


PARLIAMENT
OF KENYA
LIBRARY

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 JUL 2020	DAY: <input type="text"/>
TABLED BY:	Lomp
CLERK-AT THE-TABLE:	DMK

CONSULTATION WITH COUNCIL OF GOVERNORS

(ANNEXURES 5)

MINUTES OF THE 23RD PUBLIC PARTICIPATION MEETING OF THE TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO FACILITATE ELECTRONIC LAND TRANSACTIONS, REGISTRATION, CONVEYANCING AND OTHER RELATED ACTIVITIES AND THE COUNCIL OF GOVERNORS (COG) HELD VIRTUALLY ON MONDAY 18TH MAY 2020 AT 11:00 AM.

Attendance of the Taskforce Members

S/No.	Name	Position
1	Eric Nyadimo	Chair
2	Rachel Dinda	Secretariat
3	Mildred Ambani	Member
4	David Gatimu	Member
5	Esther Omulele	Member
6	Victor Ouno	Member
7	Herbert Were	Member
8	Tom Abuta	Member
9	Mary Macharia	Joint Secretary
10	Julius Kahindi	Member
11	Samuel Nthuni	Member
12	Sereu Moinket	Member
13	Clarah Ketyenya	Joint Secretary
14	Edward Ole Kateiya	Member
15	Elizabeth Njoroge	Member
16	Jasper Mwenda	Member
17	Agnes Matunda	Secretariat
18	George Ruhara	Secretariat
19	Mugendi Moses	Joint Secretary
20	Caroline Kihara	Member
21	Carolyne Menin	Member
22	Truphosa Achar	Member
23	Charles Wamae	Member
24	Damaris Lukwo	Secretariat
25	Eugene Lawi	Member
26	Catherine Ochanda	Member
27	Stephen Chebii	Secretariat
28	James Nombi	Joint Secretary
29	Annette Omwoyo	Joint Secretary
Apologies		
1.	Nancy Awere	Secretariat
2.	Peter Musyimi	Member
3.	Brian Kimutai	Member
COG members present		
1	Eve Bosibori	Planner, Nyamira County
2	Robert Sangori	Homa Bay County
3	Alex Nthiwa	Chief Officer, Makueni County
4	Mwenda Riungu	County Planning Director, Tana River County
5	Maurice Otieno	Mandera County
6	James Ambuga	CoG
7	Eva Sawe	CoG

8	Hon Barsosio	CECM Elgeyo Marakwet County
9	Hon. Charles Dadu	CECM Lands Kilifi County
10	Beatrice Chelangat	Planner, Nyeri County
11	Hon Ngeno K Barnabas - Kericho County	Chair CECMs Caucus
12	Mutuku Erastus	Narok County
13	Anita Wakoli	Trans Nzoia County
14	Charles Obondo	Planner Homa Bay County
15	Hon. Hamilton Parseina	CECM Lands Kajiado County
16	Veronica Ndunge	Nandi County
17	Julius	
18	Sarah Masaki	Muranga County
19	Sylvia Inziani	Kericho County
20	Bii K Ng'eny	County Director of Planning, Makeni County
21	Alphonse Rotich	County Director Physical Planning, Baringo County
22	Joseph Shuel	CECM, Laikipia County
23	Elizabeth Mburu	Director, Meru County
24	Nicholas Waweru	Director Physical Planning, Kiambu County
25	Evans Kipruto	CoG
26	Emma Nyaboke	CoG
27	David Kitonga	Director Lands Kitui County
28	Hon Sereti Vivian Mpetti	CECM Lands Narok County
29	Hon Koima Kibiwott	CECM Baringo County
30	Nicodemus Mbwika	CoG, Secretariat
MIN.01/23/2020	Agenda	
		<ol style="list-style-type: none"> 1. Program 2. Introduction to the Taskforce 3. Terms of Reference 4. Regulations 5. Plenary Discussion 6. Close
MIN.02/23/2020	Preliminaries	
		<ul style="list-style-type: none"> • The Chair called the meeting to order at 11:52am. • Opening prayers were said by Mildred Ambani. • The Chair took members through the Agenda. • The Chair introduced the Taskforce Members and requested Hon. Ng'eno to introduce CoG to team.
MIN.03/23/2020	MIN.02/23/2020-minute number not clear	
		The program was adopted as follows:

Time	Item	Assigned To
10:00 - 10:30 am	Welcome, Introduction and Opening Remarks	<i>Eric Nyadimo, Taskforce Chair</i>
10:30 - 11:00 am	Land Registration (Electronic Transactions) Regulations, 2020	<i>Sereu Mainket</i>
11:00 - 11:30 am	Survey (Electronic Cadastre Transactions) Regulations, 2020; and Survey (Amendment) Regulations, 2020	<i>Jasper Mwendu</i>
11:30 - 12:00 pm	Stamp Duty (Valuation) Regulations, 2020; and Stamp Duty (Amendment) Regulations, 2020	<i>Esther Omulele</i>
12:00 - 12:30 pm	The Land (Allocation of Public Land) (Amendment) Regulations, 2020; and Land (Amendment) Regulations, 2020; and the Land (Extension and Renewal of Leases) (Amendment) Rules, 2020	<i>Tom Abuta</i>
12:30 - 1:00 pm	Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020	<i>David Gatimu</i>
1:30 - 2:00 pm	Break	<i>All</i>
2:00 - 4:00 pm	Plenary Discussions	<i>Eric Nyadimo, Taskforce Chair</i>
4:00 - 4:15 pm	Vote of Thanks and Closing	<i>Eugene Lawi</i>
END OF PROGRAMME		

It was noted that since the meeting started of late there was need to keep to time and allow more time for plenary discussion.

