking from a chargor, the clear intention of which is to charge the chargor's land or interest in land, with the repayment of money or money's worth, obtained from the chargee;
- (b) the chargor deposits any of the following -
  - (i) a certificate of title to the land;
  - (ii) a document of lease of land;
  - (iii) any other document which it is agreed evidences ownership of land or a right to interest in land.
- (2) A chargee holding an informal charge may only take possession of or sell the land which is the subject of an informal charge, on obtaining an order of the court to that effect.

(e) in sub-clause (8) by deleting the words " possessor" and substituting therefor the words " posses or";

#### **CLAUSE 106**

**THAT**, clause 106 be amended in sub-clause (6) by deleting the word "small" appearing immediately after the words "receiver under a";

#### **CLAUSE 117**

**THAT**, clause 117 of the Bill be amended by deleting paragraph (d) and substituting therefor the following new paragraph-

- (d) the period for remedying the breach specified in the notice served under section 104 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

#### **CLAUSE 119**

(a) **THAT**, clause 119 be deleted and replaced by with the following new clause-

Power of  
the Court  
to reopen  
certain  
charges  
and revise

**119.** The Court may reopen a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

- (b) purchase of private land for settlement programmes;
- (c) establishment and management of refugee camps;
- (d) provision of shelter and a livelihood to persons in need of settlement programmes;
- (e) research, documentation and dissemination of information on settlement programmes; and
- (f) any other purpose that would enhance the development and promotion of settlement programmes that may be approved by the Commission.

(4) The Fund shall be administered in accordance with the provisions relating to public Funds under the law relating to public finance management.

**CLAUSE 173**

**THAT**, clause 173 be amended-

(a) in sub-clause (1)-

- (i) by deleting the words " and removing any difficulties occasioned by the coming into operation of this Act"

(b) In sub-clause 2-

- (i) by deleting the words "Cabinet Secretary" and substituting thereof the word "Commission; and
- (ii) by deleting the words "personsand" and substituting therefor the words "persons and' in paragraph (d)

**CLAUSE 175**

**THAT**, clause 175 be deleted.

**CLAUSE 176**

**THAT**, clause 176 be amended by renumbering the existing clause 176 as clause 175.

**SCHEDULE**

**THAT** the First Schedule of the Bill be amended by inserting the following –  
The Land Control Act, Cap. 302

**SECOND SCHEDULE**

## CONSEQUENTIAL AMENDMENTS

Amendment of  
section 169 of the  
Agriculture Act,  
Cap.318

Section 169 of the Agriculture Act, Cap.318 is amended by  
repealing paragraph (d).

## 8.0 CONCLUSION

8.1 Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Orders of the National Assembly.

8.2 On behalf of the Committee, I request the house to adopt the report.

SIGNED:.....

**HON. MUTAVA MUSYIMI, MP  
CHAIRMAN**

**DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES**

**DATE:.....APRIL 17, 2012.....**

**In the presence of:-**

1. Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**
2. Hon. Benjamin Jomo Washiali, M.P.
3. Hon. Silas Ruteere Muriuki, M.P.
4. Hon. Benedict Fondo Gunda, M.P.
5. Hon. Njuguna Gitau, M.P.
6. Hon. Kiema Kilonzo, M.P.
7. Hon. Dr. Erastus K. Mureithi, MBS, HSC, MP
8. Hon. Mohammed Affey, MP



terms.

#### **CLAUSE 120**

**THAT**, clause 120 be amended in sub-clause (1)-

- (a) by deleting subparagraph (iii) of paragraph (a);
- (b) "by inserting the words " on application" at the beginning of paragraph (c) .

#### **CLAUSE 121**

**THAT**, clause 121 be amended-

- (a) in sub-clause (5) by inserting the words " the Registrar and" immediately after the words " notice to" appearing in the third line of the sub-clause;
- (b) by inserting the following new sub-clause immediately after sub-clause(5)-  
"(5A) upon service of the notice, the registrar shall make an entry in the register of the intended acquisition".

#### **CLAUSE 124**

**THAT**, clause 124 be amended in sub-clause (1)-

- (a) by deleting paragraphs (a), (b), (c) and (d);
- (b) by inserting the words "the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose" immediately after the words " in writing that" appearing in on the second line of the sub-clause;

#### **CLAUSE 148**

**THAT**, clause 148 be amended in sub-clause (4)-

- (a) by deleting the word " governor" appearing in paragraph (b)and substituting therefor the words " government, approved by the County Assembly";
- (b) by deleting paragraphs (e), (f) and (g).
- (c) by deleting paragraph (g)and substituting therefor the following new paragraph-  
"(e) a representative of persons with special needs"
- (d) by inserting the words "prescribed by the county government" immediately after the word "organization" in paragraph (h);
- (e) by inserting the words "prescribed by the county government" immediately after the word "representative" in paragraph (i).

## NEW CLAUSE

THAT, the following new clause be inserted immediately after clause 148-

Settlement Fund. 148A (1) There is established a Fund to be known as the Settlement Fund which shall be administered by the National Land Commission.

(2) There shall be paid into the Fund -

- (a) any monies appropriated by Parliament for the purposes of the Fund;
- (b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
- (c) gifts, grants, donations or endowments as may be given to the Commission for the purpose of the Fund;
- (d) monies that may be borrowed by the Commission for the purposes of the Fund;
- (e) the rates, charges, dues, or fees levied by the Commission under this Act;
- (f) all monies derived from the payment made by beneficiaries of settlement schemes ; and
- (g) such sums as may be payable to the Commission pursuant to this Act or any other written law.

(3) The Fund shall be applied to the following purposes-

- (a) provision of access to land -
  - (i) to squatters;
  - (ii) to displaced persons;
  - (iii) for development projects;
  - (iv) for conservation; or
  - (v) such other causes that may lead to movement and displacement of persons;

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY  
TENTH PARLIAMENT – FOURTH SESSION

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REPORT

OF THE

PARLIAMENTARY COMMITTEE ON LANDS AND NATURAL  
RESOURCES ON THE DISCUSSION AND CONSIDERATION OF THE  
LAND BILLS – LAND, LAND REGISTRATION AND NATIONAL LAND  
COMMISSION, 2012

APRIL 1<sup>ST</sup> – 7<sup>TH</sup>, 2012

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National Assembly  
Parliament Buildings

April 2012

**PARLIAMENTARY COMMITTEE ON  
LAND AND NATURAL RESOURCES RETREAT ON LAND BILLS**

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**INTRODUCTION**

Pursuant to Article 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Constitution of Kenya, 2010, The Land Bills - National Land Commission Bill, 2012, Land Registration Bill, 2012 and Land Bill, 2012, were published on Friday, 10<sup>th</sup> February 2012 and Monday, 13<sup>th</sup> February 2012 respectively under the hand of the Minister for Lands.

The National Land Commission Bill and Land Registration Bill, 2012 went through the First Reading on Wednesday 15<sup>th</sup> February, 2012. While the Land Bill, 2012 went through the First Reading on Wednesday, 22<sup>nd</sup> February, 2012 and thereafter, Committed to the relevant Parliamentary Committee - (Parliamentary Committee on Lands and Natural Resources) pursuant to House Rules of Procedure.

On, February 23, 29, 2012 and March 7, 2012, following the referral of the Bills to the relevant parliamentary Committee, Parliamentary Committee on Lands and Natural Resources resolved to invited public participation pursuant to Article 118 of the Constitution of Kenya, 2010.

During its sitting held on Wednesday, March 7 and Tuesday, March 13, 2012, the Departmental Committee on Lands and Natural Resources resolved to undertake and hold a retreat on the three Land Bills (The National Land Commission Bill, Land Bill and Land Registration Bill, 2012). And that the Chairpersons of all Committees are invited to participate in the retreat to increase the participation of Members of Parliament. The retreat is scheduled to take place in **April 1<sup>ST</sup> – April 7<sup>TH</sup>, 2012.**

The objective of the workshop is to:-

- i. Consider views and memoranda from the public following the public hearings to be held on March 19<sup>th</sup> – 24, 2012;
- ii. scrutinize the Bills more closely with the assistance of the experts from Commission on the Implementation of the Constitution, Law Society of Kenya and Kenya Law Reform Commission;
- iii. consider the proposed amendments; and;
- iv. Apprise other Committee Members on the proposed amendments.

**Herein below is the report on the Workshop.**

## **OPENING REMARKS BY THE CHAIR OF THE DC ON LANDS AND NATURAL RESOURCES**

The Chairperson of the Departmental Committee on Lands and Natural Resources, Hon. Mutava Musyimi, MP thanked Hon. James Orengo, MP, the Minister for Lands and Hon. Gonzi Rai, MP, the Assistant Minister for Lands for honouring the invitation to attend the Retreat. He further thanked Chairpersons of Committees represented and all Members present for finding time to join the Committee to deliberate on the Land Bill, 2012, the National Land Commission Bill, 2012 and the Land Registration Bill, 2012.

The Chairperson further thanked all stakeholders for their respective roles undertaken in working on the various land bills. (List of participants attached)

He stated that the Retreat provided an important forum for both the consideration for all the amendments proposed on the three bills, public views and memoranda received during the public hearings facilitated by the Departmental Committee on Lands and Natural Resources.

The Chairperson reminded the Committee that only twenty days remained out of the sixty days extension granted by Parliament. Meaning that the Bills must be passed by April 22, 2012.

## **REMARKS BY THE MINISTER FOR LANDS**

The Minister congratulated the Committee on its success in achieving the extension of the deadline for the enactment of the three land bills which had allowed the further gainful consultations with all stakeholders.

The Minister informed the meeting that the Ministry did not have a predetermined position on the provisions of the three bills.

He further informed the Members that the Constitution recognised the National Land Policy and thus there was need to ensure that the three land bills gave cognizance to the issues enumerated in the Policy.

The Chairperson proceeded to declare the Retreat officially open.

## **KEY CONCERNS ON THE BILLS**

### **THE NATIONAL LAND COMMISSION BILL, 2012**

- The Bill proposes an Act of Parliament to provide for the functions, powers, qualifications of, and appointment procedure for members of the National Land Commission established by Article 67 of the Constitution and for connected purposes;
- It was noted with concern Section 31 and 32 of the National Land Commission Bill is silent on the departments of the Ministry of Lands whose functions are required to be transferred to the Commission.
- This may leave the possibility of the Executive emasculating the Commission by retaining the functional departments within the Ministry and leaving the Commission to merely play an advisory role. This is not what the Constitution intended when it established an Independent National Land Commission.

#### Issues of Concern:

- **Devolved Government in the Land Bill:** There is inadequate direction provided in the National Land Commission Bill on what land management and administration functions have been or will be devolved to County (or other local) governments. However, the Bills do now provide a role for local land boards in governance of public lands, and for county governments in compulsory acquisition and in land registration.
- **Public Lands:** Similar to the comment above, there is inadequate express provision for the management of public land by responsible agencies such as KFS and KWS and the oversight provided by the National Land Commission.
- **Compulsory Acquisition:** While significant and meaningful improvements have been made to Compulsory Acquisition process, it is still rather convoluted and less than ideal.
- **Offices of the Chief Registrar and County Registrars:** As discussed in Appendix 1, the Bills now identify specific registration roles for the National Land Commission. Given the apparent intention for the Cabinet Secretary to maintain responsibility for daily registration-related tasks, it would be useful for the bills to expressly state that the Chief Registrar's office and the county registration offices will ultimately be housed with the Cabinet Secretary (if this indeed is the intent).
- **Registration of Public Lands:** The Land Registration Bill requires that public land be registered in the name of a potentially impermanent national government agency (the National Land Commission) as opposed to the Government of Kenya or a County – as specifically mandated by the Constitution. The Land Registration Bill does not make provision for public lands that constitutionally vest in and are held by counties.
- **Registration of Community Lands:** The Constitution requires that community lands "shall vest in and be held by communities" and that unregistered community land "shall be held in trust by county governments on behalf of the communities for which it is held." The Land Registration Bill does not, however, require that community lands shall be registered with either a community or a county but rather requires registration of community lands to the National Land Commission.

#### Recommendations –

- (i) **Independence of the National Land Commission** - The independence of the National Land Commission, and legal insulation from influence or directions from any office or officer should be explicitly stated in the Bill, to ensure that it is clear to all and sundry.
- (ii) **Powers of the National Land Commission** - The powers of the National Land Commission as set out are too vague and general. Certain essential powers that are necessary for the legal functioning of statutory corporations are left out. It is therefore necessary to include essential powers of the National Land Commission, for instance, to function as a body corporate; perpetual succession; power to hold assets and liabilities.
- (iii) **Functions of the National Land Commission** – The Bill have merely reproduced the powers of the National Land Commission as envisaged in article 67 of the Constitution. However, in order to ensure that the National Land Commission has operational guidance while undertaking these functions, the Bill should provide specific details on the substance and procedures of carrying out these functions. For example the National Land Commission has a function to “monitor and have oversight responsibilities over land use planning ...” It is necessary for the Bill to clarify, in specific terms, the particular legal meaning and import of „monitoring, and oversight,“ giving the specific amendments to the Physical Planning Act of 1996 to mainstream this change.
- (iv) **Standardizing the powers and functions of the National Land Commission in all Land Bills** - The powers and functions of the Commission should be standardized and set out in each of the Land Bills, to ensure clarity, remove contradictions, and ensure that these powers are clearly apparent to anyone reading, implementing or enforcing the law.
- (v) **Selection of Panel to Interview Candidates for Membership to the National Land Commission** - The Panel should be composed of persons/organizations that possess particular competences and capacity to vet potential members of the National Land Commission, with regard to sensitivities of land management. In this regard, it is proposed that the selection panel should comprise nominees from bodies with relevant expertise such as the Law Society of Kenya; Institution of Surveyors of Kenya; Kenya Institute of Planners; Economic and Social Council; and the National Environment Council.
- (vi) **Devolution of functions of the National Land Commission** - The Bill should require the National Land Commission to devolve its functions and offices to the lowest level of devolution, in accordance with the structure of devolution set out in the *County Governments Bill, 2012*. A similar requirement should be set out with regard to the proposed County Land Management Boards.
- (vii) **Relationship between the National Land Commission and statutory lead agencies currently managing public lands/resources now classified as part of the public land estate** - The Bill should provide a clear framework how the National

Land Commission, in its role of managing public land, such as government forests; national parks; or water resources, will result with statutory agencies empowered to manage these resources such as Kenya Wildlife Service; Kenya Forest Service; or the Water Resources Management Authority.

(viii) **Transfer of staff from departments whose functions have been moved to the National Land Commission from the Ministry of Lands.** There are several recommendations with respect to this provision –

- a. It is unclear what the specific functions referred to here are. It is therefore necessary to have a tabulated schedule that clearly refines, demarcates, and identifies which departments and functions are to be transferred, in line with the constitutional and statutory powers and functions of the National Land Commission.
- b. The procedures proposed for vetting members of staff to be transferred from the Ministry of Lands to the National Land Commission are too vague and weak. The Bill should provide a radical and specific vetting procedure, with in-depth inquiries and submissions from members of the public, although with respect for due process of the law.

(ix) **Obligation of independent commissions to submit reports to the President and to Parliament** – Although this obligation is set out in article 254 of the Constitution, it is necessary for the Bill, in light of the important powers and functions being vested in the National Land Commission, to provide for a fixed period within which the National Land Commission must report to the President, and Parliament, on progress in implementation of its functions.

## THE LAND REGISTRATION BILL, 2012

- The Bill proposes to revise consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration and for connected purposes.

### Recommendation –

- (i) **The Land Register** - The Bill, in order to protect the authority of the register in protecting sanctity of title, should specify the contents of the register – with respect to each category of land in Kenya.
- (ii) **Provision that information on register does not constitute notice or knowledge to any person** - This provision should be deleted as it undermines the value and sole authority of register in protecting sanctity of title to land
- (iii) **Appointment of Chief Land Registrar by the Public Service Commission** - The link between the Registrar and the NLC is unclear. The Bill should provide for



appointment by the Registrar by the National Land Commission, to be subject to its control; or since the registrar is to exercise extensive statutory authority, the appointment should be subject to parliamentary approval

(iv) **Devolution of functions of the Chief Land Registrar** - The function and services on registration of titles should be devolved to the lowest level of government, at the village.

(v) Breadth of proposed overriding interests - The scope of overriding interest is extremely extensive, and provides too many variables that could threaten sanctity of title -

a. **Spousal interests over matrimonial home** – should instead be noted in the register to ensure that there is notice to third parties when dispositions such as charges or transfers are made. If the spousal interest is noted, chargees or buyers can ascertain this through due diligence.

b. **Compulsory acquisition** – should not be an overriding interest because it is subject to the due process of the law, and to compensation at a fair value

(vi) **Savings of registers and rules from repealed statutes** – The rules and regulations under current laws were made for a particular era and could be inconsistent with the objects of land reform as envisaged by the constitution, such as art 60. The saving of registers and rules from the past will result in continuation of regulations under old legislation if new regulations are delayed, undermining the work the constitution and new laws and institutions. Several proposals are advanced

a. Draft regulations to be developed alongside the Bills for simultaneous enactment

b. Fixed and short-term period within which the regulations are made, for instance, 6months

c. The Bill to specify a fixed period within which harmonized land register must be put in place, with an obligation on the Registrar to report to Parliament within that period.

(vii) **Power of Cabinet Secretary to make regulations** - The Bill should require that these regulations must be vetted and approved by Parliament.

(viii) **The Sectional Properties Act, 1987, No. 21 of 1987 (SPA):**

On an analysis of the Bill, it is apparent that the registration of properties under the Sectional Properties Act (SPA) and the provisions of the SPA were not captured in the Land Registration Bill 2012. The section should address the following issues arising from common ownership of property (Flats and Gated communities):-

- Definition of common facilities
- Rights and obligations of the various parties

- Handover from seller of common property to buyers and timely constituting of management committees to run common facilities.
- How to address complaints relating to developers of common property
- How to determine service charge and how to enforce payment - This has been a challenge that has led to power delivery of service.
- Procedures for dispute resolution between residents.
- Procedures for appointing manager, determining remuneration and terminating services.
- Additional developments, extensions and alterations to the original structure - a developer may add a floor on completion of sales.

The SPA is reliant on the Registered Land Act (RLA) for registration of titles derived from it. The repeal of the RLA will thus affect the registration of sectional titles. It is proposed that the registration of titles under this Act be captured in the proposed Bill. Furthermore, it is also suggested that in the light of existing technology sectional plans can be geo referenced in 3-dimension coordinate system.

- (ix) **Merging of Freehold and Absolute Proprietorship** - The merging of freehold and absolute proprietorship needs more consideration on the ground that for historical reasons, the radical title in the two cases vests in different entities i.e. the National Government and the County Councils representing various communities of Kenya respectively. Our view is that the radical owner of land in Kenya needs to be defined as the people of Kenya not National Government or communities. Article 61 (1) of the Constitution seems to suggest this but it perhaps requires interpretation. In this sense the freehold and absolute proprietorships can be merged. Otherwise the two land holding concepts can co-exist side by side.
- (x) **Registration of Titles Act (RTA) and Registered Lands Act (RLA) Title Formats:** - We propose adoption of a hybrid format of the good sides of RTA format and RLA formats. The RTA format gives history of the title thus prevents fraud, which is very prevalent under RLA format. Under RTA the title lies in a sense with both the title holder and the registrar, with the registrar holding a copy of the title. This enables tracking of history of the title easily thereby making it difficult to defraud the registered proprietor. RLA title is simple and that aspect needs to be considered.
- (xi) **Decentralization** - Decentralization of land registration should go hand in hand with decentralization of the land administration and management processes as proposed in section 6(2).

- (xii) **Rights of children** - These have not expressly protected. There is need to have that included in the event of death of one or both spouses.

## THE LAND BILL, 2012

- The Bill proposes to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources and for connected purposes.
- This is not the first attempt to consolidate the Land Law regime in Kenya. The Registered Land Act (Cap.300) was enacted in 1963 with the aim of creating a uniform legal regime for registration of title and for the regulation of transactions in Land. It was the government's intention that all land registered under other registration statutes would be converted to registration under the Registered Land Act.
- Over the last 49 years, there has been a continuous process of conversion and registration of title from other pieces of registration into the Registered Land Act. Most of titles in Kenya are now registered under this Act. The Registered Land Act covers both registration and substantive law.
- The process of using the Registered Land Act to consolidate the substantive and Land Registration Law has been slow but has been moving in the right direction.
- There is serious doubt as to whether the Ministry of Lands is moving in the right direction by moving away from the Registered Land Act legal regime and now developing 4 new laws to cover registration of title, substantive land law, and community land law. With careful drafting it would have been possible to come out with one statute to cover the substantive land law and registration law to govern public land, community land and private land thus fulfilling the constitutional imperative.
- Updating the current Registered Land Act by re-enacting it, saves its massive Land Register and converting into it, other titles registered under the other statutes. This argument is fortified by the fact that the published Land Registration Bill and Land bill are faithful reproductions of the Registered Land Act, albeit with separation of registration provisions from the substantive law provisions.
- The attempt to separate the substantive law provisions from registration provisions has created unnecessary duplication of legal provisions which are at times conflicting.
- The transitional provisions of the two statutes are not clear as to whether the various different Land Registers created under the various existing laws continue to apply and under what legal regime.
- Unless there is a time line within which a new harmonized Land Register can be created under the new Registration Act, it is now most likely that the country will for a long time end up with a land law regime with even more statutes than was previously the case:

- These legislation include;
  1. The Government Lands Act – with its GLA Register.
  2. The Registration of Titles Act – with its old Register.
  3. The Land Titles Act – with is old Register.
  4. The Registered Land Act – with its old Register.
  5. The Land Registration Act – with a new Register which will be very expensive to develop.
  6. The Land Act.
  7. The Sectional Properties Act.
  8. The Land Control Act; and
  9. All other land laws which will continue to apply by virtue of Section 175 of the Land Bill.