MIN.04/23/2020	Introduction to the Taskforce
	The chair presented an overview of the Taskforce including its mandate, milestones to date and road map of remaining activities.
MIN.05/23/2020	Regulations
	A highlight of regulations in form of Power Point presentations was presented in line with the programme as follows <ul style="list-style-type: none"> a) Registration Regulations b) Cadastre and Survey Regulations c) Valuation Regulations d) Land Administration Regulations e) Physical Planning Regulations
MIN.06/23/2020	Plenary Discussion
	Eva Sawe and Nicodemus Mbwika were nominated to table the COG comments and inputs. Comments from Nicodemus: He appreciated work done to date and highlighted several issues touching on <ol style="list-style-type: none"> 1. Governance issues Centralized system with diversity, NLIS envisages integrated system. The system should not negate devolution. 2. Legal issues Offensive language 3. Administrative Issues The country having the necessary infrastructure to uptake the system Recommendations <ol style="list-style-type: none"> a) Director General to operate PLUPA system, development control should not be managed from the National level because the functions are devolved. There be established a national System whose standards the counties can use to develop their own systems then appropriate linkages be established. Response: There is need for establishment of standards to coordinate development control by both the national and county governments. <ol style="list-style-type: none"> b) With reference to PLUPA sec63 and67, development application for all types of development need to be done with the county

governments. As the draft regulations are, it mean that counties don't have any responsibility on strategic projects which are a preserve of the national government

Response:

Development control should be through the NLIS system and the county governments have a role where the project is being undertaken in that particular county. The counties would only channel projects deemed to be strategic or intercounty to the relevant approving authorities

- c) Sec 90 of PLUPA requires development of general regulations under the Act. there is need to stablish a clear link between the draft Regulations submitted to the (under section 90) and the electronic system ones

Response:

The manual processes need to be regulated before the electronic regulations. The two have been tied together.

- d) Reg 12 PLUPA- establishing a standing appeal committee at National Level, PLUPA is duplication of roles as PLUPA has very clear dispute resolution mechanism, the Liaison Committees. The existing resolution mechanism should be used and a member with IT background be adopted as a member in the existing committees.

Response:

The functions of the two committees are different the appeals committee under electronic regulations is purely administrative, dealing with issues of access to user accounts. Liaison committees established under PLUPA are for handling disputes arising from planning processes

- e) The CS should not prescribe fees for counties as counties have responsibility to prescribe their own fees.

Response:

There is need to coordinate how the various fees are generated

- f) The Land Administration regulations provide that Development Control issues for private land shall be handled by the CS. This is offensive and does not sit well with the County Governments who have a direct role on development control

Response:

All development processes start at the county level and approvals ae done there. However, administrative processes to inform eventual registration are vested with the CS

- g) Regarding Extension and renewal of Lease, NLC has the mandate under the CoK and laws to manage such transactions on behalf of the county governments and not the CS, this mandate according to the County government should be retained with NLC.

Response:

Section 13 of the Land Act, gives the mandate of NLC to make rules in extension and renewal of Leases. The aspect of processing leases is vested with the CS. Extension of Leases is with CS, since leases before expiry is private land. It follows that renewal and allocation processes are vested with the NLC.

Eva Sawe

1. The proposed amendments to Survey regulations should be stayed awaiting the amendment of the Survey Act. The principal Act should be amended first to align it with the Constitution before the regulations to avoid double work.

Response:

The taskforce restricted itself to the provisions of the existing Survey Act and Regulations. However, it noted areas of regulations that need to be improved to bring them up to date with the system, pending the amendment of the Act

2. Land Allocation: Reg 26. Mandates the CS to execute Leases. The CS should be replaced with NLC in line with the Land Act. Article 62 (3) mandates the NLC to manage public land. Further reference is made to the Supreme Court Advisory paragraph 2, which states that this is the function of the NLC.

Response:

Article 63 of the Constitution is clear on categories of public land. When land is allocated, it becomes private land and is under the CS. Leases are executed on private land.

3. The proposed Standing Appeal Committee should be established in consultation with COG and NLC. Article 259 of the COK provides that there should be consultations between the two level of Government in undertaking different activities.

- Propose membership of the committee should be 3 MOLPP reps, 3 COG reps while the number of private sector reps is reduced to ensure the total membership does not exceed the 9 stipulated in Mwongozo,
- There should be County Standing Committees in addition to the national one as NLIS will be administered in different counties.

Response:

The Registration team will deliberate further on this.

4. Regarding Stamp Duty, under Reg (2), Counties should be left to dictate own payment methods. Further, County government should have control of the NLIS system.

Response:

Stamp Duty is a tax and established by the National Treasury and collected by KRA.

Comments from Hon Ngeno.

- The Constitution provides rules of all players. Thus, the taskforce should be alive to its provision as they formulate the regulations. Further, the Taskforce should be alive to the Report by the Transition Authority dated 1st April 2016 which details the roles of national government and county government. Also, Sections 13 (2) of the Land Act denies the role of CS and NLC.
- Section 56(3) PLUPA provides that the county governments shall have power within their jurisdiction to consider and approve all development application and provide development permission
- Issue of Extension of Leases is in the domain of the NLC and the Taskforce should ensure this is upheld.

Comments from Nicholas Waweru, Director Physical Planning, Kiambu County

- County governments should have control of the national strategic projects as they will be implemented in counties

Response:

- Legal notice 156 provides for classification of the projects and the role of CS and Director General of Physical and Land Use Planning on the same. This issue can be deliberated further.

Comments from Elizabeth Mburu- Director, Meru County

- DG should not control the PLUPA system. The system should be established in collaboration with County Governments.

Response

Sections 103 and 114 of the Land Act provide safeguards against abuse of mandates vested with the two levels of government.

The proposed Technical Committee is a hurdle in the county in fast tracking the development application process

Response

The Committee is important to check standards and validation of the applications; this is good for ownership of the processes and to ensure the County Director approves application on point of information as envisaged in PLUPA 20 (g).

- DG should circulate the plans to the Counties on the Strategic projects.
- CS should not overall mandate on private land. In case of agricultural land, whose subdivision is controlled by Land Control Boards established by the CS, it has proven difficult for counties to tame the boards. The boards should be controlled by the County governments.

Response:

The Land Control Board is in place as per the Land Control Act, which stands un-repealed. However, their effectiveness and practicability of the Act should be considered, moving forward.

- Survey is a devolved function but so far the counties have been locked out of the survey process by the Survey Act.
- During presentation of Stamp Duty regulations, there was mention of other valuation regulations already in circulation, but which have not been brought to the attention of the counties. This does not sit well with devolution

Response:

The private valuers incorporation regulations have been drafted and will be circulated at the right time by the relevant team.

Comments from Sarah Masaki- CECM Muranga County

- There is concerted effort to lock out the County governments from the formulation of the regulations and so far public notices published indicate the regulations are being established in consultation of the National Government and NLC. Counties should be considered at the inception stage of such tasks.


Response

The Taskforce seeks views to make the draft rich and is willing to incorporate CoG views.

- Survey regulations left out planning role, which presents a loophole of subdivisions being undertaken by surveyors without reference to planners.
- Development control is a county function and so control of the system should not be left with the DG.

	<ul style="list-style-type: none"> • Role of CS in extension of lease need to be clarified as it's a development application and should be tabled at the county. <p>Response: The Survey is premised on the requisite approvals and the survey module is established on this understanding.</p> <p>Comments from Mwenda Riungu- Tana River</p> <ul style="list-style-type: none"> • Regulations are not speaking to each other. No linkage of the different regulations. <p>Response The regulations are based on clear workflows. The taskforce should relook into this matter.</p> <ul style="list-style-type: none"> • There should be clear linkage of PLUPA general regulations and electronic regulations. • On Land Administration, how will the approvals be done electronically, the Land Administration regulations do not mention the role of County Government.
MIN.07/23/2020	Way forward
	<p>Chairman Remarks</p> <ul style="list-style-type: none"> • County government has the resources to do the NLIS system. The system will be rolled out phase by phase. • Other county systems should be linked to the NLIS. • Involvement of the stakeholders is timely since these are the draft documents. CoG should consider submitting a comprehensive written memorandum to the Taskforce <p>Ng'eno Remarks</p> <ul style="list-style-type: none"> • COG have been involved in several consultative meetings in the land sector and just like in previous engagements, CoG should be able to guide the regulation process. • Taskforce should ensure the regulations are informed by the laws and the TA report and Article 62 for the CoK on supremacy of the Institutions established to govern the land sector such as the NLC. • Section 56 (c) of PLUPA should be respected as it gives the counties the mandate to consider applications and grant development permission. Under Sec. 69 (4), CS receives secondary applications whose approval has been granted by the County Government. • The CoG will submit a written memorandum. • The taskforce should avail the improved regulations for validation by CoG before they are forwarded to the CS.
MIN.08/23/2020	Adjournment and Date of the Next Meeting
	<ul style="list-style-type: none"> • Eugene Lawi gave the vote of thanks and acknowledged all participants for the fruitful engagement. • The meeting ended at 4.38pm with closing prayers form Caroline Wanjeri. • The next meeting was scheduled for Thursday 19th May 2020 from 10:00a.m with Treasury and the Kenya Revenue Authority.

Approval

Chairman  Date. 10/6/2020

Secretary  Date. 10/06/2020

Secretary  Date. 10/06/2020



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401 -00100,
Nairobi.

Tel : (020) 2403314, 2403313
+254 729 777 281
E-mail: info@cog.go.ke

Ref: COG/2/13/Vol.16

28th May, 2020

Ms. Faridah Karoney
Cabinet Secretary
Ministry of Lands and Physical Planning
NAIROBI

Dear Ms. Karoney,

**REQUEST FOR A COURTESY CALL TO DISCUSS THE PROPOSED LANDS TRANSACTIONS
(ELECTRONIC) REGULATIONS, 2020**

We refer to the above subject matter.

The Council of Governors has reviewed the Draft Land Transactions (Electronic) Regulations, 2020 and note that they offer enormous benefits in the digitization of land records as a measure of improving service delivery in land management. However, there are fundamental issues in the draft regulations that clawback on the spirit of devolution contrary to the Constitution of Kenya, 2010.

Accordingly, the Council would like to request for a meeting between yourself and the Governors in the Legal and Human Rights Committee and Urban Development Planning and Lands Committee during the second week of June at a date and time of your convenience to deliberate on these issues in a bid to develop a shared view point.

We look forward to receiving your confirmation on this meeting.

Thank you for your continued support to the Council.

Yours sincerely,

H.E Hon. FCPA Wycliffe Ambetsa Oparanya, EGH, CGJ
Chairman, Council of Governors

CC: Excellency Governors Urban Development, Planning and Lands Committee
Excellency Governors Legal and Human Rights Committee



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE DRAFT LAND REGULATIONS

FROM

THE COUNCIL OF GOVERNORS

INTRODUCTION

The Ministry of Lands and Physical Planning, the National Land Commission and County Governments have the mandate to administer the various land law statutes including the Land Registration Act, 2012, the Land Act, 2012, the Survey Act, Cap 299, the Community Land Act, 2016, the Physical Planning and Land Use Act, 2019 and the Land Adjudication Act, Cap 284.

The Land Registration Act 2012 and the Land Act 2012 require the Cabinet Secretary Ministry of Lands and Physical Planning (MOLPP) and the National Land Commission to develop and implement a National Land Information System and to maintain a land register.

It is against this backdrop that the legal requirement and the broader e-government strategy of modernization of government through improving access to government services that the MOLPP and the NLC are collaborating to digitize land records as a measure of improving service delivery in land management. The proposed Regulations are still in the process of being developed and so far drafts intended to guide public participation and stakeholder involvement have been published and shared with stakeholders.

Under the proposed Regulations, the land registration and administration processes as set out in the Land Act, Land Registration Act, the Survey Act, the Physical and Land Use Planning Act and the Stamp Duty Act are not envisaged to change save from the digitization of the processes.

So far the following drafts have been developed and are being subjected to public participation:

1. Survey (Electronic Cadastre Transactions) Regulations, 2020;
2. Stamp Duty (Valuation) Regulations, 2020;
3. Stamp Duty (Amendment) Regulations, 2020;
4. Survey (Amendment) Regulations, 2020;
5. Physical and Land Use Planning (Electronic Development Control And Enforcement System) Regulations, 2020;
6. Land (Amendment) Regulations, 2020;
7. The Land (Extension and Renewal of Leases) (Amendment) Rules, 2020;
8. Land Registration (Electronic Transactions) Regulations, 2020; and
9. The Land (Allocation of Public Land) (Amendment) Regulations 2020.