#### Outcomes:

- **Land Policy/Tenure System Framework:** Several preliminary sections have been added to the Land Bill that clarifies the guiding values and principles governing land management and administration and the forms of tenure available.
- **Authority of Institutions Responsible for Land Governance:** Significant changes have been made to the Land Bill that clarify the roles and responsibilities of the National Land Commission and the Cabinet Secretary, and institutionalize a power-sharing model for land governance envisioned in the Constitution.
- **Community Lands:** Although the Land Bill does not provide a comprehensive framework and principles governing community lands, several provisions have been added to the bill that significantly clarify and elevate the status of community lands.
- **Public Lands:** The management and administration responsibilities of the National Land Commission with respect to public lands have been significantly clarified on key issues such as compulsory acquisition and allocation of public lands. Likewise accountability and robust public notification provisions have been added to the Land Bill.
- **Compulsory Acquisition:** Meaningful revisions have been made to the Land Bill that clarify the process and enhance the protections and safeguards related to compulsory acquisition.
- **Gender Equity:** The Bill now contains express recognition of “elimination of gender discrimination in law, customs, and practices related to land and property” as a guiding principle, and a new section defining co-ownership rights to land, including joint ownership rights and relationships between spouses.
- **Environmental Easements:** The Bill now contains accommodation for the existence of environmental easements, per EMCA.

#### Issues of Concern:

- **Devolved Government in the Land Bill:** There is inadequate direction provided in either the Land Bill or the National Land Commission Bill on what land management and administration functions have been or will be devolved to County (or other local) governments. However, the Bills do now provide a role for local land boards in governance of public lands, and for county governments in compulsory acquisition and in land registration.
- **Public Lands:** Similar to the comment above, there is inadequate express provision for the management of public land by responsible agencies such as KFS and KWS and the oversight provided by the National Land Commission.
- **Compulsory Acquisition:** While significant and meaningful improvements have been made to Compulsory Acquisition process, it is still rather convoluted and less than ideal.
- **Community Lands:** The concern remains that the failure to fully address community lands simultaneous with other classifications of land will relegate them as an inferior type of tenure. This is not to suggest that the faulty Community Lands Bill should have been hurried.
- **Offices of the Chief Registrar and County Registrars:** the Bills now identify specific registration roles for the National Land Commission. Given the apparent intention for the Cabinet Secretary to maintain responsibility for daily registration-related tasks, it would be useful that the bill expressly state that the Chief Registrar's office and the county registration offices will ultimately be housed with the Cabinet Secretary.
- **Gender Equity in Land Matters:** While both bills have been revised to improve gender equity and spousal rights, there remain concerns in the bills that otherwise limit the protections provided, including: (a) the presumption that spouses co-own matrimonial property as "tenants-in-common" (rather than joint tenants); and (2) the apparent attempt to limit spousal protections to "matrimonial property," excluding a spouse's partial interest in the individual property of the other spouse, as accrued through contribution over time.
- **Transition of Registered Documents from Repealed Acts to the Registration Bill:** No revisions have been made to this section of the bill. Nor does the revised version of the bill clarify or provide any principled reasons, processes, or protections related to the examination of titles previously kept under the Government Lands Act or the Land Titles Act. However, the reason for some documents to be examined was that they were filed under deed systems, rather than title systems, in the past. Thus there is some rationale for the examination. However it might be best to specify this purpose in the Bill, and limit the nature of any examination to that necessary for transitioning documents filed under deed systems to documents necessary for title registration.

key recommendation made with respect to the Land Bill –

- (i) **Definition of terms** –the Bill has provided holistic definitions for certain key terms, for instance: freehold – to bringing the perpetuity of the interest in land; peri-urban – to harmonize with definitions of urban areas and cities set out by new devolution laws, among others.
- (ii) **The forms of tenure** include a clear definition of the rights of the tenure holder; and clear definitions of the duties of the tenure holder.
- (iii) **Functions of the Cabinet Secretary** - The specified powers of the Cabinet Secretary include roles and duties already assigned to specific officers and institutions through existing Acts of Parliament. The Bill specifies how the Cabinet Secretary relates to statutory roles and departments such as survey, or physical planning. It should show how, what changes have been made in the Survey Act and the Planning Act. It should also remove the specific power of the Minister to regulate service providers such as physical planner, surveyors and other land professionals. This role should be carried out through statutory agencies, since the Cabinet Secretary may lack competence with respect to specialized professions.
- (iv) **Allocation of public lands by the National Land Commission through auction** – The Bill clarifies how auctions will be undertaken, including specific exemptions from public procurement legislation.
- (v) **Gender equity in allocations of public land** – The Bill should require, and provide a mechanism to ensure that there is gender equity in allocations of public lands by the National Land Commission, particularly through auctions, and tenders.
- (vi) **Integration of Community Land into the Land Bill** - Community land, as per article 61 of the constitution, is an equal form of tenure to public and private tenure. The Bill therefore incorporate provisions on community land, to ensure harmony in substantive and registration legal provisions.
- (vii) **Equitable access to land** – In order to fulfill the principles of land policy set out in article 60 of the Constitution, the Bill should allows the National Land Commission to issue short-term leases of 5-10-15 years from qualifying public lands. Such leases would be registrable through certificates of titles to provide security of tenure, and allow holders to utilize the lease as collateral.
- (viii) **Exclusion of short-term leases from the statutory implied terms** – The implied terms set out by the Bill should not exclude short-term leases. This is because short-term leases are likely to be unwritten, and therefore would benefit from the fabric of the statutory implied terms.

- (ix) **Power of Court to re-open charges** - This is an innovative provision that aims to secure equity and justice in the public interest. The provision could result in higher interest rates as financial institutions seek to internalize the high risk that their practices could be reopened and reversed by courts. There is also a possibility of increased litigation.
- (x) **Repeal of laws** - The Bill has specifically repeal the provisions of each existing law that provides substantive law on land.

## SUMMARY OF PUBLIC VIEWS

### Summary of the Public views include

1. The land laws should be Consolidated and harmonized to one law;
2. A framework chapter on the principles and objectives on lands as set out in the National Land Policy and Constitution be incorporated in the Land Bill
3. Legislation should set out proper procedures for resolving the squatter problem and settlement schemes/programmes
4. The law should address the issue of absentee landlords
5. Set the laws should clearly stipulate procedure for legal recognition of adverse possession
6. They are not properly addressed controlled transactions
7. abolish Land Control Boards
8. legislate clearly that there is need for the protection of community lands before the new law comes into being;
9. the Transition Provisions and Associated Issues and Repeals be clearly done not to leave room to any contradiction.
10. There is need for the bills to provide for the Information management system to be well established and updated with latest land information available to the all citizen
11. Address Devolution
12. Clauses 109(3) of land registration Bill should include guidelines and procedures to be followed to surrender existing leases. 999 and 99 years Leases be clearly shown how they will be converted.
13. Strengthen the clause on Grants and Dispositions
14. Abolish the Power of surveyor to re-survey
15. Establish timelines on Historical land injustices and provide for remedies
16. Legislate on alternative disputes resolution
17. Offences be enhanced. There should be a punishment prescribed in law for those officers who are involved in land fraud.
18. Deletion of Section 10(3) of the Land registration Bill. The law on access to the register was too restrictive and against the spirit of the constitution on access to information

19. Minimum and Maximum land sizes - The scientific study to determine the economic viability of minimum and maximum acreages as contemplated in Clause 172 (1) of the Land Bill excludes both community and public land. Therefore it should be extended to include both community and public land
20. Deletion of Clause 121 of the land Bill. Provide that the commission is the sole body exercising the power of compulsory acquisition
21. Deletion of Clause 148(4) of land Bill. Who is this person? Representative of the county government and not the representative of the governor. The selection committee to include 5 community representatives, women appointed by the community not local organization and that the physical planner and surveyor should not be members of the committee;
22. Clause 24 of the Land Bill - Leases granted by Government, on expiry of such leases, the property or any development made on the land should not revert or go to the government.
23. Specify the players and much with their roles in Clause 173 of the land Bill
24. Cl. 10(iii)& (iv) (c) of the Land Registration Bill as it contravenes article 40 of the constitution
25. The bills should not be used to Transfer of Staff to the Commission
26. Matrimonial property and Home - The lands laws should provide for Equal rights in land inheritance for male and female beneficiaries with regard to land. Spouses should have equal rights to land inheritance
27. Clauses 31(1) of national land commission Bill should State clearly the functions and departments to be transferred.

## **CONSIDERATION OF PROPOSED AMENDMENTS TO THE NATIONAL LAND COMMISSION BILL 2012**

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The Committee considered public views and proposed amendments to the National Land Commission Bill, 2012 and resolved as follows:

- **CLAUSE 1 – Agreed to**
- **CLAUSE 2**

THAT clause 2 of the Bill be amended by-

(a) deleting the definition of the word "unlawful".

**PROPOSED AMENDMENT NOT AGREED TO** – it was agreed that it was necessary to retain the legal definitions of the two words.



**PROPOSED AMENDMENT CARRIED** - That the words "prescribed by the Ministry of lands or other relevant authority" under the definitions of irregularly be deleted and substituted therefor the words 'relating to the issue of grants and disposition;

(b) deleting the definition of the word "irregularly"; and substitute therefor with the words "Irregular" in relation to grant or disposition of land means in an undertaking in a manner that does not conform to standards, procedures or criteria set out under this Act or any other law"

- **CLAUSE 3 - Agreed to**
- **CLAUSE 4 - Agreed to**
- **CLAUSE 5**

**THAT** clause 5 of the Bill be amended

(a) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c);

(d) Manage and administer unregistered community land on behalf of the County government ;(*to take care of art.63(3) of the Constitution*)

(b) by inserting the following new sub-clause immediately after sub-clause 2-

**"(3)** Notwithstanding the provisions of this section, the Commission shall ensure that all unregistered land is registered within 10 years from the commencement of this Act.

**"(4)** Parliament may, after taking into account the progress of registration, extend the period set by the Commission under sub-section (2) (d)".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 6 – Agreed to**
- **CLAUSE 7 – Agreed to**
- **CLAUSE 8**

**THAT** clause 8 (b) of the Bill be amended to reduce the number of prerequisite years of necessary knowledge and experience by deleting the words 'fifteen years' and inserting 'ten years'.

**PROPOSED AMENDMENT NOT AGREED TO**

- **CLAUSE 9 – Agreed to**
- **CLAUSE 10 – Agreed to**
- **CLAUSE 11 – Agreed to**
- **CLAUSE 12 – Agreed to**
- **CLAUSE 13 – Agreed to**
- **CLAUSE 14**

THAT clause 14 of the Bill be amended-

(a) in sub-clause (5), by deleting paragraph(a) and (b); and inserting the words "to the Registrar, the revocation of the title" after the words "recommend" appearing on the third line of the sub-clause;

**PROPOSED AMENDMENT AGREED TO**

(b) in sub-clause (7) by inserting the words "and where such title is revoked, the national government or the county government, where applicable, shall compensate the *bona fide* purchaser" **PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 15 – Agreed to**
- **CLAUSE 16**

THAT clause 16 (2) of the Bill be amended to provide for the payment /compensation of co-opted membership

**PROPOSED AMENMDENTS AGREED that public service regulations already provided for this.**

"(4) The Commission may pay persons co-opted to the committees such allowances, and other expenses as it may determine from time to time."

- **CLAUSE 17**

THAT clause 17 of the Bill be amended

(a) in the marginal note by deleting the word " Consultation" and substituting therefor the words " Establishment of County Land Management Boards"

(b) in sub-clause (1) by inserting the words "and subject to Article 10 and Article 232 of the Constitution" after the words "and county governments".

(c) by deleting sub-clause (2).

**PROPOSED AMENDMENT AGREED TO**

o **CLAUSE 18**

**THAT** clause 18 of the Bill be amended-

(a) in the marginal note by deleting the phrase "Composition of and appointment of County Land Management Boards" and substituting therefor the words "Establishment and composition of county land management Boards"

(b) by deleting sub-clause (1) and inserting the following new sub-clause-

(1) The Commission shall, in consultation and co-operation with the national and county governments, establish county land management boards for purposes of the management of public land

"(2) A county land management board shall comprise-

(a) not less than three and not more than seven members appointed by the Commission; and

(b) a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the governor and who shall be an *ex-officio* member.

(c) in sub-clause (5) by inserting the words "and Article 232" immediately after the words "Article 10";

(d) in sub-clause (7) by deleting the words "guided by" appearing immediately after the words "boards shall be" and substituting therefor the words "comply with".

**The proposed amendment was further amended and proposed as follows:**

**THAT** sub-clause 18(1) be amended by deleting the words "of whom two shall be ex-officio nominated by the governor and one of whom shall be a physical planner and one a surveyor" and substituting therefore the words "of whom one shall be ex-officio nominated by the governor who shall be a physical planner or a surveyor".

**PROPOSED AMENDMENT AGREED TO**

o **CLAUSE 19 – Agreed to;**

o **CLAUSE 20**

**THAT** clause 20 of the Bill be amended

(a) in sub-clause (1) by inserting the words "and transparent" immediately after the words "through a competitive".

(b) in sub-clause (2) by inserting the following new sub-paragraph immediately after sub-paragraph (2) (d) (vi)

"(vii) any other relevant field;

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 21**

THAT clause 21 of the Bill be amended in paragraph (d) of sub-clause (1) by inserting the words "or any other law" at the end of the paragraph.

**PROPOSED AMENDMENT NOT AGREED TO**

- **CLAUSE 22 – Agreed to;**
- **CLAUSE 23 – Agreed to;**
- **CLAUSE 24 – Agreed to;**
- **CLAUSE 25 – Agreed to;**
- **CLAUSE 26 – Agreed to;**
- **CLAUSE 27 – Agreed to;**
- **CLAUSE 28 – Agreed to;**
- **CLAUSE 29 – Agreed to;**
- **CLAUSE 30 – Agreed to;**
- **CLAUSE 31**

THAT clause 31 of the Bill be amended-

(a) in sub-clause (1)-

- (i) by inserting the words "subject to Article 252(1)(c) of the Constitution and" at the beginning of the sub-clause"; and

**PROPOSED AMENDMENT AGREED TO**

- (ii) by deleting the word "functions" appearing after the words "departments whose" and substituting therefor the word "services". and

**PROPOSED AMENDMENT AGREED TO**

(b) in sub-clause (2)-

- (i) by inserting the words "subject to Article 252(1)(c) of the Constitution and" at the beginning of the sub-clause"; and

- (ii) by deleting the word "functions" appearing after the words "departments whose" and substituting therefor the word "services"; and

**PROPOSED AMENDMENTS AGREED TO**

(c) in sub-clause (4) by deleting the words "and the services of such applicant with the Commission shall be terminated in accordance with the terms of the contract of employment" and substituting therefor the following-

"shall,-

- (a) in the case of a person who immediately before the commencement of this Act was serving on contract in the Ministry of Lands, continue to serve in the Ministry of Lands in accordance with the terms of the contract of employment; and
- (b) in the case of a person who immediately before the commencement of this Act was an employee of the Government in the Ministry of Lands, continue to serve in the Ministry of Lands or where necessary, be re-deployed in the public service".

The proposed amendment was further amended and proposed as follows:

**THAT** clause 31 be amended in sub-clause (4) by deleting the words "and the services of such applicant with the Commission shall be terminated in accordance with the terms of the contract of employment".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 32 – Agreed to;**

- **CLAUSE 33**

**THAT** clause 33 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (b)-

"(ba) information relating to the progress made in the registration of title in land;

(bb) recommendations made by the Commission to the county or national governments or to any state agency or organ and the action taken on such recommendations;

(bc) any impediments to the work of the Commission; and".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 34**

**THAT** clause 34 of the Bill be amended by inserting the words "within six months" immediately after the words "Commission shall".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 35**

THAT clause 35 of the Bill be amended by inserting the words "or any other provision of this Act where no specific penalty is provided," after the words "contravenes sub-section (1)".

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 36**

THAT clause 36 of the Bill be amended by inserting the words "and such regulations shall be tabled before Parliament for approval in accordance with the relevant laws and procedures of Parliament".

**PROPOSED AMENDMENT AGREED TO**

• **FIRST SCHEDULE**

THAT the First Schedule of the Bill be amended-

(a) in paragraph 1 by inserting the words "and whenever a vacancy arises" immediately after the words "commencement of this Act";

**PROPOSED AMENDMENT AGREED TO**

(b) in sub-paragraph (a) of paragraph 1 by deleting the words "Public Service Commission" and substituting therefor the words "Office of the President"; and

**PROPOSED AMENDMENT AGREED TO**

(c) in sub-paragraph (e) of paragraph 1 by deleting the words "Kenya Private Sector Alliance" and substituting therefor the words "Association of Professional Societies in East Africa".

**The proposed amendment was further amended and proposed as follows:**

THAT the First Schedule be amended:

(a) in paragraph 1 by inserting the words "and whenever a vacancy arises" immediately after the words "commencement of this Act";

(b) in sub-paragraph (a) of paragraph 1 by deleting the words "Public Service Commission" and substituting therefor the words "Office of the President"; and

(c) in sub-paragraph (e) of paragraph 1-

(i) by deleting the words "two persons, of opposite gender, who are citizens of Kenya" and substituting therefor the words "one person who is a citizen of Kenya"; and

(ii) by deleting the word "have" appearing immediately after the words "organizations who" and substituting therefor the word "has"

(d) in sub-paragraph (f) of paragraph 1 by deleting the words "a nominee of the Kenya National Human Rights Commission" and substituting therefor the words "Association of Professional Societies in East Africa",

(e) in sub-paragraph (g) by deleting the words "a nominee of the National Gender and Equality Commission" and substituting therefor the words "Kenya Livestock Marketing Council"

**PROPOSED AMENDMENTS AGREED TO**

- **FOURTH SCHEDULE**

**THAT** the Fourth Schedule of the Bill be amended-

(a) in sub-paragraph (1) of paragraph 3 by deleting the word "appointed" appearing immediately after the words "half of the"; and

**PROPOSED AMENDMENT AGREED TO**

(b) in sub-paragraph (2) of paragraph 3 by deleting the word "appointed" appearing immediately after the words "less than three".

**PROPOSED AMENDMENT AGREED TO**

(c) in paragraph 4 by deleting the words "with a supporting vote of at least two thirds of members present" and inserting the words "by a majority of the Members".

**PROPOSED AMENDMENT AGREED TO**

### **CONSIDERATION OF PROPOSED AMENDMENTS TO THE LAND REGISTRATION BILL 2012**

---

The Committee considered public views and proposed amendments to the Land Registration Bill, 2012 and resolved as follows:

- **CLAUSE 1 – Agreed to;**

- **CLAUSE 2**

**THAT** clause 2 of the Bill be amended-

(a) In the definition of "public purposes" by deleting paragraph (f)

**PROPOSED AMENDMENT AGREED TO**

The meeting considered the proposal for amendment presented by the Kenya Revenue Authority (KRA) through a memorandum indicating the need to define the term statutory charge and to provide for the powers to create a statutory charge.

**PROPOSED AMENDMENTS NOT AGREED TO - it was noted that relevant provisions have been made in the Land Bill 2012 in this regard**

- **CLAUSE 3 – Agreed to;**

- **CLAUSE 4**

The meeting considered a proposal for amendment presented by the Kenya Wildlife Service (KWS) through a memorandum that an interpretation is required with regard to wildlife protected areas under geothermal exploration. KWS recommended that a provision be made for the National Land Commission (NLC) to consult with the competent authority for which the land is reserved prior to issuing mining and exploration licences over already reserved public land.

#### **PROPOSED AMENDMENT NOT AGREED TO**

- **CLAUSE 5 – Agreed to;**

- **CLAUSE 6**

The meeting considered an observation from the Parliamentary Budget Office that Clause 6 had not made provision for the criteria that would guide the process of constituting registration units.

It was however noted that Article 67 of the Constitution provided the legislative framework for the NLC to carry out its registration programme. It was observed that legislation could not provide for administrative procedures.

#### **PROPOSED AMENDMENTS NOT AGREED TO**

- **CLAUSE 7**

**THAT**, clause 7 of the Bill be amended in subclause (3) by deleting the word "Public Service Commission" and substituting therefor the word " Commission".

#### **PROPOSED AMENDMENT NOT AGREED TO**

- **CLAUSE 8 – Agreed to;**

- **CLAUSE 9**

**THAT**, clause 9 be amended-

(a) in subclause (1) , by deleting the word "may" and substituting therefor the word "shall";

#### **PROPOSED AMENDMENT AGREED TO**

(b) in subclause (2) by inserting the words " where necessary" immediately after the words "authorized and" appearing in paragraph (b).

#### **PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 10**

**THAT**, clause 10 of the Bill be deleted.

#### **PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 11**

**THAT**, clause 11 of the Bill be amended by deleting the words "and on conditions satisfactory to the Registrar" and substituting therefor the words "the Registrar may reasonably prescribe".



The proposed amendment was further amended and proposed as follows:

THAT, the clause 11 of the Bill be amended by deleting the words "and on conditions satisfactory to the Registrar" and substituting the words therefor "the Chief Land Registrar may reasonably prescribe". **PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 12 – Agreed to;**
- **CLAUSE 13 – Agreed to;**
- **CLAUSE 14 – Agreed to;**
- **CLAUSE 15**

THAT, clause 15 of the Bill be amended-

- (a) by deleting the word "Deputy Land Registrar" appearing immediately after the words "The Chief Land Registrar";

**PROPOSED AMENDMENT AGREED TO – it was resolved that "Deputy Chief Land Registrar" be deleted from the National Land Commission Bill to achieve consistency.**

- (b) by deleting the words " administer the oath " appearing in paragraph (d) and substituting therefor the words "cause oaths to be administered or declarations taken".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 16 – Agreed to;**
- **CLAUSE 17 – Agreed to;**
- **CLAUSE 18 – Agreed to;**

The meeting took cognizance of the matter raised on clause 18 (3) through memorandum by Equity Bank.

- **CLAUSE 19**

THAT, clause 19 be amended by inserting the word "with" immediately after the word accordance appearing in subclause (2).

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 20 – Agreed to;**
- **CLAUSE 21**

THAT, clause 21 of the Bill be amended in subclause (2), by deleting the words "in a permanent manner" appearing immediately after the words "any boundary" and substituting therefor the word "mark."