Major Issues that need consensus between the two levels of Government

1. While devolution entails a rejection of centralization and recognizes diversity, the essence of National Land Information System (NLIS) is integration of systems that has a centralized view of things. This position creates contradictions that must be addressed and which the current draft regulations do not address. Since devolution is entrenched in the supreme law (CoK 2010), NLIS must be developed, adopted and implemented in a manner that is consistent with the constitution.
2. The proposed draft regulations grant development approval rights for projects of strategic national importance as well as intercounty projects to the cabinet secretary in charge of lands. This is in violation of the Constitution of Kenya 2010, Physical and Land Use Planning Act 2019 and the County Government Act. More fundamentally, development fees are a major revenue stream (Own Source Revenues) for the County Governments and therefore need to be safeguarded.

The Council therefore recommends that the following issues be reviewed for purposes of improving the Draft Land Regulations:

ISSUES AND RECOMMENDATIONS

1. DRAFT PHYSICAL AND LAND USE PLANNING (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS, 2020

No	Regulation	Proposed amendments	Rationale/Justification
1	Regulation 3 “(1) There shall be established an electronic development control and enforcement System being a module within the National Land Information System for the purpose of handling applications for development permission.”	(2) There shall be established an electronic development control and enforcement system managed and controlled by the County Governments based on National Standards for the purpose of handling applications for development permission at the County level.	<ul style="list-style-type: none"> • National Government to create an interface with the County Systems. • This will safeguard the institutional and functional Integrity of the County Governments as is envisaged by the Constitution of Kenya

2	Regulation 4 “(1) The Director-General shall maintain in the system, an electronic database for the – (i) approved physical and land use plans in accordance to provisions of the First and Second Schedules of the Act; (ii) development control instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals; and (iii) registers of documents submitted by applicants for development permission as provided in Schedule 1. (2) The database shall be displayed and retrieved in such a manner that enables–	“(1) The County Directors of Physical and Land Use Planning shall maintain in the system, an electronic database for the – (i) approved physical and land use plans in accordance to provisions of the First and Second Schedules of the Act; (ii) development control instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals; and (iii) registers of documents submitted by applicants for development permission as provided in Schedule 1.”	<ul style="list-style-type: none"> • This responsibility to be vested with the respective County Directors of Physical and Land Use Planning to safeguard the institutional and functional Integrity of the County Governments as is envisaged by the Constitution of Kenya
---	---	--	--

<p>3</p>	<p>Regulation 5</p> <p>“(1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall—</p> <p>(i) establish online links with relevant authorities for ease of information cross-referencing;</p> <p>(ii) enable module for property searches, cadastre outlay and property survey attributes for retrieval of such information for submission of development applications; and</p> <p>(iii) Process development applications within the prescribed projects of national importance in accordance with</p>	<p>“(1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the County Executive Members in charge of physical and land use planning shall—</p> <p>(i) establish online links with relevant authorities for ease of information cross-referencing;</p> <p>(ii) enable module for property searches, cadastre outlay and property survey attributes for retrieval of such information for submission of development applications; and</p> <p>(iii) Process development applications within the prescribed projects of national importance in accordance with section 69 of the Act.</p>	<p>Processing of development applications and grant of development permissions are vested with the County Governments pursuant to section 57 of the Physical and Land Use Planning Act (“PLUPA”) which reads in part as follows:</p> <p>“(1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.”</p> <p>Further Section 69 of the PLUPA refers to consideration of the Cabinet secretary of a development permission (meaning a permission that has already been granted by the County Government.)</p>
----------	--	---	---

	<p>section 69 of the Act.</p> <p>(2) There shall be a County Government system operators who shall be -</p> <p>(i) the County Director of Physical and Land Use Planning in accordance with section 20(h) the Act;</p> <p>(ii) such authorised planning officers in designated planning units in accordance with section 20(g) of the Act;</p> <p>(iii) such authorised technical officers in the relevant authorities or agencies in accordance to section 60(1) of the Act; and</p> <p>(iv) such authorised finance officers in designated finance units in accordance with section 120 of the</p>		
--	--	--	--

4	<p>County Government Act and section 157, 159 and 171 of the Public Finance Management Act.”</p> <p>Regulation 12</p> <p>“(1) The Cabinet Secretary in consultation with the National Land Commission shall appoint an Electronic Appeals Standing Committee to hear appeals against the termination of user’s account.”</p>	<p>The County Physical and Land Use Planning Liaison Committee shall hear appeals against the termination of user’s account within fourteen (14) days of the decision by the county executive committee member.</p>	<p>The appeals mechanism is clearly highlighted under Part IV of the PLUPA 2019 which provides in part as follows:</p> <p>“(3) An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.</p> <p>(4) An applicant or an interested party who files an appeal under sub-section (3) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court.”</p>
---	--	---	--

5	Regulation 15	<p>“(1) The system shall generate an automated confirmation of receipt of the application bearing the date and time of submission and hyperlink of the documents attached;</p> <p>(2) The application shall be received and downloaded by the authorised planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by-</p> <p>(i) the Cabinet Secretary for proposed projects that fall in the classification of strategic national importance or inter-county;</p> <p>(ii) the County Executive Committee Member for proposed developments that fall outside those specified in paragraph (i)</p>	<p>(2) The application shall be received and downloaded by the authorised county planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by-</p> <p>(i) the County legislation for proposed projects that fall in the classification of strategic national importance or inter-county;</p>	<p>All developments including projects for strategic national importance or inter-county shall be subject to fees and charges as prescribed by county legislation</p>
---	---------------	--	--	---

<p>6</p> <p>Regulation 17</p> <p>“(1) Subject to the provisions of Section 60 of the Act, the authorised planning officer shall transmit an electronic copy of the application to the authorised technical officer of the relevant authorities and agencies to review and comment.</p> <p>(2)The fully circulated application shall be received by the –</p> <p>(i) Director-General for the projects of national importance for onward approval by the Cabinet Secretary;”</p>	<p>(2)The fully circulated application shall be received by the –</p> <p>(i) county director of physical and land use planning for the prescribed projects of national importance for onward approval by the County Executive Committee Member of physical and land use planning;”</p>	<p>Section 57 of PLUPA provides as follows</p> <p>“(1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.”</p>
<p>7</p> <p>Regulation 19</p> <p>“(1) The Cabinet Secretary shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69(4) of the Act;”</p>	<p>(1) The County Executive Member in charge of physical and land use planning shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69 and 33 of the Act</p>	<p>Processing of development applications and grant of development permissions of vested with the County Governments under section 57 of PLUPA.</p> <p>Section 69 on refers to consideration of the Cabinet secretary of a development permission (meaning a permission that</p>