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 22 – Agreed to;**
- **CLAUSE 23 – Agreed to;**
- **CLAUSE 23 – Agreed to;**
- **CLAUSE 24 – Agreed to;**
- **CLAUSE 25 – Agreed to;**
- **CLAUSE 26 – Agreed to;**
- **CLAUSE 27 – Agreed to;**

- **CLAUSE 28**

THAT, clause 28 of the Bill be amended in the marginal note by deleting the words “voluntary transfer” and substituting therefor the words “Transfer without valuable consideration”.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 29**

THAT, clause 29 of the Bill be amended in paragraph (a) by deleting the word “property” and substituting therefor the word “home”

That, the words “interest of spouses in actual occupation of the land or home, during and on termination of marriage” be inserted.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 30 – Agreed to;**
- **CLAUSE 31 – Agreed to;**
- **CLAUSE 32 – Agreed to;**
- **CLAUSE 33 – Agreed to;**
- **CLAUSE 34**

THAT, clause 34 of the Bill be amended-

(a) in sub-clauses (1) by deleting the word “new” appearing immediately after the words “issue of a” and substituting therefor the word “duplicate”;

**PROPOSED AMENDMENT AGREED TO**

(b) in sub-clauses (3) by deleting the word “new” appearing immediately after the words “Registrar may issue” and substituting therefor the word “duplicate”

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 35 – Agreed to;**
- **CLAUSE 36 – Agreed to;**
- **CLAUSE 37**

THAT, clause 37 of the Bill be amended in sub clause (4) by inserting the words "of the Constitution" immediately after the expression "Subject to Article 67(2) (c)".

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 38**

THAT, clause 38 of the Bill be amended in subclause (1) by inserting the words "or in such other form as the Registrar may in any particular case approve" immediately after the words "prescribed form".

**PROPOSED AMENDMENT NOT AGREED TO**

• **CLAUSE 39 – Agreed to;**

• **CLAUSE 40**

THAT, clause 40 of the Bill be amended in subclause (1) –

(a) by deleting the word "a" appearing immediately after the word "create" and substituting therefor the word "an"; and

**PROPOSED AMENDMENT AGREED TO**

(b) by deleting the words "or that the land is freehold" appearing immediately after the words "of the land " in the fifth line.

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 41 – Agreed to;**

• **CLAUSE 42 – Agreed to;**

• **CLAUSE 43**

THAT, clause 43 of the Bill be amended by deleting the words "new registers have been opened in respect of each subdivision" and substituting therefor the words "duly registered each new subdivision"

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 44 – Agreed to;**

• **CLAUSE 45**

THAT, clause 45 of the Bill be amended in subclause (5) –

(a) by deleting the word " pin" appearing immediately after the words "a copy of " in paragraph (b) and substituting therefor the words " Personal Identification Number".

**PROPOSED AMENDMENT AGREED TO**

(b) by deleting the word " be" appearing immediately after the word "may" in paragraph (e).

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 46 – Agreed to;**

• **CLAUSE 47 – Agreed to;**

- **CLAUSE 48 – Agreed to;**
- **CLAUSE 49 – Agreed to;**
- **CLAUSE 50 – Agreed to;**
- **CLAUSE 51 – Agreed to;**
- **CLAUSE 52 – Agreed to;**
- **CLAUSE 53 – Agreed to;**
- **CLAUSE 54 – Agreed to;**
- **CLAUSE 55**

**THAT**, clause 55 of the Bill be amended -

- (a) by inserting sub-clause (4) that “the land register maintained under Section 7 of this Act shall be deemed to be the land register for the purpose of the Sectional Properties Act”.

**PROPOSED AMENDMENT AGREED TO**

- (b) by renaming the former sub-clause (4) as sub-clause (5) and deleting the words “not register long-term leases over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, unless” and substituting therefor the words “The registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land”.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 56**

**THAT**, clause 56 of the Bill be amended

(a) by deleting paragraph (1);

(b) by renumbering the existing sub-clause (2) as clause 56.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 57**

**THAT**, clause 57 of the Bill be deleted.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 58**

**THAT**, clause 58 of the Bill be amended in subclause (6) –

- (a) by deleting the word “charge” appearing immediately after the words “ the exercise by the” and substituting therefor the word “ chargee”.

**PROPOSED AMENDMENT AGREED TO**

(b) by deleting the word "charge" appearing immediately after the words "payment to the " and substituting therefor the word " chargee".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 59 – Agreed to;**
- **CLAUSE 60**

The meeting considered a proposal forwarded by memorandum by the Kenya Revenue Authority (KRA) to amend clause 60 by renaming it as 60 (1) and introducing a clause 60 (2) to read "the holder of a statutory charge shall have the rights, obligations and remedies available to a lender under this Act and this shall also apply *mutatis mutandis* to the owner of a land against whom a statutory charge has been created."

**PROPOSED AMENDMENT NOT AGREED TO**

- **CLAUSE 61**

**THAT**, clause 61 be amended by deleting the word "willnot" and substituting therefor the word "will not".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 62 – Agreed to;**
- **CLAUSE 63 – Agreed to;**
- **CLAUSE 64 – Agreed to;**
- **CLAUSE 65 – Agreed to;**
- **CLAUSE 66 - Agreed to;**
- **CLAUSE 67 – Agreed to;**
- **CLAUSE 68 – Agreed to;**
- **CLAUSE 69 – Agreed to;**
- **CLAUSE 70 – Agreed to;**
- **CLAUSE 71 – Agreed to;**
- **CLAUSE 72 – Agreed to;**
- **CLAUSE 73 – Agreed to;**
- **CLAUSE 74 – Agreed to;**
- **CLAUSE 75**

**THAT**, clause 75 of the Bill be amended in subclause (5) –

(a) by deleting the word " chargor" wherever it occurs and substituting therefor the word " chargee".

**PROPOSED AMENDMENT AGREED TO**

(b) by deleting the expression "95" and substituting therefor the expression " the law relating to land".

## PROPOSED AMENDMENT AGREED TO

- **CLAUSE 76 – Agreed to;**
- **CLAUSE 77 – Agreed to;**
- **CLAUSE 78 – Agreed to;**
- **CLAUSE 79 – Agreed to;**
- **CLAUSE 80 – Agreed to;**

- **CLAUSE 81**

THAT, clause 81 of the Bill be amended in subclause (1), paragraph (c) –

(a) by deleting the word “but” appearing immediately after the word “incorrect”;

**PROPOSED AMENDMENT AGREED TO**

(b) by inserting the words “in writing” immediately after the word “notice”;

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 82 – Agreed to;**

- **CLAUSE 83**

THAT, clause 83 of the Bill be amended in subclause (1) by deleting the words “shall be entitled to be indemnified by the Government out of Funds provided by Parliament” and substituting therefor the words “indemnity”.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 84 – Agreed to;**
- **CLAUSE 85 – Agreed to;**
- **CLAUSE 86 – Agreed to;**
- **CLAUSE 87 – Agreed to;**
- **CLAUSE 88 – Agreed to;**
- **CLAUSE 89 – Agreed to;**
- **CLAUSE 90 – Agreed to;**
- **CLAUSE 91 – Agreed to;**
- **CLAUSE 92 – Agreed to;**

- **CLAUSE 93**

THAT, clause 93 of the Bill be amended in sub-clause (8), in line 6 by deleting the word “an” immediately before the word “tenancy” and substituting therefor the word “a”.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 94 – Agreed to;**
- **CLAUSE 95**

THAT, clause 95 of the Bill be amended

- (a) in sub-clause (1)(a) by deleting the word "tenants in common" appearing immediately after the words "land as" and substituting therefor the word "joint tenants".
  - (b) in sub-clause (1)(b) by deleting the word "tenants in common" appearing immediately after the words "spouses as" and substituting therefor the word "joint tenants".
  - (c) in subclause (4) by deleting the word "voidable" and substituting therefor the word "void".
- PROPOSED AMENDMENT NOT AGREED TO**

- CLAUSE 96 – Agreed to;
- CLAUSE 97 – Agreed to;
- CLAUSE 98 – Agreed to;
- CLAUSE 99 – Agreed to;
- CLAUSE 100 – Agreed to;
- CLAUSE 101 – Agreed to;
- CLAUSE 102 – Agreed to;
- CLAUSE 103 – Agreed to;
- CLAUSE 104 – Agreed to;
- CLAUSE 105 – Agreed to;

- **CLAUSE 106**

THAT, clause 106 marginal note be amended by inserting a space between the words "SavingRegisters".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 107**

- That, clause 107(2)(b) contravenes article 62(2) and 63(3) of the constitution as it vest community land in the commission rather than the community.

- CLAUSE 108 – Agreed to;
- CLAUSE 109 – Agreed to;

- **CLAUSE 110**

THAT, clause 110 of the Bill be deleted and therefor substituted with a new clause 110 –

Clause 110

Until the regulations and exemptions contemplated under Section 112 are made "Any rules, orders, regulations, directions, notices, forms, notifications or other administrative acts made, given, issued or undertake before the commencement of this Act under any of the Acts of Parliament repealed by this Act, shall continue in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 111 – Agreed to;**

- **CLAUSE 112**

THAT, clause 112 (1) of the Bill be amended by deleting the word "may" and substituting therefor the word "shall" appearing in paragraph one.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 113**

THAT, clause 113 of the Bill be deleted.

**PROPOSED AMENDMENT AGREED TO**

## **CONSIDERATION OF PROPOSED AMENDMENTS TO THE LAND BILL 2012**

---

The Committee considered public views and proposed amendments to the Land Bill, 2012 and resolved as follows:

- **CLAUSE 1 – Agreed to;**

- **CLAUSE 2**

THAT, clause 2 of the Bill be amended-

- (a) by inserting the following definition-

"county executive committee member" means the county executive committee member responsible for matters of land.

**PROPOSED AMENDMENT AGREED TO**

- (b) in the definition of "dwelling house" by deleting the word "cartilage" and substituting therefor the word "curtilage";

**PROPOSED AMENDMENT AGREED TO**

in the definition of "freehold" by deleting the words "subject to the rights of others and the regulatory powers of the Government of Kenya" and substituting thereof the words "means the unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs"

**PROPOSED AMENDMENT AGREED TO**



- (c) by deleting the definition of "joint tenancy" and substituting therefor the following definition-

"joint tenancy" means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners".

- (d) by deleting the definition of the word "land administration";

**PROPOSED AMENDMENT AGREED TO**

- (e) by deleting the definition of the word "land management";

**PROPOSED AMENDMENT AGREED TO**

- (f) by deleting the definition of "lease" and substituting therefor the following new definition-

"lease" means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his/her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease".

**PROPOSED AMENDMENT AGREED TO**

- (g) by deleting the definition of the word "leasehold";

**PROPOSED AMENDMENT AGREED TO**

- (h) by deleting the definition of "licence" and substituting therefor the following new definition-

"licence" means a permission given by the Commission in respect of public land or proprietor of land or proprietor in respect of private or community land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise get a trespass, but does not include an easement or a profit".

**PROPOSED AMENDMENT AGREED TO**

- (i) by deleting the definition of the word "licensee";

**PROPOSED AMENDMENT AGREED TO**

- (j) by deleting the definition of "register" and substituting therefore the following new definition-

"register" has the meaning assigned to it under the law relating to land registration".  
**PROPOSED AMENDMENT AGREED TO**

- (k) by deleting the definition of "tenancy in common" and substituting therefore the following new definition-

"tenancy in common" means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds and individual, undivided interest in the property and each party has the right to alienate, or transfer their interest".

- (l) by deleting the definition of the word "peri-urban area"

**PROPOSED AMENDMENT AGREED TO**

- (m) by deleting the definition of the word "temporary purpose".

**PROPOSED AMENDMENT AGREED TO**

- (j) by deleting the definition of the word "Rules committee"

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 3 – Agreed to;**

- **CLAUSE 4**

(a) That, clause 4 of the Bill be further enriched by inserting the principles and objects as set out in the constitution and including set up of framework chapter.

- (b) by inserting the following new paragraphs immediately after paragraph (j)-

"(ja)affording equal opportunities to members of all ethnic groups";

"(jb) non-discrimination and protection of the marginalized";

"(jc) democracy, inclusiveness and participation of the people and

- (b) by deleting the word "and" appearing at the end of paragraph (j)

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 5**

THAT, clause 5 be amended in subclause (1) by deleting paragraph (c).

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 6 – Agreed to;**

- **CLAUSE 7**

• **THAT**, clause 7 be amended in paragraph (h) by inserting the words “exceeding 21 years” immediately after the words “leases”.

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 8**

**THAT**, clause 8 be amended-

(a) by inserting the following new paragraph after paragraph (a)-

“(aa) shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning”;

**PROPOSED AMENDMENT AGREED TO**

(b) in paragraph (b) by deleting the words “stakeholders” and substituting therefor the words “the public and relevant institutions”;

**PROPOSED AMENDMENT AGREED TO**

(c) **THAT**, the Bill be amended by inserting the following new clause immediately after clause 8-

8A. (1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

(2) Without prejudice to the generality of subsection (1) —

- (a) public land may be converted to private land by alienation;
  - (b) subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;
  - (c) private land may be converted to public land by—
    - (i) compulsory acquisition;
    - (ii) reversion of leasehold interest to government after the expiry of a lease; and
    - (iii) transfers; or
    - (iv) surrender.
  - (d) community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.
- (3) Any substantive transaction involving the conversion of public land to private land shall require approval by the National Assembly or County Assembly as the case may be.

(4) The Commission shall cause a register to be kept containing-

- (a) particulars of public land converted to private land by alienation;
- (b) names and addresses of all persons whose land has converted to public land through compulsory acquisition or reversion of leasehold;
- (c) particulars of community land converted to either private or public and
- (d) such other details as the Commission may direct.

(5) The Commission may make Rules for the better carrying out of the

provisions of this section, and, without prejudice to the generality of the foregoing, the rules may provide for the following—

- (a) prescribing substantial transactions requiring approval of the National Assembly or the County Assembly as the case may be;
- (b) prescribing anything required to be prescribed under this Section;
- (c) regulating and controlling the conversion of land from one category to another;
- (d) prescribing the factors to be applied or taken into account in determining land that is to be converted;

(6) Rules made under this section may contain—

- (a) different provisions for different parts of Kenya;
- (b) provisions for different categories of conversion or kinds of transactions; or
- (c) exemptions or conditional exemptions from the operation of any rule made under this section.

(7) Any Rules made by the Commission under subsection (5) shall be tabled before the Parliament for approval.

#### PROPOSED AMENDMENT AGREED TO

It is noteworthy that the proposed amendment to insert clause 8A is in line with Section 68 (c) (ii) of the Constitution that requires Parliament to legislate on the regulation of the manner in which any land may be converted from one category to another.

- **CLAUSE 9**

THAT, clause 9 be deleted.

#### PROPOSED AMENDMENT AGREED TO

- **CLAUSE 10**

That, Clause 10 be amended;-

(a) In sub-clause (3) by deleting the words "10(3)" and substituting therefor the words "10(2)".

#### PROPOSED AMENDMENT AGREED TO

- **CLAUSE 11**

**THAT**, clause 11 be amended in subclause (3) by inserting the word "with" immediately after the word "dealing".

**PROPOSED AMENDMENT AGREED TO**

The meeting deliberated on the recommendations forwarded through memorandum by the Kenya Wildlife Service (KWS) on clause 11 that a provision be made on the management of ecologically sensitive areas and endangered species located on private land. The KWS further recommended that provisions for specific actions to safeguard ecologically sensitive land including gazettelement and incorporation into regional physical plans be made under the Act.

The meeting observed that the proposals by the KWS touched on critical habitats located on community land. It was noted that it was essential for the KWS to engage communities directly in this regard.

It was further noted that situations such as these necessitated the enactment of the Community Land Bill.

The Minister for Lands undertook to fast track the Community Land Bill.

- **CLAUSE 12**

**THAT**, clause 12 be amended –

(a) in sub-clause (1)-

(i) by inserting the word "public" at the beginning of paragraph "(a)

**PROPOSED AMENDMENT AGREED TO**

(ii) by inserting the words " in order to ameliorate their disadvantaged position" immediately after the word "groups" appearing in paragraph (b).

**PROPOSED AMENDMENT AGREED TO**

(b) in sub-clause (2) by deleting paragraph "(e)" and substituting therefor the following new paragraph"

"(e) natural, cultural, and historical features of exceptional national value falling within public lands"

**PROPOSED AMENDMENT AGREED TO**

(c) in sub-clause (3) by inserting the words " subject to Article 65 of the Constitution" at the beginning of the subclause .

PROPOSED AMENDMENT AGREED TO

- (d) in subclause (4) by deleting the expression "subsection (4)" and substituting therefor the expression "subsection (3)".

That a general provision be made under subclause 4 requiring the Commission to make rules on benefit sharing with communities in cases where land is set aside for investment purposes.

That a proviso be made under clause 12 stipulating that the lessee will have pre-emptive rights.

PROPOSED AMENDMENT AGREED TO

- (e) by deleting subclause (6);

PROPOSED AMENDMENT AGREED TO

- (f) in subclause (8) by deleting the word "allocate" appearing immediately after the words "not be" and substituting therefor the word "allocated"

PROPOSED AMENDMENT AGREED TO

- (g) by deleting sub clause (10) and substituting therefor with the new sub clause

*"12(10) where the land allocated under sub section (9) is nit developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be."*

PROPOSED AMENDMENT AGREED TO

- (h) in subclause (11) by deleting the word "disposition" and substituting therefor the word "allocation"

PROPOSED AMENDMENT AGREED TO

- (i) by deleting sub-clause (12) and substituting therefor the following new subclause-

"(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe-

- (i) forms of ownership and access to land under all tenure systems;
- (ii) the procedure and manner of setting aside land for investments;
- (iii) procedures to be followed with respect to auction and disposition of land;

- (iv) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease.
- (v) Mechanisms of benefit sharing with local communities whose land have been set aside for investment.

**PROPOSED AMENDMENT AGREED TO**

**CLAUSE 13**

**THAT**, clause 13 be amended –

- (a) in subclause (1) by inserting the words "public and" immediately before the words "interested parties"

**PROPOSED AMENDMENT AGREED TO**

- (b) in subclause (4) by deleting the word "be" appearing immediately after the words "the Commission shall"

**PROPOSED AMENDMENT AGREED TO**

- (c) in subclause (5) by deleting the words "current land users and community based organizations" and substituting therefor the words "persons in occupation".

**PROPOSED AMENDMENT AGREED TO – the Committee however, observed that subclause 5 be further amended as the words "persons in occupation" were fundamentally limiting**

**Therefore, agreed to sub clause (5)**

- (d) in sub-clause (5) by deleting the words "current land users and community based organizations" and substituting therefor the words "persons in actual occupation of the land".

**NEW CLAUSE**

**THAT**, the following new clause be inserted immediately after clause 13A-



Lessee pre-emptive rights to allocation.

13A (1) Where any land reverts back to the national or county government after expiry of the Leasehold tenure the Commission shall offer to the immediate past holder of the Leasehold interest pre-emptive rights to allocation of the land provided that such Lessee is a Kenya citizen and that the land is not required by the national or the county government for public purposes.

(2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following.

- a) prescribing the procedures for applying for extension of leases before their expiry.
- (b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the Lease or re-allocate the land to the Lessee.
- (c) the stand premium and or the annual rent to be paid by the Lessee in consideration of extension of the Lease or re-allocation of the Land.
- (d) other covenants and conditions to be observed by the Lessee.

- **CLAUSE 14**

THAT, clause 14 be amended in subclause (1) by deleting the expression "Subject to Article 66(2)" appearing at the beginning of the clause and substituting therefor the expression "Subject to Article 66(1)."

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 15**

THAT, clause 15 be amended-

(a) in paragraph (a) of sub-clause (1) by deleting the expression "section 15" and substituting therefor the expression "section 14";

(b) by deleting sub-clause (4) (a) and (b).

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 16 – Agreed to;**
- **CLAUSE 17 – Agreed to;**

- **CLAUSE 18 – Agreed to;**

- **CLAUSE 19**

THAT, clause 19 be amended-

(a) in the marginal note by deleting the words "Licence for temporary purposes specified in the lease" and substituting therefore the words "Licence for temporary purposes"  
**PROPOSED AMENDMENT AGREED TO**

(b) in sub-clause (1) by deleting the words " temporary purposes" and substituting therefor the words " a period not exceeding five years";  
**PROPOSED AMENDMENT NOT AGREED TO**

(c) by deleting sub-clause (2);  
**PROPOSED AMENDMENT NOT AGREED TO**

(d) in sub-clause (4) by deleting the words " rent" and substituting therefor the words "fee";  
**PROPOSED AMENDMENT AGREED TO**

(e) by deleting subclause (5).  
**PROPOSED AMENDMENT NOT AGREED TO**

- **CLAUSE 20 – Agreed to;**

- **CLAUSE 21**

THAT, clause 21 be amended-

(a) in the marginal note by deleting the word "rent" and substituting therefor the words "fees".  
**PROPOSED AMENDMENT AGREED TO**

(b) in paragraph (a) by deleting the word "rent" and substituting therefor the words "fees".  
**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 22**

THAT, clause 22 be amended by deleting the marginal note and substituting therefor the following-

"Implied covenants and conditions by grantor or lessor".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 23 – Agreed to;**

- **CLAUSE 24 – Agreed to;**

- **CLAUSE 25 – Agreed to;**

- **CLAUSE 26**

THAT, clause 26 be deleted and replaced by the following new clause-

Obligations  
of children.

26. A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child's liability and obligations to the land.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 27** – Agreed to;
- **CLAUSE 28** – Agreed to;
- **CLAUSE 29** – Agreed to;
- **CLAUSE 30** – Agreed to;
- **CLAUSE 31** – Agreed to;
- **CLAUSE 32** – Agreed to;
- **CLAUSE 33** – Agreed to;
- **CLAUSE 34** – Agreed to;
- **CLAUSE 35** – Agreed to;

- **CLAUSE 36**

THAT, clause 36 be deleted.

**PROPOSED AMENDMENT AGREED TO** – This is because it is provided for in the National Land Commission Bill - clause 33(1);

- **CLAUSE 37**

THAT, clause 37 be deleted and replaced by the following new clause-

Community land.

37. Community land shall be managed in accordance with the law relating to community land enacted pursuant to Article 63 of the Constitution.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 38** – Agreed to;

- **CLAUSE 39**

THAT, clause 39 be amended-

- (a) in the marginal note by deleting the words "procedure for regaining possession" and substituting therefor the words "Vendor's right to regain possession".

**PROPOSED AMENDMENT AGREED TO**

- (b) by deleting the word "only" appearing immediately after the words "the contract by the purchaser"

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 40**  
 THAT, clause 40 be amended in sub-clause (1) by inserting the words "and mense profits"  
 immediately after the words "claiming damages"  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 41**  
 THAT, clause 41 be amended by deleting paragraph (f).  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 42**  
 THAT, clause 42 be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 43**  
 THAT, clause 43 be deleted  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 44 – Agreed to;**
- **CLAUSE 45 – Agreed to;**
  
- **CLAUSE 46**  
 THAT, clause 46 be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 47 – Agreed to;**
  
- **CLAUSE 48**  
 THAT, clause 48 be amended in subclause (1) by deleting the word "transfer and substituting  
 therefor the word "transferee".  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 49**  
 THAT, clause 49 be amended by inserting the words "where applicable," immediately after the  
 words "pay the interest".  
**PROPOSED AMENDMENT AGREED TO**
  
- **SUB TITLE – "Part VI – CO-TENANCY AND PARTITION"** appearing immediately after clause  
 56 be deleted.
  
- **CLAUSE 50 – Agreed to;**
- **CLAUSE 51 – Agreed to;**
- **CLAUSE 52 – Agreed to;**
- **CLAUSE 53 – Agreed to;**

- CLAUSE 54 – Agreed to;
- CLAUSE 55 – Agreed to;
- CLAUSE 56 – Agreed to;
  
- CLAUSE 57  
 THAT, clause 57 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- CLAUSE 58  
 THAT, clause 58 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- CLAUSE 59  
 THAT, clause 59 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- CLAUSE 60  
 THAT, clause 60 of the Bill be deleted  
**PROPOSED AMENDMENT AGREED TO**
  
- CLAUSE 61  
 THAT, clause 61 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- CLAUSE 62  
 THAT, clause 62 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- CLAUSE 63  
 THAT, clause 63 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**

➤ The Committee agreed to delete clauses 57 – 63 as they are provided for in the  
 Land Registration Bill, 2012;

- CLAUSE 64 – Agreed to;
- CLAUSE 65 – Agreed to;
- CLAUSE 66 – Agreed to;
- CLAUSE 67  
 THAT, clause 67 be amended in paragraph (b) by inserting the word "lease" immediately  
 after the word "periodic".  
**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 68**  
 THAT, clause 68 of the Bill be amended by deleting the words "by reason of the fact" and substituting therefor the word "provided"  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 69 – Agreed to;**
  
- **CLAUSE 70**  
 THAT, clause 70 be amended by deleting the word "a" appearing immediately after the words "a lease of land"  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 71**  
 THAT, clause 71 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 72 – Agreed to;**
  
- **CLAUSE 73**  
 THAT, clause 73 of the Bill be amended-
  - (a) in sub-clause (1) by deleting the "comma" appearing immediately after the word "Act";  
**PROPOSED AMENDMENT AGREED TO**
  
  - (b) in sub-clause (2) by deleting the word "sublease" and substituting therefor the words "subleasee";  
**PROPOSED AMENDMENT AGREED TO**
  
  - (c) In sub-clause (3) by deleting paragraph (c);  
**PROPOSED AMENDMENT AGREED TO**
  
  - (d) by deleting subclause (4).  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 74 – Agreed to;**
- **CLAUSE 75**  
 THAT, clause 75 of the Bill be amended in subclause (1)-
  - (a) by deleting the word "to" appearing at the beginning of the sentence in paragraph (a) and substituting therefor the words "that";  
**PROPOSED AMENDMENT AGREED TO**
  
  - (b) by deleting the word "lawful" appearing immediately after the words "without any" in paragraph (a).  
**PROPOSED AMENDMENT AGREED TO**

(c) by deleting the word "tenancy" and substituting therefor the words "lease" in paragraph (d).

**PROPOSED AMENDMENT AGREED TO**

(d) by deleting the word "to" appearing immediately after the words "one months notice" at the end of the sentence in paragraph (e).

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 76**

**THAT**, clause 76 of the Bill be amended in subclause (1) by deleting the words "other than a short term lease".

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 77 – Agreed to;**

- **CLAUSE 78**

**THAT**, clause 78 of the Bill be amended by inserting the word "the owner" immediately after the words "lease to" appearing on the first line.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 79 – Agreed to;**

- **CLAUSE 80 – Agreed to;**

- **CLAUSE 81 – Agreed to;**

- **CLAUSE 82**

**THAT**, clause 82 be amended –

(a) By deleting sub-clause (2) of the Bill

(b) By renumbering sub clause (3) as sub clause (2);

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 83**

**THAT**, clause 83 of the Bill be deleted.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 84**

**THAT**, clause 84 of the Bill be deleted.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 85**

**THAT**, clause 85 of the Bill be deleted.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 86**

**THAT**, clause 86 of the Bill be deleted

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 87**  
THAT, clause 87 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 88**  
THAT, clause 88 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 89**  
THAT, clause 89 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**
  
- **CLAUSE 90**  
THAT, clause 90 of the Bill be deleted.  
**PROPOSED AMENDMENT AGREED TO**

**THAT, clauses 83 – 90 be deleted and replaced with the following new clauses:--**

Lessor's right of forfeiture. 83A. (1) Subject to the provisions of section 83D and to any provisions to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee –

(a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or

(b) is adjudicated bankrupt; or

(c) being a company, goes into liquidation.

(2) The right of forfeiture may be –

(a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(b) enforced by action in the court.

(3) The acceptance by the lessor of any rent after the service of a notice of forfeiture under section 83C does not operate as a waiver of the lessor's right of forfeiture unless the lessor has by any other positive act shown an intention to treat the lease as subsisting

Effect of forfeiture on 83B The forfeiture of a lease determines every sublease and every other interest



subleases appearing in the register relating to that lease, but –

- (a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or
- (b) where the court grants relief against the forfeiture under section 83D, every such sublease and other interest shall be deemed not to have determined.

Notice before forfeiture.

83C. Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less than 30 days:- –

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money

Relief against forfeiture. 83D. (1) A lessee upon whom a notice has been served under section 58, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not

- **CLAUSE 91**

THAT, clause 91 be amended by providing for a proviso to additional remedies.

"Provided that a lessee who is aggrieved as a result of unlawful eviction under this section may commence an action against the lessor for remedies"

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 92 – Agreed to;**

- **CLAUSE 93**

THAT, clause 93 of the Bill be amended-

- (a) in the marginal note by deleting the words "power to create charge" and substituting therefor the words "Informal charges";
- (b) in subclause (3) by deleting the word "signed" and substituting therefor the words "executed";
- (c) in subclause (5) by inserting the word "formal" immediately after the word "A" appearing at the beginning of the subclause.

(d) by deleting subclause (6) and substituting therefor the following new clause-

93A. (1) An informal charge may be created where-

(a) a chargee accepts a written and witnessed undertaking from a chargor, the clear intention of which is to charge the chargor's land or interest in land, with the repayment of money or money's worth, obtained from the charge;

(b) the charger deposits any of the following-

(i) a certificate of title to the land;

(ii) a document of lease of land;

(iii) any other document which it is agreed evidences ownership of land or a right to interest in land.

(2) a chargee holding an informal charge may only take possession of or sell the land which is the subject of an informal charge, on obtaining an order of the court to that effect.

(e) by renumbering subclause (7) as subclause (3);

(f) by renumbering subclause (8) as subclause (4);

(g) by deleting the words "possessor" in the newly renumbered subclause (4) and substituting therefor the words "posses or";

#### **PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 94 – Agreed to;**
- **CLAUSE 95 – Agreed to;**
- **CLAUSE 96 – Agreed to;**
- **CLAUSE 97 – Agreed to;**
- **CLAUSE 98 – Agreed to;**
- **CLAUSE 99 – Agreed to;**
- **CLAUSE 100 – Agreed to;**
- **CLAUSE 101 – Agreed to;**
- **CLAUSE 102 – Agreed to;**
- **CLAUSE 103 – Agreed to;**
- **CLAUSE 104 – Agreed to;**
- **CLAUSE 105 – Agreed to;**

#### • **CLAUSE 106**

THAT, clause 106 of the Bill be amended in sub-clause (6) by deleting the word "small" appearing immediately after the words "receiver under a".

#### **PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 107 – Agreed to;**
- **CLAUSE 108 – Agreed to;**
- **CLAUSE 109 – Agreed to;**

- **CLAUSE 110 – Agreed to;**
- **CLAUSE 111 – Agreed to;**
- **CLAUSE 112 – Agreed to;**
- **CLAUSE 113 – Agreed to;**
- **CLAUSE 114 – Agreed to;**
- **CLAUSE 115 – Agreed to;**
- **CLAUSE 116 – Agreed to;**

- **CLAUSE 117**

(a) **THAT**, clause 117 of the Bill be amended by deleting paragraph (d) and substituting therefor the following new paragraph-

- (d) the period for remedying the breach specified in the notice served under section 104 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 118 – Agreed to;**

- **CLAUSE 119**

**THAT**, clause 119 be deleted and replaced by with the following new clause-

Power of the Court to  
reopen certain charges  
and revise terms

**119.** The court may reopen a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 120**

**THAT**, clause 120 of the Bill be amended-

- (a) in subclause (1) by deleting subparagraph (iii) of paragraph (a); and
- (b) by inserting the words "on application" be added at the beginning of paragraph (c)

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 121**

**THAT**, clause 121 of the Bill be amended-

- (a) in subclause (5) by inserting the words " the Registrar and" immediately after the words " notice to" appearing in the third line of the subclause;

**PROPOSED AMENDMENT AGREED TO**

- (b) by inserting the following new subclause immediately after subclause(5)-  
“(5a) upon service of the notice, the registrar shall make an entry in the register of the intended acquisition”.

**PROPOSED AMENDMENT AGREED TO**

- CLAUSE 122 – Agreed to;
- CLAUSE 123 – Agreed to;

- **CLAUSE 124**

THAT, clause 124 of the Bill be amended in subclause (1)-

- (a) by inserting the words “the land is required for public purposes or in the public interest” immediately after the words “purposes” appearing in paragraph (b);

**PROPOSED AMENDMENT AGREED TO**

- (b) by deleting paragraphs (a),(b), (c) and (d);

**PROPOSED AMENDMENT AGREED TO**

- CLAUSE 125 – Agreed to;
- CLAUSE 126 – Agreed to;
- CLAUSE 127 – Agreed to;
- CLAUSE 128 – Agreed to;
- CLAUSE 129 – Agreed to;
- CLAUSE 130 – Agreed to;
- CLAUSE 131 – Agreed to;
- CLAUSE 132 – Agreed to;
- CLAUSE 133 – Agreed to;
- CLAUSE 134 – Agreed to;
- CLAUSE 135 – Agreed to;
- CLAUSE 136 – Agreed to;
- CLAUSE 137 – Agreed to;
- CLAUSE 138 – Agreed to;
- CLAUSE 139 – Agreed to;
- CLAUSE 140 – Agreed to;
- CLAUSE 141 – Agreed to;
- CLAUSE 142 – Agreed to;
- CLAUSE 143 – Agreed to;
- CLAUSE 144 – Agreed to;
- CLAUSE 145 – Agreed to;
- CLAUSE 146 – Agreed to;
- CLAUSE 147 – Agreed to;

- **CLAUSE 148**

THAT, clause 148 of the Bill be amended in subclause (4)-

- (a) by deleting the word “governor” appearing in paragraph (b)and substituting therefor the words “ government, approved by the County Assembly”;

**PROPOSED AMENDMENT AGREED TO**

- (b) by deleting paragraphs (e), (f) and (g).

**PROPOSED AMENDMENT AGREED TO**

- (c) by deleting paragraph (g) and substituting therefor the following new paragraph -  
(e) a representative of persons with special needs;

**PROPOSED AMENDMENT AGREED TO**

- (d) by inserting the words "prescribed by the county government" in paragraph (h) immediately after the word "organization" in paragraph (h);

**PROPOSED AMENDMENT AGREED TO**

- (d) by inserting the words "prescribed by the county government" in paragraph (i) immediately after the word "representative" in paragraph (i)

**PROPOSED AMENDMENT AGREED TO**

NEW CLAUSE

THAT, the following new clause be inserted immediately after clause 148-

Settlement Fund.            148A (1) There is established a Fund to be known as the Settlement Fund which shall be administered by the National Land Commission.

(2) There shall be paid into the Fund -

- (a) any monies appropriated by Parliament for the purposes of the Fund;
- (b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
- (c) gifts, grants, donations or endowments as may be given to the Commission for the purpose of the Fund;
- (d) monies that may be borrowed by the Commission for the purposes of the Fund;
- (e) the rates, charges, dues, or fees levied by the Commission under this Act;
- (f) all monies derived from the payment made by beneficiaries of settlement schemes ; and

(g) such sums as may be payable to the Commission pursuant to this Act or any other written law.

(3) The Fund shall be applied to the following purposes-

(a) provision of access to land -

(i) to squatters;

(ii) to displaced by natural causes and or by internal conflicts

(iii) for development projects;

(iv) for conservation; or

(v) such other causes that may lead to movement and displacement

(b) purchase of private land for settlement programmes;

(c) establishment and management of refugee camps;

(d) provision of shelter and a livelihood to persons in need of settlement programmes;

(e) research, documentation and dissemination of information on settlement programmes; and

(f) any other purpose that would enhance the development and promotion of settlement programmes that may be approved by the Commission.

(4) The Fund shall be administered in accordance with the provision relating to public Funds under the law relating to public finance management.

The Committee further deliberated **SETTLEMENT PROGRAMMES** and agreed that:-

- the Agriculture Act (Cap. 318) sections 161 - 180 which currently govern settlement programmes be incorporated into the new Land Act.
- Establish under the Land Bill, 2012, settlement Fund to be administered by the National Land Commission and that **section 167(1-4) of the Agriculture Act (Cap. 318) be repealed.**

- The Fund to be administered in accordance with the provisions relating to public funds under the law relating to public finance management and that **section 168 (1-3) of the Agriculture Act (Cap. 318) be repealed;**
- Outline the purposes for which the Settlement Fund under the National Land Commission may expend money from the Fund and that **section 169 (1-5) of the Agriculture Act (Cap. 318) be repealed.**
- Bring Section 171 – 181 of the Agriculture Act Cap. 318 into the Land Bill and **sections 170 – 181 of the Agriculture Act (Cap. 318) be repealed.**

**PROPOSED AMENDMENT AGREED TO**

- **CLAUSE 149 – Agreed to;**
- **CLAUSE 150 – Agreed to;**
- **CLAUSE 151 – Agreed to;**
- **CLAUSE 152 – Agreed to;**
- **CLAUSE 153 – Agreed to;**
- **CLAUSE 154 – Agreed to;**
- **CLAUSE 155 – Agreed to;**
- **CLAUSE 156 – Agreed to;**
- **CLAUSE 157 – Agreed to;**
- **CLAUSE 158 – Agreed to;**
- **CLAUSE 159 - Agreed to;**
- **CLAUSE 160 – Agreed to;**
- **CLAUSE 161 – Agreed to;**
- **CLAUSE 162 – Agreed to;**
- **CLAUSE 163 – Agreed to;**
- **CLAUSE 164 – Agreed to;**
- **CLAUSE 165 – Agreed to;**
- **CLAUSE 166 – Agreed to;**
- **CLAUSE 167 – Agreed to;**
- **CLAUSE 168 – Agreed to;**
- **CLAUSE 169 – Agreed to;**
- **CLAUSE 170 – Agreed to;**
- **CLAUSE 171 – Agreed to;**
- **CLAUSE 172 – Agreed to;**

- **CLAUSE 173**

THAT, clause 173 of the Bill be amended

- (a) in sub-clause (1) by deleting the words "and removing any difficulties occasioned by the coming into operation of this Act"

**PROPOSED AMENDMENT AGREED TO**

- (b) in sub-clause (1) by deleting paragraphs (f);

**PROPOSED AMENDMENT AGREED TO**



(c) In sub-clause (2) by deleting the words "Cabinet Secretary" and substituting thereof the word "Commission"

**PROPOSED AMENDMENT AGREED TO**

(d) By deleting the words "personsand" in subclause 2 paragraph (d) and substituting therefor the words "persons and"

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 174 – Agreed to;**

• **CLAUSE 175**

THAT, clause 175 of the Bill be deleted.

**PROPOSED AMENDMENT AGREED TO**

• **CLAUSE 176**

THAT, clause 176 of the Bill be amended by numbering the existing clause as clause 175.

**PROPOSED AMENDMENT AGREED TO**

• **FIRST SCHEDULE –**

THAT, the First Schedule of the Bill be amended

(a) by inserting the words include "REPEALED LAWS" immediately after the SCHEDULE TITLE.

**PROPOSED AMENDMENT AGREED TO**

(b) by inserting the following –

The Land Control Act, Cap. 302.

**PROPOSED AMENDMENT AGREED TO**

• **SECOND SCHEDULE**

**That, a new schedule to be known as the Second schedule be inserted in the Bill**

#### **CONSEQUENTIAL AMENDMENTS**

Amendment of  
section 169 of  
the Agriculture  
Act, Cap.318

**Section 169 of the Agriculture Act, Cap.318 is amended by deleting paragraph (d).**

## ANNEXTURES

ANNEX I - PROGRAMME

# ANNEX I - PROGRAMME

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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## PARLIAMENTARY COMMITTEE ON LANDS & NATURAL RESOURCES RETREAT ON LAND BILLS

MOMBASA  
April 1<sup>ST</sup> – 7<sup>TH</sup>, 2012

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### WORKING PROGRAMME

**Sunday April 1, 2012 - Arrivals**

**DAY 1 – Monday, April 2, 2012**

8.30 – 9.00 am      Registration and of Participants

**SESSION 1:**              **OFFICIAL OPENING AND INTRODUCTORY REMARKS**

**Chair**                      **HON. MUTAVA MUSYIMI, M.P**

9.00 – 9.45 am - **Welcome Remarks by the Chairperson, Parliamentary Committee on Lands and  
Natural Resources;**

- **Remarks by the Clerk, Kenya National Assembly;**
- **Remarks by the Minister for Lands;**

09.45 - 10.15 am *Photo Session and Health Break*

**SESSION 2** **Consideration of the Land Bill, 2012 -**

Session Chair **HON. MUTAVA MUSYIMI, MP**

10.15 – 11.15 am **Topic: The Land Bill, 2012 –**

- a.) The Land Bill Provisions – Legal Counsel;
- b.) Constitutionality of the Land Bill, 2012 – CIC;
- c.) Practitioners view of the Land Bill, 2012 – LSK;

12.45 – 2.15 pm *Lunch Break*

**SESSION 3** **Consideration of the Land Bill, 2012**

Session Chair **HON. MUTAVA MUSYIMI, MP**

2.15 – 4.15 pm **Consideration of Public views on the Land Bill, 2012 from the hearings;**

4.15 – 4.45 pm **Health Break**

4.45 – 6.00 pm **Topic: the Land Bill, 2012 - proposed Amendments and Recommendations**

**Presenter: legal counsel**

-----*End of Day One*-----

**DAY 2 – Tuesday, APRIL 3, 2012**

**SESSION 4** **Consideration of the Land Bill, 2012**

Session Chair **HON. MOHAMMED AFFEY, MP**

8.30 – 10.30 am **Consideration of flagged issues and making Recommendations on the Lands Bill**

10.30 – 11.00 am **Health Break**

**SESSION 5** **Consideration of the National Land Commission Bill, 2012**

Session Chair **HON. SILAS RUTEERE, MP**

11.00 – 12.45pm **Topic: the National Land Commission Bill, 2012 –**

- a.) The National Land Commission Bill Provisions – Legal Counsel;
- b.) Constitutionality of the National Land Commission Bill, 2012 – CIC;
- c.) Practitioners view of the National Land Commission Bill, 2012 – LSK;

12.45 – 2.15 pm *Lunch Break*

**SESSION 6**                      **Consideration of the National Land Commission Bill, 2012**

Session Chair                      **HON. MOHAMMED AFFEY, MP**

2.15 – 4.15 pm                      **Consideration of Public views from the hearings on the National Land Commission Bill, 2012**

4.15 – 4.45 pm                      Health Break

4.45 – 6.00 pm                      **Topic: The National Land Commission Bill, 2012 - proposed Amendments and Recommendations**

**Presenter: legal counsel**

-----*End of Day Two*-----

**DAY 3 – Wednesday, April 4, 2012**

**SESSION 7**                      **Consideration of the National Lands Commission Bill, 2012**

Session Chair                      **HON. SILAS MURIUKI RUTEERE, MP**

8.30 – 10.30 am                      **Consideration of flagged issues and making Recommendations on the National Lands Commission Bill, 201**

10.30 – 11.15 am                      *Health Break*

**SESSION 8**                      **Consideration of the Land Registration Bill, 2012**

Session Chair                      **HON. DR. ERASTUS K. MUREITHI, MBS, HSC, MP**

11.15 – 12.45 pm                      **Topic: the Land Registration Bill, 2012 –**

- a.) The Land Registration Bill Provisions – Legal Counsel;**
- b.) Constitutionality of the Land Registration Bill, 2012 – CIC;**
- C.) Practitioners view of the Land Registration Bill, 2012 – LSK**

12.45 – 2.15 pm                      *Lunch Break*

**SESSION 9**                      **Consideration of the Land Registration Bill, 2012**

Session Chair                      **HON. SILAS RUTEERE MURIUKI, MP**

2.15 – 4.15 pm                      **Consideration of Public views from the hearings on the Land Registration Bill, 2012**

4.15 – 4.45 pm                      Health Break

4.45 – 5.45 pm                      **Topic: The National Land Commission Bill, 2012 - proposed Amendments and Recommendations**

Presenter: legal counsel

-----End of Day Three -----

**DAY 4 –Thursday, APRIL 5, 2012**

**SESSION 10                      Consideration of the Land Registration Bill, 2012**

Session Chair                      **HON. SILAS MURIUKI RUTEERE, MP**

8.30 – 10.30 am                      **Consideration of flagged issues and making Recommendations on the Land Registration Bill, 2012**