			<p>has already been granted by the County Government.)</p> <p>Further Section 69 refers to section 33 of the PLUPA which provides that, "The County Executive Committee members of all counties participating in the Inter-County physical and land use development plan shall separately submit the plans to the respective County Assemblies for approval and thereafter submit the same to the Director-General of Physical and Land Use Planning for coordination and certification."</p>
--	--	--	---

General Comments

- Regulations envisaged in section 90 of PLUPA have not been completed and ideally should give effect to the electronic regulations since they describe the processes.
- While devolution entails a rejection of centralization and recognition of diversity, the essence of National Land Information System (NLIS) is integration of systems that has a centralized view of things. This creates contradictions that must be addressed which the current draft regulations do not address. Since devolution is entrenched in the supreme law (COK 2010), NLIS must be developed, adopted and implemented in a manner that is consistent with the constitution.
- The proposed draft regulations grant development approval rights for projects of strategic national importance as well as intercounty projects to the cabinet secretary in charge of lands. This is in violation of the Constitution of Kenya 2010, Physical and Land Use Planning Act 2019 and the County Government Act. More fundamentally, development fees are a major revenue stream (Own Source Revenues) for the County Governments and therefore need to be safeguarded.

2. DRAFT LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020

No	Regulation	Proposed amendments	Rationale/ Justification
1	<p>Regulation 6</p> <p>“Cadastral maps shall for purposes of registration under these Regulations, be maintained in electronic form.”</p>	<p>Cadastral maps shall for purposes of registration under these Regulations, be maintained by the County Governments in electronic form</p>	<p>Cadastral maps are generally regarded as an essential part of the land management infrastructure in most Countries. cadastral surveying and cadastral mapping are a function of county and as such the cadastral maps should be maintained at county level</p>
2	<p>The Cabinet Secretary in consultation with the National Land Commission shall appoint an Electronic Appeals Standing Committee to hear appeals against the termination of user’s account.</p>	<p>Add the Cabinet Secretary in consultation with CoG and National Land Commission</p>	<p>As per Article 189 of the Constitution, collaboration between the two levels of Government is prudent in safeguarding the interests of Kenyans.</p>
3	<p>2)The membership of the Electronic Appeals Standing Committee shall comprise of:(a)Three representatives from the Ministry; (b)One representative from National Land Commission (c) One representative from Council of Governors;</p>	<p>Add 2 members from the council of Governors and retain 2 from private sector</p>	<p>The 'Mwongozo, The Code of Governance "The board shall have a minimum of seven members and a maximum of nine members," Since the Council of Governors represents 47 County Governments, at least three representatives from the Counties should be part of the Electronic appeal standing committee</p>

	(d) Four representatives from the private sector provided that one of them shall be an Information Technology Specialist well versed with system forensic audit and cybercrime	
4	New Insertion There should be a County Electronic Appeals Standing Committee established at County level – the Land management system should be administered at different Counties.	The Electronic Appeals Standing Committee should be established at county level where an aggrieved party then can first appeal to the County committee before escalating to the courts. Otherwise, most aggrieved parties will quickly head to court and cause all manner of hiccups to the counties.

3. DRAFT LAND (EXTENSION AND RENEWAL OF LEASES) (AMENDMENT) RULES, 2020

No	Regulation	Proposed amendments	Rationale/ Justification
1	Regulation 4: “(3) Where the County Executive Committee Member approves an application under paragraph (2), the County Executive Committee Member	3) Where the County Executive Committee Member approves an application under paragraph (2), the County Executive Committee Member shall inform the National Land Commission to –	Amend “Cabinet Secretary” and include “National Land Commission” in consultation with the “County Government” as the listed functions are the prerogative of the National Land Commission and the County Government as opposed to the National Government.

<p>shall inform the Cabinet Secretary to-</p> <p>(a) require the lessee to have the land revalued in order to determine the land rent and other requisite fees, payable;</p> <p>(b) require the lessee to have the land re-surveyed and georeferenced, where applicable;</p> <p>(c) prepare a lease for the extended period, stating the terms and conditions of the extension; and</p> <p>(d) have the lease executed;</p> <p>(e) forward the executed lease to the Registrar for the registration and the noting of the extended term in the register.</p>	<p>(a) require the lessee to have the land revalued in order to determine the land rent and other requisite fees, payable;</p> <p>(b) require the lessee to have the land re-surveyed and georeferenced, where applicable;</p>	<p>This is pursuant to Article 62 (3) of the Constitution of Kenya which reads as follows:</p> <p>“Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under--</p> <p>(a) clause (1) (a), (c), (d) or (e); and</p> <p>(b) clause (1) (b), other than land held, used or occupied by a national State organ.”</p> <p>Further, the above position was buttressed in the Supreme Court Advisory Opinion Reference No. 2 of 2014</p>
--	--	---

4. DRAFT SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS AND SURVEY (AMENDMENT) REGULATIONS

No	Regulation	Proposed amendments	Rationale/ Justification
1	All regulations	Amendment of these draft regulations to be stalled until amendment of the Survey Act Cap 299 of 1961 is done.	The current Survey Act Cap 299 of 1961 has not been amended since the inception of the Constitution 2010 to incorporate County Governments. The Council therefore proposes amendment of the principal Act before amendment of the Regulations.