10.30 – 11.15 am                      *Health Break*

**SESSION 11                      PROPSOED AMENDMENTS - PLENARY**

Session Chair                      **HON. KIEMA KILONZO, MP**

**11.15 – 12.45 pm                      Consideration of flagged issues and making Recommendations on the three Bill**

12.45 – 2.15 pm                      *Lunch Break*

**SESSION 12                      PROPSOED AMENDMENTS - PLENARY**

Session Chair                      **HON. MUTAVA MUSYIMI, MP**

2.15 – 4.15 pm                      **Consideration of flagged issues and making Recommendations on the three Bills**

4.15 – 4.45 pm                      *Health Break*

**4.45 – 5.45 pm                      Consideration of flagged issues and making Recommendations on the three Bills**

-----End of Day four -----

**DAY 5, Friday, APRIL 6, 2012**

**SESSION 13                      PROPOSED AMENDMENTS**

Session Chair                      **HON. MUTAVA MUSYIMI, MP**

8.30 – 10.30 am                      **Plenary and Review of the proposed Amendments on the three Bills**

10.30 – 11.15 am                      *Health Break*

**11.15 – 12.15 pm                      Plenary and Review of the proposed Amendments on the three Bills**

**SESSION 14                      PROPOSED AMENDMENTS**

Session Chair **HONMUTAVA MUSYIMI, MP**

11.15 - 12.45 pm **adoption of the proposed Amendments on the three Bills**

12.45 – 2.15 pm *Lunch Break*

**SESSION 15 CLOSING SESSION**

Session Chair **HON. MUTAVA MUSYIMI, MP**

2.00 – 3.00 pm - **Closing Remarks by the Chairperson, Parliamentary Committee on Lands and  
Natural Resources;**

-----*End of Day five and Programme*-----

SATURDAY APRIL 7, 2012 - DEPARTURES

## ANNEX II- PARTICIPANTS

1. The Hon. Mutava Musyimi, MP - Chairperson;
2. The Hon. Silas Ruteere Muriuki, MP
3. The Hon. Benedict Fondo Gunda, MP
4. The Hon. Kizito M. Justus, MP
5. The Hon. Mohammed Affey, MP
6. The Hon. Peter Gitau Njuguna, MP
7. The Hon. Kiema Kilonzo, MP
8. The Hon. Dr. Erastus K. Mureithi, MBS, HSC, MP
9. The Hon. Omar Zonga, MP
10. The Hon. Ekwee Ethuro, MP – Chairperson – CFC;
11. The Hon. Mohammed Abdikadir, MP – Chairperson - CIOC
12. The Hon. Njoroge Baiya, MP – Ag. Chairperson, Legal Affairs
13. The Hon. Ababu Namwaba, MP – Legal Affairs
14. The Hon. Thomas Mwacheguzi, MP – Chairperson, LAFAC;
15. The Hon. Gideon Konchellah, MP – Chairperson, Labour
16. The Hon. David Were, MP - Chairperson – Transport;
17. The Hon. (Eng.) James Rege, M.P. Chairperson - Energy.
18. The Hon. Danson Mungatana, MP – Chairperson, Catering Committee;
19. The Hon. James Orengo, EGH, MP – Minister for Lands;
20. The Hon. Gonzi Rai, MP - Assistant Minister, Ministry of Lands
21. Clerk of the National Assembly;
22. Ms. Peris Mangira – Head, Land Reform Transformation Unit (LRTU), Ministry of Lands;
23. Mr. Victor Liyai – Deputy Head, LRTU, Ministry of Lands;
24. Ms. Vane Akama –legal Counsel;
25. Mr. Ann Musandu – Clerk Assistant;
26. Mr. Zakayo Mogere – Clerk Assistant;
27. Mr. Emejien Nicholas – Clerk Assistant;
28. Mr. Jacob Ngwelle - Clerk Assistant;
29. Mr. Abenayo Wasike – Clerk Assistant;
30. Mr. Rana Tiampati – Clerk Assistant;
31. Mr. Allan Kariuki – Committee Assistant;
32. Staff – CNA’s office; - Ms. Sophie Salamba;
33. Staff – DSNA’s office; - Mrs. Magdalene Ndungu;
34. CIC; - Dr. Elizabeth Muli
35. CIC; - Dr. Ali Ibrahim;
36. CIC;- Ms. Doreen Muthaura;
37. LSK; - Mr. Mbage Nganga;
38. LSK; - Mr. Apollo Mboya;
39. LSK: - Grace Okumu;
40. KLRC; - Mr. Kathurima M’noti;
41. KLRC;- Mr. Peter Musyimi;



## ANNEX III - MINUTES

**MINUTES OF THE ONE HUNDRED & TENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON THURSDAY, FEBRUARY 16, 2011 IN COMMITTEE ROOM 4, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE AT 10.00 AM.**

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### **PRESENT:**

The Hon. Mutava Musyimi, MP - **Chairperson**  
The Hon. Peris C. Simam, MP. - **Vice chairperson**  
The Hon. Benedict Fondo Gunda, MP  
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.  
The Hon. Mohammed Affey, MP.  
The Hon. Silas Ruteere Muriuki, MP.  
The Hon. Peter Njuguna Gitau, MP  
The Hon. Benjamin Jomo Washiali, MP  
The Hon. Kiema Kilonzo, MP.

### **ABSENT WITH APOLOGY**

The Hon. Justus M. Kizito, MP.  
The Hon. Omar Mbwana Zonga, MP

### **IN ATTENDANCE - STAKEHOLDERS**

- (See attached list)

### **IN ATTENDANCE - KENYA NATIONAL ASSEMBLY**

Mr. Rana Tiampati - Clerk Assistant  
Abenayo Wasike - Clerk Assistant

### **MIN. NO. 7/2012: INTRODUCTION**

The Chairman called the meeting to order at 09.45a.m after prayers were said. He further called the Members present to consider the proposed agenda and adopt. The agenda included:-

- a) Prayers;
- b) Confirmations of minutes;
- c) Matters arising;
- d) **Consideration of the Land Bills - Land Registration and National Land Commission.**
- e) Any Other Business;
- a) Date of the next sitting.

The proposed agenda was adopted by the Members present

### **MIN.NO. 8/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of the Minutes of the 100<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, 105<sup>th</sup>, 106<sup>th</sup>, 107<sup>th</sup>, 108<sup>th</sup> and 109<sup>th</sup> sittings was postponed to a later date.

### **PAPERS LAID**

The following papers were laid before the Committee: -

- a) Memorandum By the Chief Executive Officer, Law Society of Kenya on the Land Registration, Land and National Land Commission Bills;
- b) Memorandum By the Kenya Private Sector Alliance on the Land Bill, 2012;
- c) Memorandum By the Executive Officer, Kituo Cha Sheria on Land Historical Injustices Redress Mechanism and Models;
- d) Memorandum by Think Tank on Women and Legislation on Summary of Gaps in the proposed Land Bills – Gender Perspectives.

### **MIN. NO.9/2012: CONSIDERATION OF LAND BILLS – STAKEHOLDERS VIEWS**

The Committee was informed that:-

- i. Only two Bills that have been published and made available to the public and Parliament – Land Registration and National Land Commission Bill. The Land Bill is yet to be published.
- ii. The invitation to all stakeholders was due to the Constitutional timelines that must be met by Parliament and therefore the need to consult the public and other the stakeholders within the short notice;
- iii. Some of the invited stakeholders are yet to receive the published Bills and that since the first draft were developed by the ministry, several version have been in circulation.
- iv. The Ministry has misled Kenyans on the kind of legislation to implement Articles of the constitution on Land and the process;

#### **1. APOLLO MBOYA - THE LAW SOCIETY OF KENYA**

The Society informed the Committee that:-

- i. They are yet to receive the published Bills and that there has been confusion on which version has been published finally. The society is giving views based on the February 16, 2012 version.
- ii. The Law Society of Kenya has been engaged by the Ministry of Lands through participation in various meetings and foras including the Legal Technical Working Group;
- iii. The main issues include the sequencing in the enactment of the Bills, stakeholder consultations and the role of the NLC with respect to the Land Bill;

#### **a.) Comments on the National Land Commission Bill, that:-**

- iv. The bill appears acceptable except on a few areas.
- v. The transfer of functions to the Commission from the Ministry of Land should be well captured in the bill because what is capture is not sufficient;
- vi. There is need to state in the bill the abolishment of appointment of the Registrar of Lands under other statutes though there is repeal of some of the Statutes;
- vii. The National Land Commission be established first and then be involved in the development and enactment of the rest of the Land Bills;

#### **(b.) Comments on the Land Registration Bill**

- i. Clause 10 - inclusion of information in the register not to constitute notice or knowledge. This defeat the purpose of the adjudication and registration of title and the clause is in conflict with clause 32, 33 and 42.
- ii. Clause 12(2)(b) & (c) - appointment of officers - it should be clear that being an advocate of seven years standing and possession of 15 years experience in land administration are alternative qualifications;
- iii. Clause 28(1) - power to compel registration - a person should not be penalized because the registrar has willfully refused to carry out his statutory duties;
- iv. Clause 34 - reference to bankruptcy Act - should be repealed as it is taken care of by the proposed in Insolvency Act;
- v. Clause 37(2) - certificate of title and certificate of lease only to be issued to one proprietor - conflicts with clause 92 of the bill and a section of the land bill which provides that each proprietor is entitled to a certificate of title;
- vi. Clause 43 - disposition and dealings affecting land - cross refer with land bill;
- vii. Clause 44(1) - instruments of dispositions to be statutory form - should empower the chief land registrar to approve any other forms of instruments;
- viii. Clause 45(3) - executions of instruments in writing and under seal - this will conflict with the Companies Act;
- ix. Clause 51 - purpose of this part - section 51 - 54 not clear and appears to be an introduction into the registration statute the doctrine of fraudulent preference contained in the Companies Act.
- x. Clause 54(2) - protection of person receiving land - radical section and prejudices the right of a transferee for valuable consideration without notice.
- xi. Clause 59(3) - transfer of part (currently 43) - the definition of "sub division" and does it include sectional property e.g apartment is 3rd floor.
- xii. Clause 60(2) - Registration of leases (55)- registration of sectional property be done under the sectional property Act;
- xiii. Clause 67- presumption that money paid is interest - chargor;
- xiv. Clause 68 - chargee's consent to transfer (61) - chargor;
- xv. Clause 76 - licenses - section 131 does not exist;
- xvi. Clause 97(2) certificate of ownership of co-tenants - (94) - contradicts section 37 of the bill which provides that only one certificate of title can be issued where there are more than one proprietor;
- xvii. Clause 98(4) - co-ownership and other relationships between spouses - (95) - not clear;
- xviii. Clause 102(2) - partition subject to charge - meaning not clear;
- xix. The bill appears to duplicate several sections contained in the Land Bill hence there is need to be clear to avoid conflict of the two statutes.

## **2. PROF. YASH PAL GHAI - KATIBA INSTITUTE**

He informed the Committee that:-

- i. The Ministry of Lands did not do good job and is unfaithful in the preparation of the three legislations;
- ii. Will submit a written memorandum to the Committee in a few days time;
- iii. Integrity of the process is questionable since it was not participatory and there were no consensus;
- iv. The land reform objectives as envisaged in the National land Policy and Constitution were never taken care of;
- v. Evictions, demolitions are still ongoing without any eviction guidelines and awaiting enactment of legislations;

**a. Comments on Land Bill**

- vi. The framework omits issues of historical injustices, people living in informal settlements, community land tenure. The issue of squatters not mentioned;
- vii. System and management of public lands – requires the NLC to have landless in mind during allocation, public participation;
- viii. The bill does not adequately address devolution and customary user rights;
- ix. Need to give guidance on leases which were more than 99 years;

**b. Comments on Land Registration Bill**

- x. System of titles to land;
- xi. Classification of titles to land;

**c. Comments on National Land Commission Bill**

- i. Lack sufficient offences;
- ii. Has weak phraseology;
- iii. Staff appointment by NLC – should be properly done to prevent transfer bureaucracy and corruption from Ministry to the Commission;
- iv. The vetting procedure for staff by NLC need reviewed to establish a proper procedure that befits the NLC;

**3. CHIEF EXECUTIVE OFFICER- KEPSA**

- i. Thanked the Committee for invitation and that they are pleased to inform the Committee that most of the issues raised during development of the legislations were taken on board;

**a. Comments on land Bill**

- ii. Clause 2 – insert the “**that has been declared as matrimonial home**”. This is to ensure that spouses declare what is their matrimonial home to avoid cases where spouses can be fraudulent through collusion;
- iii. Clause 59 – (a) delete the word “**property**” and substitute it with the word “**home**”.
  - (b) Add the words to sub clause (5) “unless the lender, assignee or transferee demonstrates that he or she took due diligence and care in making the inquiry” after the words “consented to the disposition”;
  - (c) Delete sub clause 6.

There is need to protect lenders, assignee and transferees from fraudulent dealings of spouses who may collude to defraud the lenders for example.

- iv. Clause 173 - delete Para (f). Because under article 68, the responsibility of setting the minimum and maximum private land acreage is left to legislation by parliament and not the cabinet secretary.

**4. CHAIRPERSON, INSTITUTE OF SURVEYORS OF KENYA**

The Chairperson informed the Committee that:-

**Comments of the Land Registration Bill.**

- i. 5 laws in Kenya will be repealed however the Sectional Property Act and Registration of Documents are left out;
- ii. Registration of title – need to be clarified on the issue of times it can be issued and registered. This may lead to duplications or fraud;
- iii. The professionals are not involved in the process;

- iv. Land buying companies should not be allowed to process subdivision, adjudication tilts issuance and allocations. This may lead to double allocations.
- v. There is need to strengthen the protection of minors and vulnerable groups;
- vi. Clause 9 – the words “may” be deleted and substituted with the words “shall”.

## **5. THINK TANK ON WOMEN & LEGISLATION.**

The Committee was informed that, from a gender dimension, the Bills reveals that:-

- i. They should be analyzed to correct any inconsistencies with the National Land Policy, Constitution and International law;
- ii. Further analyzed to reveal inconsistencies with each other and with other legislations touching on natural resources;

### **Comments on the Land Bill**

It contravenes the national land policy, constitution and international law by:-

- i. Leaving out community land from its content;
- ii. Silent on forms of land tenure and rights accruing in respect of each of those tenure systems;
- iii. Fails to fully resonate the role of the NLC with imperatives of public participation in the allocation and disposal of public land, particularly on gender equity in allocation and disposal of public land;
- iv. Failure to adhere to gender issues on co-ownership in land and lack of clarity on the interplay between customary and formal law and institution of land governance;
- v. Failure to provide for internally displaced persons, and oblige the NLC and settlement trustees to identify IDPs as category requiring priority in terms of access to public land;
- vi. Providing for land sale contracts have to be in writing, signed and witnessed in writing while under land registration, thumbprints are acceptable instead of signature.
- vii. Failure to reconcile the power of the land control board with provision of section 96 of the land registration
- viii. Not linking the powers of the NLC in respect of public lands to those of other state agencies with specific mandate – KFS and KWS;
- ix. Section 96 requires that charge of matrimonial home including a customary charge of a matrimonial home shall be valid only if any document or form used in applying for such a charge, or used to grant the charge is signed by the borrower and any spouse of the borrower living in the matrimonial home.
- x. In compulsory acquisition of land, it should clarify who is an interested party to include spouses and dependants and further clarify the process by which compensation will be allocated and distributed among dependants.
- xi. On controlled transactions – should state that the board shall consider the applicants intent to farm the land productively and sustainably relative to the resources available to him or her so as not to disadvantage women farmers who may apply but their access to capital may not match of men;
- xii. Needs to set out procedure for proceedings during a land control board in order to guarantee that the interests of spouses and dependants will be represented effectively.

### **Comments on Land Registration Bill – the bill**

- i. Leaves out aspects of public participation rights relevant to land registration should be discussed in the bill;

- ii. Does not give full effect to devolution – key driver to women access to land registration services;
- iii. Fails to clarify how renewal or non-renewal of leases owned by foreigners as required under Article 65 of the Constitution;
- iv. Fails to make matrimonial property a subject of compulsory registration within a certain time frame upon acquisition and prescribe penalties;
- v. Classification of titles – either as continuum, freehold or leasehold.
- vi. Cadastral map – in Section 14 – should make consistent.
- vii. Section 60 – joint proprietors – be reconciled with section 90 on joint tenancies and tenancies in common;
- viii. Section 87 – opportunity to be heard – should be made under duty for the registrar to verify the authority of any advocate or agent to represent any person.
- ix. Section 93 – tenancy in common – where the land is registered in the name of one spouse and other spouse contributes labour. It may be difficult to implement.
- x. Section 110 – power of Cabinet Secretary – regulations made under this Act should be made to be approved by the National Assembly.

### **Comments on the National Land Commission**

- i. Lacks the general and guiding principles that underpins the philosophy of the NLC;
- ii. Application of the provisions of First Schedule for nomination of commission should also apply to commission secretariat;
- iii. Section 15 obliges the NLC to establish county offices or boards is to general to give effect to devolution;
- iv. Section 15 further fails to link NLC offices to natural resources management functions;
- v. There is need to empower the NLC to obtain information by public/government agencies;
- vi. Section 31 creates only three kinds of offences however the bill should create more offences which may aid women in the quest for equity in land ownership issues or access to land registration services;
- vii. Providing for the independence of the commission;
- viii. Section 13 – investigation and adjudication of historical injustices – no mention of specific period within which such legislation must be recommended and timelines for investigations to commence, not time frames for parliament to pass such a law and the recommended timeframe for implementation of recommendations from such investigations.
- ix. Make recommendation of the NLC binding to government;

## **6. EXECUTIVE DIRECTOR, KITUO CHA SHERIA**

She informed the Committee that:-

- i. Kenya has tried to institute effective transitional justice mechanisms in order to address the land injustices without much success; this has led failure in governing of land hence continued land clashes, forceful evictions, absentee landlords, mushrooming of urban informal settlement and lingering land claims;
- ii. The constitution of Kenya guarantee land rights and simultaneously places the state under a constitutional duty to take reasonable steps to enable citizens to

- gain equitable access to land, security of tenure and provide for redress to the deposed of their land.
- iii. The consideration of historical injustices under the NLC should be undertaking a cutoff date.
- iv. The land bill does not encompass provisions of community land; this may lead to continued perception that community land tenure rights are inferior to the other forms of tenure;
- v. Section 11 – allocation of public land – lack of expressly providing for allocation by way of conversion to community land for purposes of adjudication and settlement of squatters;
- vi. Section 13 (5) – placing of care, control and management of reserved public land – the NLC may grant a management body power to lease or sub lease over a whole or part of reserved public land. This is punitive to members of the public since it may end up locking out from accessing public recreational faculties;
- vii. Section 76 (1) & (2) – unlawful eviction – evictions should be outlined whether they constitute a remedy for nonpayment of rent and the procedures to be followed.
- viii. Part 5 – compulsory acquisition – massive powers given to the cabinet secretary with regards to compulsory acquisition should be checked. And compensation regime should not be limited to money but also alternative land, restoration and others;
- ix. Section 185 – unlawful occupation of land – the notice requiring any person to show why they should not vacate public land should be strictly in written form, or done in both written or orally;
- x. Section 188 – corrupt transactions- the bill is silent on land tribunal establishment.
- xi. Section 189 and 190 - land sizes and general powers to make regulations – such powers of the Cabinet Secretary should be exercised in consultation with the NLC.
- xii. Section 190(2) – the bill to define tenants at will and absentee landlords.
- xiii. The land bill is silent on indigenous people a subject of international law.

**All Bills must comply with:-**

- xiv. rights of both rural and urban poor to access to land and acquire secure land tenure;
- xv. Rights of marginalized groups/communities;
- xvi. Gender aspects on access to land by women and their participation to management and administration of land.

**MIN. NO.10/ 2011 – ADJOURNMENT**

There being no other business, the Chair adjourned the meeting at forty six minutes past one o'clock until Wednesday, February 22, 2012 in the Main Conference Room, First floor of County Hall at 09.30a.m.

**SIGN:.....**  
**(CHAIRPERSON)**

**DATE:.....APRIL 17, 2012.....**

MINUTES OF THE ONE HUNDRED & ELEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON WEDNESDAY, FEBRUARY 22, 2011 IN COMMITTEE ROOM 4, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE AT 10.00 AM.

**PRESENT:**

The Hon. Mutava Musyuni, MP – Chairperson  
The Hon. Benedict Fondo Gunda, MP  
The Hon. Omar Mbwana Zonga, MP  
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.  
The Hon. Silas Ruteere Muruku, MP.  
The Hon. Peter Njuguna Gitau, MP  
The Hon. Benjamin Jomo Washiali, MP

**ABSENT WITH APOLOGY**

The Hon. Mohammed Affey, MP.  
The Hon. Kiema Kilonzo, MP.  
The Hon. Justus M. Kizito, MP.

**IN ATTENDANCE - STAKEHOLDERS**

Prof. Yshs Pal Ghai	- Katuba Institute
Jill Ghai	- Katuba Institute
Ambreana Manji	- Director, British Institute for East Africa
Ms. Beverline Ongaro	- Representing East African Wildlife Consortium
Appollo Mboya	- Law Society of Kenya
Mbage Nganga	- Law Society of Kenya
John Kibuchi	- Law Society of Kenya
Ali Said Rajab	- SUPKEM
Priscillah Nyokabi	- Kituo Cha Sheria
Odindo Opiata	- Hakijamu Trust
Odenda Lumumba	- Kenya Land Alliance /Land Sector Non – State Actors
Diana Gichengo	- GROOTS Kenya
Eljah Odhiambo	- Hakijamu Trust
Shadrack Omondi	- Director, RECONCILE
Andrew Songa	- Kenya Human Rights Commission
Maria Lwiztke	- Mazingira Institute

**IN ATTENDANCE - KENYA NATIONAL ASSEMBLY**

Mr. Rana Tiampau - Clerk Assistant  
Abenayo Wasike - Clerk Assistant

**MIN. NO. 11/2012: INTRODUCTION**

The Chairman called the meeting to order at 09.45a m after prayers were said. He further called the Members present to consider the proposed agenda and adopt. The agenda included:-

- a. Prayers;
- b. Confirmations of minutes;
- c. Matters arising;
- d. **Deliberation and receipt of Memoranda on the Land Bills – Land, Land Registration and National Land Commission.**
- e. Any Other Business;
- f. Date of the next sitting

The proposed agenda was adopted by the Members present



**MIN.NO. 12/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of the Minutes of the 100<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, 105<sup>th</sup>, 106<sup>th</sup>, 107<sup>th</sup>, 108<sup>th</sup>, 109<sup>th</sup>, and 110<sup>th</sup> sittings was postponed to a later date.

**PAPERS LAID** - The following papers were laid before the Committee: -

- a. Memorandum By the Chief Executive Officer, Law Society of Kenya on the Land Registration, Land and National Land Commission Bills – Vol. II;
- b. Memorandum By the Director, Land Development & Governance Institute on the Land Bills - the Land Registration, Land and National Land Commission Bills 2012;
- c. Memorandum By the Director, British Institute in East Africa on the Land Bills - the Land Registration, Land and National Land Commission Bills 2012;
- d. Memorandum By the Legal Counsel, East African Wildlife Consortium on the Land Bills - the Land Registration and National Land Commission Bills 2012;
- e. Memorandum by Executive Officer Kituo Cha Sheria – on the Land Bills - the Land Registration and National Land Commission Bills 2012;

**MIN. NO.13/2012: CONSIDERATION OF LAND BILLS – STAKEHOLDERS VIEWS**

The Committee was informed that:-

1. **ALI SAID - REP – SUPKEM , NANDI**
  - v. Powers of the cabinet secretary and registrar of titles are enormous and should be given to the National Land Commission;
2. **Ms. Beverline Ongaro, East Africa Wildlife Consortium**

**On the National Land Commission Bill, the following changes be incorporated, that:-**

- viii. Clause 4(3) the Composition of the commission and its committees or board should not exceed two thirds of the same gender;
- ix. Clause 5(e)(i) the Commission should initiate on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress and enforcement to the relevant authorities;
- x. Clause 5(1)(a) the Commission should have regard to the functions of other state organs as established by law;
- xi. Clause 5(2)(a) alienate public land;
- xii. Clause 5(2)(b) to develop and implement the registration of all rights and interests in land;
- xiii. Clause 5(3) to review and report annually to parliament on the implementation of the recommendations;
- xiv. Clause 17(2)the establish the county land administration boards in consultation with the county and national government for purposes of administration of public land;
- xv. Clause 18(5) appointment of mebers shall be approved by the county assembly taking into account provisions of article 10 of the constitution;
- xvi. Clause 31(3) use the criteria determined by the Commission subject to the provisions of the Public Officers Ethics Act, vet such person to ensure they fit and are proper to serve in the position applied for;

**On the Land Registration Bill , the following changes be incorporated, that:-**

- xx Section 8(1) of the Bill subjects the application of the Bill to the Community Land Bill which is yet to be enacted, including maintain a community land register. This creates uncertainty as the provisions of the NLC Bill are subjected to a legislation that is yet to be enacted we propose an **insertion of a section 5(2)** so that the community legislation referred meets constitutional criteria.-  
*5 (2) Notwithstanding the provisions of 5 (1), registration of community land shall be subject to legislation on community land made pursuant to Article 63 of the constitution.*
- xxi There is need to ensure that the problem of titles and inaccurate information at registries do not arise under the Bill once enacted, especially at county level. We note that the Bill does not spell out what happens in the event there is negligence by government in respect of maintaining registries To that end we propose that section 6(1) be amended to read:-  
*6 (1) for the purposes of this Act, the commission shall create a central land registry and shall guarantee the information held therein.*
- xxii Section 8(1) specifically mentions community land. There is need to ensure that land registries to be established extends to community land as well so that the community land does not appear to be inferior to other forms of land. To that end, we propose that section 7(1) be amended to read -  
*7 (1) there shall be maintained a land registry for all land in which there shall be kept.*
- xxiii We propose that section 8(1) be amended to read:-  
*8 (1) Subject to the legislation on community land made pursuant to Article 63 of the constitution, there shall be maintained a community land register, which shall be part of the land register referred to in 6 (1), in which shall be kept*
- xxiv It is commendable that the Registrar is mandate to make information at the registry available There is need to have a specific time frame for which such information is availed upon request. To that end we propose section 7(4) be amended to read:-  
*7 (4) The Registrar shall upon, upon payment of the prescribed fee, make information in the land registry accessible to any person, within 10 working days from the date of request.*
- xxv The provision of the tenancy in commons is not sufficient to protect the rights of spouses, especially women. We propose that instead ownership by spouses be by joint tenancy to afford proprietary protection especially to women. To that end, we propose sections 95(1) (a) and 95(1)(b) be amended to read:-  
*95 (1) (a) there shall be a presumption that the spouses shall hold the land as joint tenants*  
*95 (1) (b) the registrar shall register the spouses as joint tenants*
- xxvi There is need for the compiling of land register to include community land To that end we propose that section 107(2) reads -  
*107 (2) (b) subject to the Land Adjudication Act and the Land Consolidation Act, the Commission as the proprietor of all trust land and unregistered community land in the area, subject in each case to any grant or lease affecting the land.*

**3. Mr. MBAGE NGANGA, LAW SOCIETY OF KENYA**

He informed the Committee that.

**d. COMMENTS ON LAND BILL**

Secti on	Subject matter of the provision	Comments and proposals
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2	Interpretation	Definition of "Charge": Correct the typo in (b) by replacing "an customary" with "a customary". "Freehold" This definition is not complete. It does not capture the aspect of unlimited time duration. Under common law a freehold interest is held in perpetuity. "licence"... It is not correct to limit the definition of a license to that given by the Commission. It is also possible for owners of private land to grant licences. Since the Land Bill also governs private land the definition should not be restricted public land. "peri-urban area"... This definition should be synchronized with the definitions of the urban areas contained in the bills dealing within cities, municipalities and urban areas-legislation dealing with devolved entities. "Rules Committee"- The Civil Procedure Act only applies to proceedings before the High Court and the other subordinate Courts. The provisions of the Land Bill will be enforced by Environment and Land Court which will have its own rules of procedure.
6	Delineation of powers between the Cabinet Secretary and the Commission.	The earlier version of the section had attempted to delineate the functions of the Cabinet Secretary and the Commission. This delineation has now been done away with. The Cabinet Secretary has been assigned land management and administration functions which include coordination of County and Physical Planning management of National Spatial Data infrastructure. These land management functions have been vested in the Commission by virtue of Article 62(2) & (3) and Article 67 of the Constitution. It would be unconstitutional for the Land Bill to purport to assign the Cabinet Secretary functions which have already been assigned to the Commission by the Constitution. The functions referred to in sections 6(b), (c) & (d) should be removed and transferred to section 5(2) of the National Land Commission Bill, if this is not done, there is a danger of the Land Bill being declared unconstitutional.
7(g) & 12	Methods of acquisition of Title to land.	It is suggested that section 6(a) be amended to read, "Grants by the Commission on behalf of the National County Governments." The use of the term "allocation" is a departure from the existing legislation which uses the term "Grant" in the statutes and the documents under which the government has hitherto issued titles in respect of public land. This is the term commonly understood by Practitioners. Furthermore, based on the current practice, allotment of land and issue of grants is usually a two stage process. Letters of allotment are initially issued to qualified applicants. Formal Grants are issued after the conditions of allotment have been complied with. This distinction must now come out clearly in the new legislation.
14(1)	Commission may reserve public land.	Insert "of the Constitution" after Article 66(2).
15(a)	Placing of care, control and management of	Check the correct cross-reference. It appears to be section 14.

reserved public land.

- 19 Power of Commission to issue Licence for temporary purposes specified in the lease. There doesn't appear to be any power for the Commission to issue any grants of leases.
- 37 Community Land. This part is short on detail. It would perhaps be more convenient for the provisions of the Community Land Act to be inserted in this part for the purposes of consolidation of the law.
- 40 Damages for breach of contract. In addition for damages for breach of contract, the Vendor should be entitled to compensation for loss of income (mesne profits) arising out of the purchaser's continued use of the premises
- 83 to 91 Remedies and Relief. Sections 83 to 91 have made very drastic changes on the law relating to leases. They have abolished the lessor's right of re-entry or forfeiture for breaches of the lease covenants including non-payment of rent. Although the sections are aimed at protecting tenants from unlawful evictions, they nonetheless have gone overboard and may be misused by the tenants who want to stay in other people's premises without payment of rent. These sections will be a great dis-incentive to the development of housing for rental market. They may also discourage banks from financing property development where rental income is supposed to provide cash flow for the repayment of bank loans.
- 93 Power to create charge. This sub-section provides an obligation on the charge to obtain the signature of spouses in the charge instrument. Banks should take note that they will now be required to carry out due diligence to ensure that they obtain the consent of any spouse living in the premises. Such spousal rights should be noted on the register to make it easier for Lenders to carry out such due diligence.
- 93(5) As above. This sub-section should be modified to provide that even though the lender can't exercise a power of sale the charge instrument can nevertheless be enforced as a contract between the parties.
- 98 Variation of interest rate. This section drastically alters the current banking practice where banks usually reserve the right to alter the rate of interest without any requirement of notice to the borrower. They must now give at least 30days notice. Any variation of such interest must also require the written consent of the borrower in a memorandum to be applied the charge. What happens if the borrower refuses to sign the memorandum especially when the loan has already been disbursed?
- 104 Remedies of the lender. This subsection imposes on the lender more obligations than hitherto contained in the ITPA or the Registered Land Act as it requires the lender to serve very detailed notices on the defaulting borrower and inform the borrower of the rights available to him, to apply to court for reliefs against the lender's exercise of power of sale. The notice shall be in a statutory form prescribed by the Cabinet Secretary in consultation with the Commission. Banks

should take note of this.

110	Lender's power of sale.	This section is intended to protect Borrowers by regulating the manner in which the Lender exercises power of sale. It imposes an obligation on the Lender to serve a multiplicity of notices not only on the Chargor but on other people who may have an interest on the charged property. Banks should take note of these new requirements.
111	Duty of lender exercising power of sale.	This section imposes very strict duty of care on the lender exercising power of sale. It exposes lenders to potential litigation not only from borrowers but from guarantors and subsequent charges. Banks should take note to ensure strict adherence to the procedures.
117	Application for relief Chargor and others.	This section now gives a statutory right to other strangers to challenge the lenders security even though they were not parties to the agreement between the lender and the borrower. Banks should take careful note of this.
117(4)(d)	As above.	This amounts to allowing the court to give an automatic injunction without looking at the merits of the case.
118(3)	Power of the court in respect of remedies and reliefs thereto.	This sub-section alters the current banking practice of demanding the entire charge debt when there has been a default in payment of any instruments. Banks should take note of this.
119	Power of the court to re-open certain charges and revise terms.	This section appears to be designed to restrict the Lenders exercise of power of sale of matrimonial home. It goes against the established common law principles that the court will be reluctant to rewrite the contract for the parties. There is need to define what is a small charge.
120.(a)(iii)	Exercise of powers to reopen certain charges.	Small charge is not defined.
120(1)(c)	As above.	This section gives the power to the registrar to make an application to court to reopen charges in situations where the registrar feels that a particular lender is conducting its business in an oppressive manner. This amounts to state interference with contractual rights of the parties. Banks should carefully take note of this.

e. COMMENTS ON LAND REGISTRATION BILL

Section	Subject matter of the provision	Comments and proposals
5	Conflict with other Laws	The Land Bill 2012 also deals with matters also covered in this Bill. How do you deal with conflicts? Care must be taken to ensure that matters of Substantive Law covered in this Registration Bill

should be transferred to the Land Bill.

- 7(3) Land Registry Reference to "Public Service Commission" should be deleted and substituted with "Commission".
- 9(2)b Maintenance of documents Reference to affixing of Common Seal should be modified since the proposed Companies bill does not require Companies to have a Company Seal
- 10 Inclusion of information in register not to constitute notice or knowledge Delete. What is the purpose of the Register if the information cannot be relied upon? This defeats the whole purpose of Adjudication and Registration of Title.
- 11 Public Access to Register Delete "Satisfactory to the Register" and replace with "the registrar may reasonably prescribe"
- 13 Appointment of Officers Substitute "Commission" with "Public Service Commission"
- 28(1) Voluntary Transfer The purpose of this Section is not understood. It seems to conflict with Section 44 of the Land Bill which allows for transfer of Land with or without consideration. In any case this is a matter of substantive law that should be more appropriately dealt with under the Land Bill, the Companies Act and the Insolvency Act. It should be deleted.
- 29(a) Overriding Interests The protection of spousal rights should only be restricted to the "matrimonial home" as defined in the Land Bill. Except for the matrimonial home in which the other spouse and the family resides it would be difficult for third parties to ascertain whether the premises are matrimonial property especially when the family does not reside there
- 29(b) Trusts and overriding interest This subsection is in conflict with section 68 of the Act which requires that any person acquiring land in a fiduciary capacity may be registered as a proprietor with the addition of the words "as trustee" and will be treated as an absolute proprietor.
- 30 Actual Notice Delete the words "notwithstanding section 10" in view of the proposal in s. 10 above Delete section s. 10
- 31(2)(a) Certificate of Title and Certificate of Lease This is in conflict with Section 94 of this Bill and Section 58 of the Land Bill which provides that each Co-proprietor is entitled to a copy of the Certificate of Title
- 37 Dispositions and dealings affecting land Cross refer with Land Bill which also contains provisions and dispositions of interests in land. The word "Constitution" should also be inserted in s.37 (4) after Article 67(2) (c).
- 38 Instruments of Dispositions to be in statutory form The section should empower the Chief Land Registrar to approve any other for. Cf with section 108 of the RLA

45(5)	Executions of instruments in writing	The list of documents in (a) to (d) should be deleted and the Cabinet Secretary be given the power to make regulations in connection with the identification documents required. This is to ensure flexibility as the form of identification documents may change from time to time.
51-54	Prejudicial Dispositions	The purpose of sections 51 to 54 is not clear. It appears that this is an attempt to introduce into the registration statute the doctrines of fraudulent preference contained in the Companies Act or the proposed Insolvency Act. This is a matter of Substantive Law which is better left to be handled under the Insolvency law which has a more developed jurisprudence on fraudulent preference under insolvency Law. Part VII of this Act dealing with Inhibitions, Cautions and Restrictions provides adequate framework for restraining fraudulent dealings pending a final determination by Court as to whether the Acts complained about amount to fraudulent dealings under Insolvency Law. Part VIII also provides for rectification of the Register to cancel fraudulent entries on the Register.
55(3) & (4)	Registration of Leases	The Sectional Properties Act adopts the RLA as the registration Statute for Sectional Properties. Since RLA is being repealed the registration of Sectional properties should then be done under this Act. For purposes of rationalization and consolidation of the law as required by the Constitution, the Sectional Properties Act should be repealed and its provisions transferred to this Act.
58(6)	Form and Effect of Charge	This sub section is long winded and unclear. It should be broken down into clearer subsections.
75(5)	Cautions	The cross-reference to Section 95 of Land Act is wrong
94	Certificate of Ownership of co-tenants	This appears to contradict Section 31 of the Bill which provides that only one Certificate of Title can be issued in cases where there is more than one proprietor
95	Co-ownership and other relationships between spouses	There appears to be a conflict between Section 93(8) and 95 of the Bill. Section 93(8) provides that no joint tenancy can exist except between spouses. Section 95 on the other hand provides that any co-tenancy between spouses should be presumed to amount to a tenancy in common. Is there any need

Part XII Savings and Transitional Provisions  
 Sections 106-112

then to provide for existence of joint tenancy? Perhaps it should now be abolished as has been done in England under the Law of Property Act

There appears to be a major conflict between the savings and transitional provisions as contained in the Land Registration Bill and the Land Bill. Whereas the Land Registration Act (Section III) repeals the existing laws governing land, the Land Bill appears to save them. (See Sections 174-176) This introduces a lot of confusion as to what law would not apply in land transactions dealt with under the repealed legislation.

102(2) Partion subject to charge Meaning not clear

**COMMENTS ON NATIONAL LAND COMMISSION BILL**

**Cl. Subject matter of the Provision Comments and Proposals**

- 2 Definition of the term "irregularly" This definition cannot be entirely correct. The yard stick of defining what is irregular is the law as enacted by Parliament and subsidiary legislation thereto. Officials of the Ministry of Lands have been party to a large number of irregularities complained of and the standards they have set cannot be the yard stick of what should be regarded as irregular.
- 5(2) Additional functions of the Commission Article 67(2) of the Constitution sets out the functions of the Commission. These powers have been reproduced in Section 5(1) of the NLC Bill. Article 67(3) of the Constitution provides that Parliament may prescribe any other functions in the national legislation (being the NLC Bill) and other legislation relating to Land Article 233 of the National Land Policy specified in great details the additional powers required by the Commission to enable it to sufficiently carryout its constitutional mandate. These provisions of the National Land Policy should be given legal effect by being a specified in Section 5(2) of the NLC
- 14(5)(b) Award compensation for revocation of Grant This subsection appears to give power to the Commission to recommend compensation to a person whose Grant of Title has been revoked for irregularity. Why should a person who was a party to an irregularity be compensated? Section 14(7) already protects the interests of a purchaser for value without notice. Section 14(5) should therefore be deleted since it purports to give a right of compensation to a party who would have been party to the irregular transaction
- 30(b) Savings of previous actions of the Ministry of Lands The Legality or otherwise of the actions of the Ministry of Lands before the commencement of the NLC should be governed by the law in existence at that time. Section 14 of the NLC Act requires the Commission to review grants and other dispositions of public land. This Section 30(b) now purports to legalize all actions by the Ministry of Lands notwithstanding that the Commission is supposed to review the legality of such acts. There is a clear conflict between these sections. The subsection also contradicts Section 117 of the Land Bill dealing with corrupt transactions.
- 31 Transfer of Staff The Section makes reference to "departments whose functions have



	of the Ministry of Lands	been transferred to Commission". The Act is silent on which these departments to be transferred to the Commission. These departments must be clearly specified in a schedule to the NLC Act. The draft Land Authority Bill recommended by the Ndungu Report can form a guide as to the specific departments that should form part of the Commission. Parliament must be quite specific on this otherwise the Commission will be a non-starter because of the turf wars that will most likely ensue between it and the existing bureaucracy at the Ministry of Lands
32	Transfer of Assets and liabilities	of Again the Section should be clear on the departments whose functions and have been transferred to the Commission. The Commission should also have the power to renounce transfer of any onerous assets and liabilities which would have been irregularly incurred by the Ministry. This should be read in context with section 14 which requires the Commission to review previous transactions of the Ministry of Lands.
The First Schedule	Constitution of the Selection Panel	The constitution of the Selection Panel is very unrepresentative. It is comprised of public officers and other state agencies with no demonstrated experience in the public interaction with the Ministry of Lands. It should be reconstituted to include professional organizations who are involved with day to day interactions with the Ministry of Lands. This should include the Law Society, the Institution of Surveyors and the Kenya Institute of Planners
31	Transfer of Staff of the Ministry of Lands	The Section makes reference to "departments whose functions have been transferred to Commission". The Act is silent on which these departments to be transferred to the Commission. These departments must be clearly specified in a schedule to the NLC Act. The draft Land Authority Bill recommended by the Ndungu Report can form a guide as to the specific departments that should form part of the Commission. Parliament must be quite specific on this otherwise the Commission will be a non-starter because of the turf wars that will most likely ensue between it and the existing bureaucracy at the Ministry of Lands
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- (i) There is a need to interrogate the Bill to ensure that it has espoused the principles of land policy as provided in Article 60 of the Constitution.
- (ii) Harmonize the provision of the Bill with the National Land Commission (NLC) and the Land Registration Bills to avoid any contradictions, overlap, repetitions and confusion.
- (iii) Rights of children not guaranteed in the bill in the vent of death of one or both spouses and in the event of divorce.
- (iv) **Preamble** - It needs to be reviewed to provide that it also gives effect to articles 60, 62, 64 and 66 as well. This is because you find these articles are affected when you go through the Bill.
- (v) Role of Alternative dispute resolution mechanism and land tribunal not apparent;
- (vi) **Squatter**: Needs to be expanded to include those who live on land with knowledge of the owner who doesn't complain for a reasonable period of time but does not grant the occupiers any tenure rights.
- (vii) **Land administration**: This should be expanded to include all the processes of land allocation, planning, valuation, registration and titling. We recommend that it be interpreted as "the processes of recording and disseminating information about ownership, value, and use of land when implementing land management policies"
- (viii) **Missing Interpretations**: Interpret terms Customary Land and Community Land Committee and dependency that are used in the Bill

### Specific Comments

- i) **Section 3 (1) (C)**: This may not be necessary as it may require conversion and should be captured under Community Land Act.
- ii) **Section 5**: Forms of land tenure should be two only. Delete the third (co-tenancy/or joint tenancy) as these are subsections of the other two)
- iii) **Section 7**: Add subdivision in this section as another method of acquisition of title to land.
- iv) **Section 46 (1)**: Land held by tenants in common should be exempted from this provision. In addition, the section should be improved to prevent rogue companies from buying large chunks of land, subdividing and issuing letters of allotment instead of title deeds resulting in cases of multiple titles. Flouting this provision should be a criminal offence with punitive punishment. The numbering should be amended to 46 only.
- v) **Section 57(1)** contradicts with the Land Registration Bill, which states only spouses can have a joint tenancy.
- vi) **Section 57 2(b)** : is a repetition of the Land Registration Bill
- vii) **Section 58**- Issuance of multiple titles on one property should be discouraged as this will abet fraudulent deals.
- viii) **Section 59(1)** Contradicts the land registration bill that proposes joint tenancy not common tenancy.
- ix) **Section 59(3)** Joint tenancies –matrimonial properties should be registered as matrimonial properties or spousal and other interests be noted in the register to avoid confusion and technicalities that are beyond third parties and voidance of contracts on this basis.
- x) **Section 59(5) and (6)** – There is need to protect the lenders otherwise this will increase the lending risks, associated costs like insurance, high interest rates and will discourage lenders. Unscrupulous borrowers will take advantage of these clauses to default in payments.
- xi) **Section 62(1) (a)** – Provide that the valuation will be undertaken by a valuer.
- xii) **Section 76(1)** add the words "*of repair' and redecoration'* after state
- xiii) **Section 80**- Notice provided should include the relevant attachments to show the land has been registered in the transferee's name e.g. A copy of the transfer document or the new title document in the name of the transferee.
- xiv) **Section 83(1)**: Abolishing termination of a lease by re-entry or forfeiture will discourage investment in land and property and create room for corruption.