5. DRAFT LAND (ALLOCATION OF PUBLIC LAND) AMENDMENT REGULATIONS

No	Regulation	Proposed amendments	Rationale/Justification
1	Regulation 34A “A letter of allotment issued under the provisions of this Act and these regulations may be done in electronic form.”	“A letter of allotment after provision of approved plans shall be issued under the provisions of this Act and these regulations may be done in electronic form.”	The base maps and cadaster plans should be based on approved plans after which allotment is done.
2	Regulation 36: “36 (1) The cabinet secretary shall prepare and execute leases emanating from allocation of public land.”	(1) The National Land Commission shall prepare and execute leases emanating from allocation of public land. (3) In order to facilitate the preparation of leases on public	Amend “Cabinet Secretary” and include “National Land Commission” in consultation with the “County Government” as the listed functions are the prerogative of the National Land Commission and the County

<p>(3) In order to facilitate the preparation of leases on public land, the cabinet secretary shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the Schedule from the office or authority responsible for surveys.</p> <p>(5) Upon receipt of the sealed cadastral plan and cadastral map, a lease document in Form LA 13 set out in the Schedule and shall be executed by an officer designated by the Cabinet Secretary by notice in the Gazette.”</p>	<p>land, the National Land Commission shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the Schedule from the office or authority responsible for surveys</p>	<p>Government as opposed to the National Government.</p> <p>This is pursuant to Article 62 (3) of the Constitution of Kenya which reads as follows:</p> <p>“Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under--</p> <p>(a) clause (1) (a), (c), (d) or (e); and</p> <p>(b) clause (1) (b), other than land held, used or occupied by a national State organ.”</p> <p>Further, the above position was buttressed in the Supreme Court Advisory Opinion Reference No. 2 of 2014 which in part provided as follows:</p> <p>“The NLC is required to obtain ‘consent’ from the National or County Governments in the discharge of its functions as stipulated in section 5 (2) (a) of the NLC Act.</p> <p>That provision was to be read in conjunction with Article 259(11) which required that any function or power that was to be exercised on the advice</p>
---	--	--

			or recommendation or with the approval or consent of or in consultation with another ought only to be exercised after such fact."
--	--	--	---



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

Tel: +254(0)20 2718050
Fax: +254(0)20 2724470
Email: records@molpp.go.ke
Web: www.molpp.go.ke
When replying please quote:

Ardhi House
1st Ngong Avenue
P.O. BOX 30450-00100
Nairobi, KENYA

Ref. MOLPP/ADM/CSO/1/357

June 9, 2020

Hon. Wycliffe Ambetsa Oparanya, EGH, CGJ
Chairman
Council of Governors
P. O. Box 40401-00100
NAIROBI

Dear *Chairman,*

RE: **DELIBERATION ON PROPOSED LAND TRANSACTIONS
(ELECTRONIC) REGULATIONS 2020**

Reference is made to the above-named subject, your letter dated May 28, 2020, our letter dated June 3, 2020 and our subsequent virtual communications.

We take note of your recognition of our efforts to develop various sets of draft regulations to support electronic land transactions, registration and conveyancing.

We also acknowledge your interest in participating in the review of the said draft regulations.

In light of the foregoing, we invite Governors in the Legal and Human Rights Committee and Urban Development Planning and Lands Committee to a virtual meeting on June 11, 2020 at 10.00 a.m. The meeting credentials will be shared on Wednesday June 10, 2020.

Thank you for your continued support and cooperation.

Yours *Sincerely,*

Farida Karoney, EGH
CABINET SECRETARY



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

CABINET SECRETARY'S BRIEF ON ISSUES RAISED BY THE COUNCIL OF GOVERNORS ON PROPOSED ELECTRONIC LAND TRANSACTIONS REGULATIONS, 2020

1. PHYSICAL AND LAND USE (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT) REGULATIONS, 2020

No	Regulation	Proposed amendments	Rationale/Justification	Response
1.	Regulation 3 “(1) There shall be established an electronic development control and enforcement System being a module within the National Land Information System for the purpose of handling applications for development permission.”	(2) There shall be established an electronic development control and enforcement system managed and controlled by the County Governments based on National Standards for the purpose of handling applications for development permission at the County level.	<ul style="list-style-type: none"> • National Government to create an interface with the County Systems. • This will safeguard the institutional and functional Integrity of the County Governments as is envisaged by the Constitution of Kenya 	<ul style="list-style-type: none"> • The system is to be established in accordance to provisions of Section 6(h) of the Land Act, that requires the CS in collaboration with the NLC to establish the System. • The drafting has taken care of the interlinkage of processes between the county and the national government. It is as a unitary system with separate workflow paths.
2.	Regulation 4 “(1) The Director-General shall maintain in	“(1) The County Directors of Physical and Land Use Planning shall maintain in the	<ul style="list-style-type: none"> • This responsibility to be vested with the respective County Directors of Physical and Land Use 	<ul style="list-style-type: none"> • The system administration as envisaged is the role of the CS, the authority that

No	Regulation	Proposed amendments	Rationale/Justification	Response
	<p>the system, an electronic database for the –</p> <p>(i) approved physical and land use plans in accordance to provisions of the First and Second Schedules of the Act;</p> <p>(ii) development control instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals; and</p> <p>(iii) Registers of documents submitted by applicants for development permission as provided in Schedule 1.</p> <p>(2) The database shall be displayed and retrieved in such a manner that enables–</p>	<p>system, an electronic database for the –</p> <p>(i) approved physical and land use plans in accordance to provisions of the First and Second Schedules of the Act;</p> <p>(ii) development control instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals; and</p> <p>(iii) registers of documents submitted by applicants for development permission as provided in Schedule 1.”</p>	<p>Planning to safeguard the institutional and functional Integrity of the County Governments as is envisaged by the Constitution of Kenya</p>	<p>establishes the system. The operational/ technical office of physical and land use planning is the Director General who has the role of formulating policies and guidelines on physical and land use planning coordinating planning by the counties</p> <ul style="list-style-type: none"> • The coordinating role of the DG is based on Article 191, specifically 191 (3) (b) (c) on the need to provide uniformity across the nation by provision of norms and standards and promotion of equal opportunity or equal access to the government services • However, PLUPA 13 does not provide for the role of DG in system establishment. The section should be amended to allow the DG to :- <ul style="list-style-type: none"> i. establish a land information system for guiding and coordinating physical and land use planning across the country; ii. coordinate the processing of inter-county

No	Regulation	Proposed amendments	Rationale/Justification	Response
				<p>development applications; communicate the decisions of the national government on development applications of strategic national importance</p> <ul style="list-style-type: none"> • The regulation may be amended to read the Director General shall design and oversee and support the county sub-systems...” <p>In turn, the County Director of physical and land use planning shall operate and maintain the system in accordance to standards and specifications set by the Director General</p>
3.	Regulation 5 “(1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall—	“(1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the County Executive Members in charge of physical and land use planning shall— (i) establish online links with relevant authorities for ease	Processing of development applications and grant of development permissions are vested with the County Governments pursuant to section 57 of the Physical and Land Use Planning Act (“PLUPA”) which reads in part as follows:	<ul style="list-style-type: none"> • This is a matter that should be carefully interpreted in view of the roles of the two planning authorities on development permission. Section 69 (4) needs to be clearly interpreted. In terms of approval of development permission, the CECM Member is confined to county matters only.