- xv) **Section 84:** It negates the principle of encouraging resolution of land and property related disputes through Alternative Dispute Resolution Mechanism as provided in Article 60 of the Constitution. We propose re-introduction of the land tribunal but decentralized to district and county levels as an alternative to court procedures.
- xvi) **Section 84(1):** Referring all termination of leases to cases to court is cumbersome, expensive and time consuming. The law should provide guidelines only and only cases with disputes should be referred to court. Also encourage ADR's
- xvii) **Section 85 (c):** The timelines provided are unreasonable and will discourage investment in property and increase bad debts. The law should consider the developers who also have financial commitments to meet e.g. loans, staff expenses, utilities like water and electricity, taxation and other statutory dues. Although trying to protect the rights of the tenants, the plight of the investors should not be ignored. Probably introduce different procedures relating to recovery of rent arrears from different categories of tenancies. (Currently we have protected and non-protected tenancies). Otherwise tenants will take advantage to default in rent payments hiding under the 60 days window (30 before notice and 30 days' notice period)
- xviii) **Section 87(1)-**Interests in land should be registered to inform parties in different contracts and notice to spouse should be on matrimonial property only. The law seems to create rights for different interested parties without corresponding obligations.
- xix) **Section 89(C)-**Age and condition of building only applies in old buildings. Courts should seek expert advice e.g. a property manager /valuer
- xx) **Section 103,104 105, 106, 107, and 108:** These procedures will hinder growth of the mortgage industry as it makes it very difficult for the lender to recover funds in the event of default
- xxi) **Section 110 -** Chargee power of sale- Service of notice is ambiguous likely to cause conflict any other person –only parties' mentioned in the charge document should apply
- xxii) **Section 108(2):** Provisions of peaceable entry without committing forcible entry. These are barriers that will interfere with the lending industry
- xxiii) **Section 117(C)** spouse of the charger – should read the spouse who had given consent.
- xxiv) **Section 127(2) b:** This subsection should be deleted because discrepancy in area affects value of land and the amount of compensation therefore cannot be ignored. It is also catered for in Section 136
- xxv) **Section 133-** Justifies deletion of 127(2) b. The Land Acquisition Compensation Tribunal needs to be reinstated but provision also made that decentralized to both County and District Levels
- xxvi) **Section 173 (1) (f):** Rework to the effect that the Cabinet Secretary shall formulate criteria for determining minimum and maximum land holding acreages in respect of private land in line with Section 172 (3) (not determine the minimum and maximum acreage) the criteria can be applied in different areas of the country as the minimum and maximum will not be uniform across the different areas due to factors like climate, economic activity, human density, infrastructure

## **6. PROF.GHAI CONSORTIUM.**

### **Comments and proposal on the Land Bill**

The Committee was informed that, from a gender dimension, the Bills reveals that:-

1. There are a number of words/phrases that ought to be defined that are not, including:
  - "Small charge" – see cl 106 (6); 120 (1)(a)(iii) and especially cl 119(1) which stipulates that a court may reopen '(a) a charge for a sum equal to or less than the amount lent on the security of a small charge' without any clarity being offered in the bill as to what that amount is set at.
  - "long lease" – see cl 7(h),
  - "the register" see definition of "proprietor"
  - How can "religious institutions" be "public buildings" [this is really important not just in terms of definition but in terms of the power to acquire land compulsorily]

2. Certain words and phrases are inadequately defined:

- “Allocation of land” surely is being used specifically in relation to government allocations?
- “building” the definition is so wide it will include a child’s swing
- “Co-tenancy” causes confusion: the 1882 Transfer of Property Act talks of co-ownership. We discuss this concept further below.
- “freehold” misses the essential element of an interest unlimited in time
- “Instrument” – one does not say “a writing” .....
- “land management” this definition is very vague, and it does not cover the actual acts that one would assume constitute management – see clause 10(1) which clearly conceives of management as something hands on, for which guidelines may be developed.
- “lease/leasehold” is normally assumed to confer a right of exclusive possession - but seems the 1882 Act does not have this element. There seems to be a problem in that Act contemplated a lease in perpetuity – how is this different from freehold?
- “Licence” is defined as being something granted by the NLC – but person can grant a license of private land. Licences granted by the NLC over public land and those granted by individuals in relation to private land need to be distinguished.
- “Temporary purpose” cannot be *acquisition* of land - the point is to define “temporary”: purpose is not a problem. The second clause of the sentence is confusing: is ‘or solely as a means of access to other land by a public body’ also subject to the period of not more than five years?
- “trustee”: suggest it is made clear that executors and administrators are meant

3. **Forms of tenure**

Co-tenancy is not a form of tenure. Nor is an easement (see (d) and nor are all types of customary land right (see (e)).

The definitions could be clearer: “right of survivorship” is not ordinary English. It could say: *joint tenancy is a form of joint ownership of land under which the death of one owner transfers that person’s interest to the remaining owner or owners.*

*Tenancy in common is a form of joint ownership of land under which the interest of any owner passes on death as part of that person’s estate.*

4. The Land Bill should contain a substantive provision that deals with matters relating to evictions and displacements and which at the minimum provides that:

- i. A notice of at least three months must be given to the persons who will be subject of eviction;
- ii. That the person effecting any eviction applies to the Court and obtains an order to effect the eviction;
- iii. That anyone who may be affected by the eviction be given a right to be heard during the Court process;

That in making any decision relating to an application for eviction the Court must be guided by, among others, the following factors:

- i. The social and other costs of eviction on the affected persons including, loss of economic opportunities, loss of educational opportunities, disruption of the family;
- ii. The length of time the occupier has been on the land;
- iii. Opportunity for and ability to resettle elsewhere;
- iv. Alternatives to eviction, including the possibility of compensation of the land owner in cases of potential mass eviction;
- v. Whether it is in the public interest to grant an order of eviction.

5. **The transitional provisions can provide for a moratorium on evictions.**

1. **Allocation of public land**

- (A) Targeted groups for allocation of public lands are no longer limited to “marginalized” or “disadvantaged” groups. Section 12 of the Land Bill, 2012 deals with allocation of public land. The whole section we propose would now read:-  
12 (1) The Commission may, on behalf of the National or County Governments, allocate public land by way of-

(b) Application confined to a marginalized group of person

**(B) In Section 12 Limitations on allocation of public land to foreigners have been deleted**

The new clauses read:

(12)(3) The Commission shall set aside land for investment purposes

(12)(4) In fulfilling the requirements of subsection [3], the Commission shall ensure that the investments in the land benefit local communities and their economies.

(12)(5) Subject to the Constitution and any other law, the Commission may, in consultation with the National and county governments, allocate land to foreign governments on a reciprocal basis in accordance with the Vienna Convention on Diplomatic Relations ”

The Consortia recommends inclusion of the following limitations in Section 12 (3)

**(a) A non-citizen shall not be allocated or granted land unless it is for investment purposes in accordance with national development goals, national land policy or national economic policy.**

**(b) Subject to Article 66 of the Constitution, the Commission shall set aside land for investment purposes under subsection (3) which shall be identified, gazetted and allocated to investors through leasehold interests not exceeding 99 years.”**

**2. Compulsory land acquisition**

The reason for compulsory acquisition given in the Constitution is only public purposes well defined in the interpretation section two one of the reasons being settlement of squatters, poor, landless and internally displaced persons we see no reason for 124 (1) (b) and propose its deletion. In 124 (1) (a) the public body purposes of compulsory acquisition should be tied to public purposes that have been defined in the interpretation section.

The same comment applies to Section 138 (1) (b) which should equally be deleted

**When the Justification of Compulsory Acquisition ceases to exist**

Section 124(2) does not contain sufficient safeguards for the landholder in the event the justification for the acquisition ceases to exist. Section 124(2) reads:

“If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may retain the land in a land bank or offer the original owners or their successors in title pre-emptive rights to re-acquire the land, upon restitution to the acquiring authority [of] the full amount paid as compensation.”

**3. Protection of bonafide purchaser for value in corrupt transactions**

Section 171 (2) Land Bill reads.

“Notwithstanding the provisions of any other written law, a transaction under subsection (1) shall be illegal its inception and shall be void and of no legal effect.”

This provision should probably go further in protecting the rights of the bona fide purchaser for value, as per the Constitution and Land Registration Bill (Section 82(2)). We recommend including the terms at the end “**subject to the rights of the bona fide purchaser for value.**”

The Land Bill must clearly provide for the registration of land function under the Cabinet secretary functions in Section 6.

### LAND REGISTRATION BILL

The Chief Land Registrar and the Deputy Chief Land Registrar should be publicly appointed and approved by the National Assembly. They should be of opposite gender.

### NATIONAL LAND COMMISSION BILL

#### 1. SELECTION PANEL

The first schedule provides for the Constitution of a Selection Panel. Section 1 (d) provides for two persons of the opposite gender nominated by the Non Governmental Council who have demonstrated competence and capacity in matters related to natural resources. We propose changing the Non Governmental Council with **Law Society of Kenya**.

The National Gender and Equality Commission nominee should be replaced with **Institute of Surveyors in Kenya**.

#### 2. EVICCTIONS,

- a. To protect the rights of persons who face evictions, the National Land Commission Bill should give the National Land Commission powers to:
  - i. Liaise with the governmental agency concerned with housing and settlement to help identify suitable land for resettlement of persons who face eviction;
  - ii. Recommend the allocation of the land identified to the government agency concerned with housing and resettlement to facilitate the resettlement of those affected by eviction;
  - iii. Recommend, where necessary, compulsory acquisition of land to resettle persons affected by eviction;
  - iv. Recommend the form of title to be issued in relation to land allocated or acquired to resettle persons affected by evictions;
  - v. Formulate rules and regulations to guide police conduct during evictions.

The Land Bill must provide for a definition of eviction in the interpretation section borrowed from the eviction guidelines as follows:-

**Eviction is defined as “the permanent or temporary removal against their will or individuals, families and/or communities from their home and/or land which they occupy without the provision and access to, appropriate forms of legal or other protection.”**

(AFTERNOON SESSION – 2.30 – 4.30 P.M.)

#### PRESENT:

The Hon. Mutava Musyimi, MP – Chairperson  
The Hon. Benedict Fondo Gunda, MP  
The Hon. Omar Mbwana Zonga, MP

The Hon. Dr Erastus Mureithi, MBS, HSC, MP  
The Hon. Silas Ruteere Muriuki, MP.  
The Hon. Peter Njuguna Gitau, MP  
The Hon. Benjamin Jomo Washiali, MP

#### ABSENT WITH APOLOGY

The Hon. Mohammed Affey, MP  
The Hon. Kiema Kilonzo, MP  
The Hon. Justus M. Kizito, MP.

#### IN ATTENDANCE - STAKEHOLDERS

Prof Yshs Pal Ghai	- Katiba Institute
Jill Ghai	- Katiba Institute
Ambreana Manji	- Director, British Institute for East Africa
Ms Beverline Ongaro	- Representing East African Wildlife Consortium
Ali Said Rajab	- SUPKEM
Priscillah Nyokabi	- Kituo Cha Sheria
Odindo Opiata	- Hakijamii Trust
Odenda Lumumba	- Kenya Land Alliance /Land Sector Non – State Actors
Diana Gichengo	- GROOTS Kenya
Elijah Odhiambo	- Hakijamii Trust
Shadrack Omondi	- Director, RECONCILE
Andrew Songa	- Kenya Human Rights Commission
Maria Lvitzke	- Mazingira Institute

#### IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr Rana Tiampau - Clerk Assistant  
Abenayo Wasike - Clerk Assistant

#### **MIN. 14/2012: CONSIDERATION OF THE LAND BILLS – STAKEHOLDERS VIEWS**

#### **7. LAND SECTOR NON-STATE ACTORS PRESENTATION ON THE THREE LAND BILLS**

The Actors informed the Committee that:-

##### **National Land Commission Bill**

##### **- Authority and jurisdiction of Institutions responsible for Land Governance**

The Bill should provide a clear framework how the NLC will play its role of managing public land i.e. forests, national parks, minerals and water resources which are placed under other statutory technical agencies. Consequently, **Article 67(3)** of the Constitution the Bill should prescribe other functions that will empower the Commission to carry out its constitutional mandate of oversight over statutory agencies charged with technical expertise to manage natural resources. This will be to ensure the realization of the multiple values of land, namely, economic productivity, equity, environmental sustainability and conservation of national heritage.

- **Section 31 and 32** of NLC Bill need to be amended to avoid the possibility of the Ministry of Lands (the executive emasculating the NLC by retaining the functional departments within the Ministry and leave the Commission to merely play an advisory role
- The functions under **clause 173** should be transferred to the NLC and some should be removed as they do not relate directly land matters.
- A clear Alternative Dispute Resolution system should be provided for to give effect to the Constitutional and National Land Policy requirements
- propose that this **clause 166 in the Land Bill** be deleted as there are adequate constitutional provisions that protect the right to private property and there is no point of creating some new forms of violation. In any case the provisions on compulsory acquisition ought to take care of such cases unless more clarity is added to the circumstances being envisaged here.



- Public participation must be infused within this provision in line with **Article 69 (1) (d)** of the constitution. In this regard **section 11(3)** of the bill should also include provision for consultation with the public through dialogue forums.
- Section 124(4) is amended to read, "In the event that the Commission has not undertaken the acquisition in accordance with subsection (1) *and in the absence of justification to show cause for its inaction*, the acquiring authority may proceed and acquire the land."
- **Section 148(2)** outlines the beneficiaries of settlement programmes to include squatters and a variety of displaced persons. **Section 148(4)** outlines a sub-county selection committee that will identify and verify beneficiaries of a settlement programme. **Section 148(7)** states that land acquired in a settlement scheme shall not be transferable except through a process of succession.
- **Section 93, 94 and 95** of Land Registration Bill provide for Joint tenants of spouse rather than co-ownership.
- While at **Section 109(3)** while any lease granted to a non-citizen shall not exceed 99 years, there is no further guidance to how registered freehold titles held by non-citizens will be converted to 99 year leases nor how leases of 999 years shall be reduced to 99 years bearing in mind that the transitional and consequential provisions at **Article 262(8) (1) and (2)** remain not implemented up to date.
- The Land Registration Bill at **Section 107(2) (a)** provides for public land to be registered to the NLC in trust for the county and national government as the proprietor contrary to the Constitution that provides that public land shall vest in and be held by county governments and national government in trust of the people.

8. **GENDER CRITIQUE ON LAND BILLS - Presented by the Think Tank on Women and Legislation**

The following are proposals that should be included in the proposed land legislation to give effect to the gender imperatives of the Constitution, the National Land Policy, international law (which is now part of the law of Kenya) and best practices from comparable jurisdictions:

**THE LAND BILL, 2012**

1. Section 2 (definitions) define the terms "freehold", "absolute proprietorship" "alienation" and "allocation".
2. The Bill uses the terms "freehold" and "absolute proprietorship" interchangeably. Choose one and be consistent on its use. The National Land Policy recommends the use of the term "freehold".
3. Section 12: Methods of allocating public land include "auction", "tendering" allocation "targeting an group" etc. Define the principles which will govern each of these methods. For example, who will auctions be done, or to what principles will they be subjected to? Will the tendering be subject to the applicable public procurement and disposal law? These issues are too important to be left to delegated legislation.
4. Section 12 (allocation targeting a group (12(1)(b): Initial drafts said such groups would be those who had historically been marginalized from allocations of public land, ostensibly including women: the initial wording should be reinstated. Allocation should be to marginalized groups. In amended form it should read - **12 (1) (b) application confined to a marginalized group of persons or groups.**
5. Section 12. **Provide a sub-section stating that the National Land Commission shall consider gender equity in access to land in its functions of allocation of public land.** Otherwise allocations that do not achieve gender equity will be contrary to articles 27 and 56 of the Constitution.
6. Section 57-63: In respect of matrimonial property, this Bill uses the term "tenancy in common", an old common law doctrine used to provide equitable interests of women in matrimonial property. **Remove this term of tenants in common and replace it with co-tenancy or joint tenancy as is the case with other property which is jointly owned.**

- 7 Section 59(2). If one spouse acquires matrimonial property with the “contribution” of the other spouse, both spouses shall have an interest in the property. **Define contribution (may be we can borrow from section 2 of the draft Matrimonial Property Bill)**. Also say whether the spouses will have equal interests or how the interests will be shared between the spouse who acquired the property and the one who “contributed to it” (Annexed are the necessary critical definitions of matrimonial property, matrimonial home, spouse and relevant factors for court to consider in sharing matrimonial property including indirect contribution).
- 8 Section 59(6) If a spouse misleads the chargee, assignee or transferee as the case may be, in respect of matrimonial property as a result of which the other spouse suffers some loss or damage- the spouse who gave misleading information should pay damages. **Change this to provide that any transaction arising from such misleading information shall be voidable.**
- 9 Section 93(3) Any charge of matrimonial home shall have effect only if it is signed by the charger and “any spouse of the charger living in the matrimonial home”. **Change this and provide that only the spouse who has proprietary interests in the matrimonial home in question is supposed to consent not “any spouse” living in that home.**
- 10 Section 93(3) also says alternatively if the spouse has not signed the charge there should be evidence that consent has been given. How do you consent of spouse? At the moment, the section is silent and can give rise even to “oral consent” which can be problematic to establish. **Provide for written consent, or by witnessed thumbprint by the spouse in case they cant write.**
- 11 Section 93(5): A Charge shall only take effect after it is registered. However, the sub-section should provide that pending registration, the charge shall still be a binding contractual document between the parties time it is executed. The only issue is that there can be no dealings or transactions involving the charge until it is registered.
12. Section 147: The Rules made by the NLC to give effect to this Act should be made subject to approval of Parliament (specify if National Assembly or Senate)
- 13 Section 176 Savings (all rules and regulations under the repealed land laws are saved. This will rise to conflict; the old subsidiary legislation cannot be used to implement the new laws. New rules and regulations should be made within 60 days to remedy this situation.
- 14 On repeal (section 174) only two Statutes are listed. The Bill should repeal the Sectional Properties Act, as well as the Government Lands Act. These are substantive laws on land which should be repealed alongside the others that have been repealed- such as the Government Lands Act, the Registration of Titles Act etc.

## THE LAND REGISTRATION BILL, 2012

- 1 Section 2 (definitions) define the terms “freehold”, “absolute proprietorship” “alienation” and “allocation”.
- 2 The Bill uses the terms “freehold” and “absolute proprietorship” interchangeably. Choose one and be consistent on its use. The National Land Policy recommends the use of the term “freehold”.
- 3 Section 8: provides for a community land register. Why a separate register. There should be one major register on all public land, private land and community land; perhaps with different sections for each category. All land and land tenure systems are of equal constitutional standing (see article 61 of the Constitution). Isolation of Community land from the other two categories of land (public and private)) gives effect to the traditional downgrading of community land tenure
- 4 Section 13: The Chief Lands Registrar. This is a new, powerful office. The Bill should provide for vetting and Parliamentary approval of appointee. Also the Chief Lands Registrar and his/her Deputy should be of opposite gender
- 5 Section 29: Spousal interests in matrimonial property should not be “overriding interests” How can third parties such as lenders know that property is matrimonial property? Instead the rule should be to require that spousal interests shall be noted in the register (to enable third parties know where they exist through due diligence). This provision can be strengthened further by a sub-section making matrimonial property (and all spousal interests therein) the subject of compulsory registration and provide the time lines within which such matrimonial property shall be registered.

## THE NATIONAL LAND COMMISSION BILL

1. **Section 8: Selection Panel of the National Land Commission (NLC)** should be composed of representatives of the relevant professional bodies like the Law Society of Kenya, Institute of Surveyors of Kenya, Kenya Institute of Planners etc. Most of those listed currently are irrelevant to the competencies being sought at the NLC.
2. **Section 16-18:** The devolution of offices of the NLC and of the County Lands Boards should be described to the lowest level to give effect to article 6(3) of the Constitution which provides that state organs should devolve their services to the greatest extent possible depending on the nature of the services provided. Land services are very critical especially to women and need to be devolved significantly. The devolution of land Bills should be synchronized with the devolution system provided for under the County Government's Bill (County-Sub County- Ward- "Further Decentralized Units").
3. Provide a section saying how the NLC in its administration of all public lands as provided for in article 67(2) of the Constitution will interact with other public agencies with specific mandate over special public land such as forests (Kenya Forests Service) and Wildlife protected areas (KWS). Like NEMA in environmental matters and since NLC powers are Constitution while those of KFS and KWS are statutory, the NLC should have overall powers/functions over all public land but will work in consultation with the Lead Agency (KWS, KFS) concerned.
4. **S.31 on the transfer of Ministry Staff. This should not be the case. NLC should hire its own staff.**
5. Insert a new section (to be "section 3") establishing the Commission, as an entity with perpetual succession and with rights and obligations to enter into contracts etc. At the moment, the Bill does not establish the Commission, it just provides for its powers (section 5) and functions (section 6).
6. **Provide for the position of Vice Chair of the NLC. At the moment, that position is not provided for. Then require that the Chair and Vice Chair shall be of opposite gender.**
7. **Provide for gender equity in the composition of NLC staff (no more than two-thirds of staff members may be of same gender).**

## 9. KENNEDY ORWA - CO-MANAGER, ENVIRONMENT LIAISON CENTRE INTERNATIONAL

ELCI, in collaboration with the Councils of Elders of the Luo and Abagusii communities makes the following recommendations for consideration by the National Assembly, concerning the Land Bill and Land Registration Bills.

### THE LAND BILL

#### 1. *Power to Create Charge (Article 77)*

Replace "any" with "all" to protect wives who have interest but are not living on the land, and who may not be enjoying the favour of her / their polygamous husband at the time of charging such interest.

#### 2. *County Control Boards (Article 149)*

- a) There is no clear devolution of land administration structure beyond the county level. This may keep access to justice on land and land related services out of reach of poor widows, orphans and people with disability.