No	Regulation	Proposed amendments	Rationale/Justification	Response
	<p>(i) establish online links with relevant authorities for ease of information cross-referencing;</p> <p>(ii) enable module integration for property searches, cadastre outlay and property survey attributes for retrieval of such information for submission of development applications; and</p> <p>(iii) Process development applications within the prescribed projects of national importance in accordance with Section 69 of the Act.</p> <p>(2) There shall be a County Government system operators who shall be –</p> <p>(i) the County Director of Physical and Land Use Planning in</p>	<p>of information cross-referencing;</p> <p>(ii) enable module integration for property searches, cadastre outlay and property survey attributes for retrieval of such information for submission of development applications; and</p> <p>(iii) Process development applications within the prescribed projects of national importance in accordance with section 69 of the Act.</p>	<p>“(1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.”</p> <p>Further Section 69 of the PLUPA refers to consideration of the Cabinet secretary of a development permission (meaning a permission that has already been granted by the County Government.)</p>	<p>The matters being handled at this level [in (i) and (ii)] are national. Article 186 (3) provides that a function or power not assigned by the Constitution or national legislation to a county is a function or power of the national government</p> <ul style="list-style-type: none"> • Where deemed necessary, the CS may through a notice in the gazette make alternate regulations applicable to development of projects of inter-county or strategic national importance and such regulations will take precedence over this regulation

No	Regulation	Proposed amendments	Rationale/Justification	Response
	<p>accordance with section 20(h) the Act; (ii) such authorised planning officers in designated planning units in accordance with section 20(g) of the Act; (iii) such authorised technical officers in the relevant authorities or agencies in accordance to section 60(1) of the Act; and (iv) such authorised finance officers in designated finance units in accordance with section 120 of the County Government Act and section 157, 159 and 171 of the Public Finance Management Act.”</p>			
4.	<p>Regulation 12 “(1) The Cabinet Secretary in consultation with the National Land</p>	<p>The County Physical and Land Use Planning Liaison Committee shall hear appeals against the termination of</p>	<p>The appeals mechanism is clearly highlighted under Part IV of the PLUPA 2019 which provides in part as follows:</p>	<p>The two appeal processes (under the draft electronic regulations and under PLUPA) are not interchangeable. The liaison committee is a framework for hearing</p>

No	Regulation	Proposed amendments	Rationale/Justification	Response
	Commission shall appoint an Electronic Appeals Standing Committee to hear appeals against the termination of user's account."	user's account within fourteen (14) days of the decision by the county executive committee member.	<p>“(3) An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.</p> <p>(4) An applicant or an interested party who files an appeal under sub-section (3) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court.”</p>	disputes arising from physical planning activities and decisions while the appeal process under the draft regulations is about system use and administration
5.	Regulation 15 “(1) The system shall generate an automated confirmation of receipt of the application bearing the date and time of submission and hyperlink of the	(2) The application shall be received and downloaded by the authorised county planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by— (i) the County legislation for proposed projects	All developments including projects for strategic national importance or inter-county shall be subject to fees and charges as prescribed by county legislation	Further to clarification made on issue 3 above, it is strongly recommend for CoG to push for both 1. “shared services Agreement”[CGA118] and invoke CGA 114 to ensure local ownership and 2. Tariffs and pricing of DC services to ensure all concerned authorities benefit.

No	Regulation	Proposed amendments	Rationale/Justification	Response
	<p>documents attached; (2) The application shall be received and downloaded by the authorised planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by— (i) the Cabinet Secretary for proposed projects that fall in the classification of strategic national importance or inter-county; (ii) the County Executive Committee Member for proposed developments that fall outside those specified in paragraph (i)</p>	<p>that fall in the classification of strategic national importance or inter-county;</p>		
3.	<p>Regulation 17 “(1) Subject to the provisions of Section 60 of the Act, the authorised planning officer shall</p>	<p>(2) The fully circulated application shall be received by the – (i) county director of physical and land use planning for the prescribed projects</p>	<p>Section 57 of PLUPA provides as follows “(1) A person shall not carry out development within a county without a development permission granted by</p>	<p>This part needs to be relooked in line with the roles of the planning authorities with regard to strategic and inter-county projects as provided for in Section 69 of PLUPA</p>

No	Regulation	Proposed amendments	Rationale/Justification	Response
	<p>transmit an electronic copy of the application to the authorised technical officer of the relevant authorities and agencies to review and comment.</p> <p>(2)The fully circulated application shall be received by the –</p> <p>(i) Director-General for the prescribed projects of national importance for onward approval by the Cabinet Secretary;”</p>	<p>of national importance for onward approval by the County Executive Committee Member of physical and land use planning; ”</p>	<p>the respective county executive committee member.”</p>	
4.	<p>Regulation 19 “(1) The Cabinet Secretary shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69(4) of the Act;”</p>	<p>(1) The County Executive Member in charge of physical and land use planning shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69 and 33 of the Act</p>	<p>Processing of development applications and grant of development permissions of vested with the County Governments under section 57 of PLUPA. Section 69 on refers to consideration of the Cabinet secretary of a development permission (meaning a permission that</p>	<p>Again this needs to be clarified</p>

- While devolution entails a rejection of centralization and recognition of diversity, the essence of National Land Information System (NLIS) is integration of systems that has a centralized view of things. This creates contradictions that must be addressed which the current draft regulations do not address. Since devolution is entrenched in the supreme law (CoK 2010), NLIS must be developed, adopted and implemented in a manner that is consistent with the constitution.

Response: clarified by response to issue no. 2 on the matrix

- The proposed draft regulations grant development approval rights for projects of strategic national importance as well as intercounty projects to the cabinet secretary in charge of lands. This is in violation of the Constitution of Kenya 2010, Physical and Land Use Planning Act 2019 and the County Government Act. More fundamentally, development fees are a major revenue stream (Own Source Revenues) for the County Governments and therefore need to be safeguarded.