**Proposal:** There should be devolution to sub-ward levels to ensure ease of access to justice and services.

- b) Article 149 (2) gives absolute powers to the Cabinet Secretary to decide membership of the control board. This provision may be misused by the cabinet secretary by ensuring those he/she is able to manipulate are members of the control board.

**Proposals:**

- i) The membership to the control board be defined by the law
  - ii) That Councils of Elders be included as mandatory members of such control boards
3. *Application for Consent in Controlled Transactions {Article 152 (2)}*  
The decisions of such control boards should be challengeable in a court of law as a control measure.
4. *Conditions for granting a consent {Article 153(1)(i)}*  
Article 153 provides guidelines on refusal of consent by the County Control Board. Provisions of Article 153(1)(i) a and b should be broken down further to prevent a possible misuse of such provision against the people with disability, orphans and widows.  
  
**Proposal:** There should, in particular, be clear criteria that the board shall use to decide that a person is
  - a) Unlikely to farm the land well or develop it adequately
  - b) Unlikely to be able to use the land profitably for the intended purpose owing to its nature
5. *Public Awareness through Education*  
**Proposal:** Land Bill should provide for public education to enhance awareness of the law. This will help land owners and beneficiaries to limit inconveniences during registration and/or succession causes.
6. *Conflict Resolution:*  
The Bill emphasizes the court system for conflict resolution, which is not in the spirit of the Constitution of Kenya 2010 (Chapter 5 Article 60(g)), and the National Land Policy Clause 170(c). In this regard we propose that a clause on Alternative dispute resolution be added to give guidelines on a speedy and cost effective access to justice. We recommend that Councils of Elders be part of the alternative dispute resolution mechanisms as they are well acquainted with land matters in their areas of jurisdiction. Information from the elders is important especially in cases of disinheritance of orphans, people with disability and widows by relatives.  
  
**Proposal:** The bills should enhance the roles played by the Council of elders in conflict resolution, but allow this to be complemented with the formal justice system.

## THE LAND REGISTRATION BILL

1. *Interference with boundary features (Article 20)*  
Fine and the penalty charged on persons found guilty of interfering with boundaries on Clause 20 of the registration bill is too lenient on the grabbers. Most of them will pay up without feeling a pinch and continue to torment their neighbors who may be orphans and widows.  
  
**Proposal:** Increase the penalty for this offense.
2. *Land and Property Registration:*  
The registration process should be simplified and shortened.  
  
**Proposal:** The Land Registration Bill should provide clear timelines for the registration services.  
  
Clause 10(2) of the Land Registration Bill gives the registrar powers to suspend services in relation to the register without qualifying under what circumstance he/ she can do that. This may be open for abuse as the registrar can use it against land owners and beneficiaries, or for personal benefits.  
  
**Proposal:** There should be guidelines embedded in the law to caution against abuse of office and possible disenfranchising of widows, people with disability and orphans.

3. *Succession / Inheritance of Land and Other Property:*

**Proposal:** The Land Registration Bill should include a general caution on deceased persons' title to give time for succession processes and to avoid possible tempering with documentation. This will help guard against any dealings which are not in the interest of the dependants before succession.

Clause 46 of the Land Registration Bill leaves the minor at the mercy of the trustees.

**Proposal:** A statement should be added to caution against rogue trustees who misuse their powers to grab land from the minors.

4. *People With Disability*

Article 47(4) empowers the registrar to satisfy that the person claiming to be the guardian to the disabled is entitled to execute the document, but does not give guidelines with regard to the limits of transactions. This leaves the disadvantaged groups at the mercy of the registrar and the supposed guardian.

**Proposal:** This article should give guidelines on how the registrar will judge the validity of the documents presented before him on behalf of the Persons with Disability.

5. *Registration of land in the names of orphans*

Orphans have in the past been disinherited by relatives and influential persons in society while they wait to be eighteen.

**Proposal:** This law should provide for registration of land and other property therein in the names of orphans, and prevent initiation and/or effecting of transactions that, by their nature:

- a) Lead to permanent loss of the property in full or in part before such orphans are eighteen years old
- b) Denies the orphan rights to benefit from the proceeds accruing from such land and property therein to which the orphan is entitled

6. *Enhanced protection of people with disabilities*

**Proposal:** The bill should protect people with disabilities by

- a) Providing for registers in forms of Braille, and
- b) Employing personnel with competence in the Kenya Sign Language to assist the dumb

7. *Land Register*

**Proposal:** The land register should be such that it will facilitate relatives of deceased to trace all land owned by such a deceased person and transfer the same to his/her beneficiaries.

10. **MWENDA MAKATHIMO - DIRECTOR, LAND DEVELOPMENT AND GOVERNANCE INSTITUTE, LDGI**

**The National Land Commission Bill, 2012**

- (i) **Independence of the NLC** - The independence of the NLC, and legal insulation from influence or directions from any office or officer should be explicitly stated in the Bill, to ensure that it is clear to all and sundry.
- (ii) **Powers of the NLC** - The powers of the NLC as set out are too vague and general. Certain essential powers that are necessary for the legal functioning of statutory corporations are left out. It is therefore necessary to include essential powers of the NLC, for instance, to function as a body corporate; perpetual succession; power to hold assets and liabilities.
- (iii) **Functions of the NLC** - The Bill has merely reproduced the powers of the NLC as envisaged in article 67 of the Constitution. However, in order to ensure that the NLC has operational guidance while undertaking these functions, the Bill should provide specific details on the

substance and procedures of carrying out these functions. For example the NLC has a function to “monitor and have oversight responsibilities over land use planning ..” It is necessary for the Bill to clarify, in specific terms, the particular legal meaning and import of „monitoring, and oversight,□ giving the specific amendments to the Physical Planning Act of 1996 to mainstream this change.

- (iv) **Standardizing the powers and functions of the NLC in all Land Bills** - The powers and functions of the Commission should be standardized and set out in each of the Land Bills, to ensure clarity, remove contradictions, and ensure that these powers are clearly apparent to anyone reading, implementing or enforcing the law.
- (v) **Selection of Panel to Interview Candidates for Membership to the NLC** - The Panel should be composed of persons/organizations that possess particular competences and capacity to vet potential members of the NLC, with regard to sensitivities of land management. In this regard, it is proposed that the selection panel should comprise nominees from bodies with relevant expertise such as the Law Society of Kenya; Institution of Surveyors of Kenya; Kenya Institute of Planners; Economic and Social Council; and the National Environment Council.
- (vi) **Devolution of functions of the NLC** - The Bill should require the NLC to devolve its functions and offices to the lowest level of devolution, in accordance with the structure of devolution set out in the *County Governments Bill, 2012*. A similar requirement should be set out with regard to the proposed County Land Management Boards.
- (vii) **Relationship between the NLC and statutory lead agencies currently managing public lands/resources now classified as part of the public land estate** - The Bill should provide a clear framework how the NLC, in its role of managing public land, such as government forests; national parks; or water resources, will result with statutory agencies empowered to manage these resources such as Kenya Wildlife Service; Kenya Forest Service; or the Water Resources Management Authority.
- (viii) **Transfer of staff from departments whose functions have been moved to the NLC from the Ministry of Lands**. There are several recommendations with respect to this provision –
  - a. It is unclear what the specific functions referred to here are. It is therefore necessary to have a tabulated schedule that clearly refines, demarcates, and identifies which departments and functions are to be transferred, in line with the constitutional and statutory powers and functions of the NLC.
  - b. The procedures proposed for vetting members of staff to be transferred from the Ministry of Lands to the NLC are too vague and weak. The Bill should provide a radical and specific vetting procedure, with in-depth inquiries and submissions from members of the public, although with respect for due process of the law.
- (ix) **Obligation of independent commissions to submit reports to the President and to Parliament** – Although this obligation is set out in article 254 of the Constitution, it is necessary for the Bill, in light of the important powers and functions being vested in the NLC, to provide for a fixed period within which the NLC must report to the President, and Parliament, on progress in implementation of its functions.

## The Land Bill, 2012

- (i) **Definition of terms** – it is necessary for the Bill to provide holistic definitions for certain key terms, for instance: freehold – to bringing the perpetuity of the interest in land; peri-urban – to harmonize with definitions of urban areas and cities set out by new devolution laws, among others.

- (ii) The forms of tenure should include a clear definition of the rights of the tenure holder; and clear definitions of the duties of the tenure holder.
- (iii) **Functions of the Cabinet Secretary** - The specified powers of the Cabinet Secretary include roles and duties already assigned to specific officers and institutions through existing Acts of Parliament. The Bill should specify how the Cabinet Secretary relates to statutory roles and departments such as survey, or physical planning. It should show how, what changes have been made in the Survey Act and the Planning Act. It should also remove the specific power of the Minister to regulate service providers such as physical planner, surveyors and other land professionals. This role should be carried out through statutory agencies, since the Cabinet Secretary may lack competence with respect to specialized professions.
- (iv) **Allocation of public lands by the NLC through auction** – The Bill should clarify how auctions will be undertaken, including specific exemptions from public procurement legislation.
- (v) **Gender equity in allocations of public land** – The Bill should require, and provide a mechanism to ensure that there is gender equity in allocations of public lands by the NLC, particularly through auctions, and tenders.
- (vi) **Integration of Community Land into the Land Bill** - Community land, as per article 61 of the constitution, is an equal form of tenure to public and private tenure. The Bill should therefore incorporate provisions on community land, to ensure harmony in substantive and registration legal provisions.
- (vii) **Equitable access to land** – In order to fulfil the principles of land policy set out in article 60 of the Constitution; the Bill should allow the NLC to issue short-term leases of 5-10-15 years from qualifying public lands. Such leases would be registrable through certificates of titles to provide security of tenure, and allow holders to utilize the lease as collateral.
- (viii) **Exclusion of short-term leases from the statutory implied terms** – The implied terms set out by the Bill should not exclude short-term leases. This is because short-term leases are likely to be unwritten, and therefore would benefit from the fabric of the statutory implied terms
- (ix) **Power of Court to re-open charges** - This is an innovative provision that aims to secure equity and justice in the public interest. The provision could result in higher interest rates as financial institutions seek to internalize the high risk that their practices could be reopened and reversed by courts. There is also a possibility of increased litigation.
- (x) **Repeal of laws** - The Bill should specifically repeal the provisions of each existing law that provides substantive law on land.

#### The Land Registration Bill, 2012

- (i) **The Land Register** - The Bill, in order to protect the authority of the register in protecting sanctity of title, should specify the contents of the register – with respect to each category of land in Kenya.
- (ii) **Provision that information on register does not constitute notice or knowledge to any person** - This provision should be deleted as it undermines the value and sole authority of register in protecting sanctity of title to land
- (iii) **Appointment of Chief Land Registrar by the Public Service Commission** - The link between the Registrar and the NLC is unclear. The Bill should provide for appointment by the Registrar by the National Land Commission, to be subject to its control; or since the registrar is to exercise extensive statutory authority, the appointment should be subject to parliamentary approval

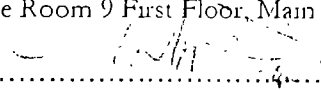
- (iv) **Devolution of functions of the Chief Land Registrar** - The function and services on registration of titles should be devolved to the lowest level of government, at the village.
- (v) Breadth of proposed overriding interests - The scope of overriding interest is extremely extensive, and provides too many variables that could threaten sanctity of title -
  - a **Spousal interests over matrimonial home** – should instead be noted in the register to ensure that there is notice to third parties when dispositions such as charges or transfers are made. If the spousal interest is noted, chargees or buyers can ascertain this through due diligence
  - b. **Compulsory acquisition** – should not be an overriding interest because it is subject to the due process of the law, and to compensation at a fair value
- (vi) **Savings of registers and rules from repealed statutes** – The rules and regulations under current laws were made for a particular era and could be inconsistent with the objects of land reform as envisaged by the constitution, such as art 60. The saving of registers and rules from the past will result in continuation of regulations under old legislation if new regulations are delayed, undermining the work the constitution and new laws and institutions.
 

Several proposals are advanced -

  - a. Draft regulations to be developed alongside the Bills for simultaneous enactment
  - b. Fixed and short-term period within which the regulations are made, for instance, 6 months
  - c. The Bill to specify a fixed period within which harmonized land register must be put in place, with an obligation on the Registrar to report to Parliament within that period.
- (vii) **Power of Cabinet Secretary to make regulations** - The Bill should require that these regulations must be vetted and approved by Parliament.

**MIN. NO.15/ 2011 – ADJOURNMENT**

There being no other business, the Chair adjourned the meeting at forty six minutes past one o'clock until Thursday, February 23, 2012 in the Committee Room 9 First Floor, Main parliament Buildings at 11 00a.m

SIGN:..........

(CHAIRPERSON)

DATE:.....APRIL 17, 2012.....



**MINUTES OF THE ONE HUNDRED & TWELVETH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON THURSDAY, FEBRUARY 23, 2012 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.00 AM.**

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**PRESENT:**

The Hon. Mutava Musyimi, MP – Chairperson  
The Hon. Peris C. Simam, MP. - Vice chairperson  
The Hon. Benedict Fondo Gunda, MP  
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.  
The Hon. Silas Ruteere Muriuki, MP.  
The Hon. Omar Mbwana Zonga, MP  
The Hon. Benjamin Jomo Washiali, MP

**ABSENT WITH APOLOGY**

The Hon. Mohammed Affey, MP.  
The Hon. Peter Njuguna Gitau, MP  
The Hon. Justus M. Kizito, MP.  
The Hon. Kiema Kilonzo, MP.

**IN ATTENDANCE - KENYA NATIONAL ASSEMBLY**

Mr. Rana Tiampati - Second Clerk Assistant  
Abenayo Wasike - Third Clerk Assistant

**MIN. NO. 16/2012: INTRODUCTION**

The Chairman called the meeting to order at 11.17a.m after prayers were said. He further called the Members present to consider the proposed agenda and adopt. The agenda included:-

- f) Prayers;
- g) Confirmations of minutes;
- h) Matters arising;
- i) **Deliberations on the Land Bills – Land Registration and National Land Commission Bill, 2012;**
- j) Any Other Business;
- b) Date of the next sitting.

The proposed agenda was adopted by the Members present.

**MIN.NO. 17/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of the Minutes of the 100<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, 105<sup>th</sup>, 106<sup>th</sup>, 107<sup>th</sup>, 108<sup>th</sup>, 109<sup>th</sup>, 110<sup>th</sup> and 111<sup>th</sup> sittings was postponed to a later date.

**MIN. NO. 18/2012: CONSIDERATION OF LAND BILLS;**

## 1. LAND BILLS –

In consideration of the Bills, The Committee noted

- the time remaining to the set deadline by the Constitution is less than 2 days;
- Availability of Land Bills and specifically the Land Bill for consideration by the House and well as the committee. This is as a result of the delays in the publications with respect to the Bills.
- There is a possibility for the extension of time by the House depending on the availability of the requisites number of members to vote i.e. two thirds;

Therefore, resolved to invite Law society of Kenya, Commission on the Implementation of the Constitution and Kenya Law Reform Commission for expert advice and fast - track the consideration of the stakeholder's views. The meeting to start at 2.30p.m at the same venue, with or without Parliament extending the time for discussion on the Bills;

And directed the secretariat to prepare the proposal from stakeholders in a matrix form for consideration in the Afternoon meeting.

### **MIN. NO. 19/ 2012: ADJOURNMENT**

There being no other business, the Chair adjourned the meeting at forty six minutes past Twelve o'clock until Thursday, February 23, 2012 in Committee room 9, Main Parliament Buildings at 2.30p.m.

### **AFTERNOON SITTING**

#### **PRESENT:**

The Hon. Mutava Musyimi, MP – Chairperson  
The Hon. Peris C. Simam, MP. - Vice chairperson  
The Hon. Benedict Fondo Gunda, MP  
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.  
The Hon. Silas Ruteere Muriuki, MP.  
The Hon. Omar Mbwana Zonga, MP  
The Hon. Benjamin Jomo Washiali, MP

#### **ABSENT WITH APOLOGY**

The Hon. Mohammed Affey, MP.  
The Hon. Peter Njuguna Gitau, MP  
The Hon. Justus M. Kizito, MP.  
The Hon. Kiema Kilonzo, MP.

#### **IN ATTENDANCE - TECHNICAL EXPERTS**

#### **COMMISSION ON THE IMPLEMENTATION OF THE CONSTITUTION**

- 1) Dr. Elizabeth Muli;
- 2) Dr. Ali Ibrahim;
- 3) Ms. Doreen Muthaura;

LAW SOCIETY OF KENYA

1. Mr. Mbage Nganga;
2. Mr. Apollo Mboya;
3. Ms. Hannah Gitonga Mwangi;

KENYA LAW REFORM COMMISSION

1. Mr. Kathurima M'noti;

**IN ATTENDANCE - KENYA NATIONAL ASSEMBLY**

Mr. Rana Tiampati - Second Clerk Assistant  
Abenayo Wasike - Third Clerk Assistant

**MIN. NO. 20/2012: INTRODUCTION**

The Chairman called the meeting to order at 2.40p.m after prayers were said. He further called the Members present to consider the proposed agenda and adopt. The agenda included:-

- i. Prayers;
- ii. **Deliberations on the Land Bills – Land Registration and National Land Commission Bill, 2012;**
- iii. Any Other Business;

The proposed agenda was adopted by the Members present.

He further introduced and welcomed all those present in the meeting

**MIN.NO. 21/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of the Minutes of the 100<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, 105<sup>th</sup>, 106<sup>th</sup>, 107<sup>th</sup>, 108<sup>th</sup>, 109<sup>th</sup>, 110<sup>th</sup> and 111<sup>th</sup> sittings was postponed to a later date.

**MIN. NO. 22/2012: CONSIDERATION OF LAND BILLS;**

**The Committee was informed that:-**

1. The proposals by stakeholders on the three bills were ready for consideration as directed by the Committee in the morning sitting. The proposal are in a matrix form and each bill has its own matrix;
2. Parliament is yet to vote to extend the timelines for consideration of the Bills and therefore the Committee is to proceed with speed to prepare a report;
3. The three institutions invited are to form part of the Committee and provide expert analysis on the bills as wells as on the proposal made by stakeholders;
4. The three institutions therefore will be the technical arm of the Committee.

The meeting therefore resolved to establish a sub Committee comprising of the Chair, any two Committee members and the technical team of the CIC, LSK, KLRC, legal

Counsel and clerk of the Committee. The Sub Committee to start work now and will report back to the main Committee on Friday, February 24, 2012 at 09.00a.m.

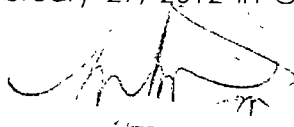
**MIN. NO. 23/2012: CONSIDERATION OF LAND BILLS –NATIONAL LAND COMMISSION BILL, 2012;**

The Subcommittee considered the National Land Commission Bill, 2012 as follows as proposed in the matrix see attached.

**MIN. NO. 24/ 2012: ADJOURNMENT**

Following Parliamentary approval for the extension of time to consider the land Bills, for sixty days, the Sub Committee adjourned and will report to the Committee on Wednesday, February 29, 2012 at 10.00a.m for further direction.

There being no other business, the Chair adjourned the meeting at forty six minutes past five o'clock until Wednesday, February 29, 2012 in Commission Room, first Floor, county Hall at 10.00a.m.



SIGN:.....

(CHAIRPERSON)

DATE:.....APRIL 17, 2012.....

**MINUTES OF THE ONE HUNDRED & THIRTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON WEDNESDAY, FEBRUARY 29, 2012 IN COMMISSION ROOM, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 AM.**

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**PRESENT:**

The Hon. Mutava Musyimi, MP – **Chairperson**  
The Hon. Benedict Fondo Gunda, MP  
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.  
The Hon. Silas Ruteere Muriuki, MP.  
The Hon. Omar Mbwana Zonga, MP  
The Hon. Benjamin Jomo Washiali, MP

**ABSENT WITH APOLOGY**

The Hon. Peris C. Simam, MP. – **Vice chairperson**  
The Hon. Mohammed Affey, MP.  
The Hon. Peter Njuguna Gitau, MP  
The Hon. Justus M. Kizito, MP.  
The Hon. Kiema Kilonzo, MP.

**IN ATTENDANCE - KENYA NATIONAL ASSEMBLY**

Mr. Rana Tiampati – Second Clerk Assistant  
Abenayo Wasike – Third Clerk Assistant

**MIN. NO. 25/2012: INTRODUCTION**

The Chairman called the meeting to order at 11.17a.m after prayers were said. He further called the Members present to consider the proposed agenda and adopt. The agenda included:-

- k) Prayers;
- l) Confirmations of minutes;
- m) Matters arising;
- n) Report from the Sub Committee;**
- o) Deliberations on the Land Bills – Land Registration and National Land Commission Bill, 2012;**
- c) Date of the next sitting.

The proposed agenda was adopted by the Members present.

**MIN.NO. 26/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of the Minutes of the 100<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, 105<sup>th</sup>, 106<sup>th</sup>, 107<sup>th</sup>, 108<sup>th</sup>, 109<sup>th</sup>, 110<sup>th</sup>, 111<sup>th</sup> and 112<sup>th</sup> sittings was postponed to a later date.

**MIN. NO. 27/2012: REPORT FROM THE SUB COMMITTEE AND DELIBERATIONS ON THE LAND BILLS**

The Committee noted that parliament has extended the timelines for consideration of the lands Bills and therefore resolved:-

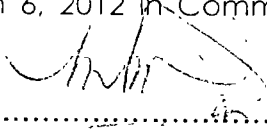
- That the subcommittee continues with the consideration of the proposals by stakeholders and proposes amendments. The subcommittee to include Law society of Kenya, Commission on the Implementation of the Constitution and Kenya Law Reform Commission;
- Undertake public hearings on the bills from March 19 – 23, 2012 to seek public views as provided for in the Constitution.

That, During the Public hearings –

- The Committee will cover 20 centres;
- Each 4 centres to be covered by a subcommittee of two to three members per day from 09.00a.m to 3.00 p.m.

**MIN. NO. 28/ 2012: ADJOURNMENT**

There being no other business, the Chair adjourned the meeting at forty minutes past Twelve o'clock until Tuesday, March 6, 2012 in Committee room 9, Main Parliament Buildings at 2.30p.m.

SIGN:.....

(CHAIRPERSON)

DATE:.....APRIL 17, 2012.....