Response: This has partly been clarified by response to issue no.1. and partly by response to issue no. 3

General Comments by Mr. Augustine Masinde (Director of Physical Planning)

- I. Regulations envisaged in section 90 of PLUPA (provides the procedure for drafting regulations) have not been completed and ideally should give effect to the electronic regulations since they describe the processes.
- II. Draft Regulations in (I) were submitted to the Attorney General’s Office for professional drafting.
- III. The Draft PLUPA Regulations were outputs of robust consultative processes that culminated in the joint forum in Naivasha last year.
- IV. The Draft Regulations were developed by a team of technical officers drawn from the National Government, the National Land Commission and County Government.
- V. The County Government was represented by twelve (12) experts comprising seven (7) technical officers, two (2) CECs and three (3) attorneys. The names of these experts were submitted by CoG.
- VI. Covid-19 pandemic has slowed down the process.
- VII. Once the professionally drafted regulations are returned, the Ministry will share the document with the Council of Governors and other stakeholders.
- VIII. Workshops for discussion and value addition will be conducted.
- IX. What the Taskforce on Formulation of Electronic Land Transactions is doing is a mere translation of the processes captured in the mother regulations (a translation of analogue processes to digital processes to operationalise NLIMS)
- X. We acknowledge your concerns and assure you that the process is still on/ This is work in progress.

NB. The Taskforce may have re-regulated instead of sticking to the business of translation.

2. DRAFT LAND REGISTRATION (ELECTRONIC) REGULATIONS, 2020

Regulation 6	Amend the clause to state: - “Cadastral maps shall for purposes of registration under these Regulations, be	Section 15 LRA provides for maintenance of the maps by the office or authority responsible for Survey.
--------------	--	--

	<p>maintained by the County Governments in electronic form”</p> <p>Land survey and mapping is a county function as per Schedule four of the Constitution.</p>	<p>Survey supports registration, which is a National Government function.</p>
<p>Regulation 13 Electronic Appeals Committee</p> <p>13(5)</p>	<p>Constitution should be clear.</p> <p>How will it be mainstreamed?</p> <p>Will it operate in Nairobi?</p> <p>Should it be decentralized?</p> <p>Provide for appeals to ELC court.</p> <p>Appointment of the committee and parties ought to be independent</p> <p>Add more members representing counties</p> <p>Land industry players such as representatives of LSK, KBA or ISK</p> <p>Appeals should not be capped at 30 days. 90 days is preferable. Moving to court calls for huge costs thus adequate preparation.</p> <p>Insert “e” representative from ISK.</p> <p>“f” representative from Academia</p>	<p>Our proposal is to do away with regulation 13 which provides for Electronic Appeal on the following grounds:</p> <ol style="list-style-type: none"> I. Composition- ad hoc or standing Committee <ul style="list-style-type: none"> - Central vs Decentralized Committees II. Cost implications III. Section 86 LRA provides that appeals arising from decisions of the Land Registrar under the act lie with the ELC Court. IV. Appeal process is time consuming.

3. DRAFT LAND (EXTENSION AND RENEWAL OF LEASES) (AMENDMENT) RULES, 2020

The National Land Commission raised similar issues on the proposed rules. A team of experts drawn from the Ministry and NLC was constituted to look into the issues and report back to us. The Council of Governors may identify a few experts to join the already existing committee so that a joint report may be presented us at a date jointly decided upon by us.

4. DRAFT SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS, 2020 and DRAFT SURVEY (AMENDMENT REGULATIONS), 2020

Introduction

In the memorandum, the Council of Governors proposes that the above-named regulations be stalled until the amendment of the Survey Act (Cap. 299) is done. The Council of Governors may not have taken time to look at the draft regulations, since no other comments were offered.

Some comments

- i. The Survey Act (Cap. 299) focusses on quality control by the Director of Surveys to support the guarantee of title to land by the National Government. The quality control involves: -
 - (a) Persons who may carry out surveys land for purposes relating to registration of transactions in or of title to land
 - (b) Standards to be met in execution of the said surveys in (a)

It is unlikely that the amendment of the Survey Act, as mentioned by COG, will remove the need for quality control, regardless of introduction of new actors (if any)

- ii. The cadastre function, in both physical and electronic formats, underpins and supports all land transactions in Kenya, which make reference to the proprietary unit of land. Functions such as Land Registration, Land Valuation, Land Administration, Physical and Land Use Planning can only be effectively executed with requisite input from the cadastre.
- iii. Identification of proprietary units for purposes of land rent, land rates, land allocation, administration and identification of community land and public land requires input from the Cadastre. For Counties to carry out functions related to revenue generation from their land resource, effectively, input from the cadastre is essential.
- iv. Any action to stall the Draft Survey (Electronic Cadastre Transactions) Regulations, 2020, and the Draft Survey (Amendment) regulations, 2020, will impede/ disable efforts in the development of the other modules within the National Land Information System (NLIS) - that action has the effect of stalling the NLIS. It will also adversely affect all land related functions within the 47 Counties and the National Land Commission.
- v. Part 2 of the Fourth Schedule of the Constitution, in section 8 (County Planning and Development), identifies Survey and Mapping (8) (b)) and Boundaries and Fencing (8(c)) as functions within County Planning and Development. It can therefore be inferred that only the functions that serve the purposes of County Planning and development are devolved. Section 21 of Part 1 of the same Schedule gives National Government power to provide 'general principles of land planning and coordination of planning by counties.'
- vi. It is unclear why the COG has proposed the drastic action regarding these regulations, noting that Survey Act (Cap. 299) was not among the legislations whose timelines were set by Fifth Schedule of the Constitution. The COG should engage the Cabinet Secretary with a view of addressing this matter in a different manner.

- vii. It is noted that once the NLIS and the different modules within it are operational, “the central view of things” will disappear as the system will have a global reach geographically and additional functionalities and linkages will take place in the course of time incrementally

ADDITIONAL COMMENTS ON DRAFT LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020

- viii. The COG is proposing a change in regulation 6 of the Draft Land Registration (Electronic Transactions) Regulations, 2020 to allow for County Governments to maintain the cadastral map. Section 15 of the Land Registration Act states that preparation and maintenance of the cadastral map is the function of the Office or Authority responsible for survey of land (Director of Surveys). Apart from this requiring an amendment to the principal Act, this should be assessed in the light of the comments in (5) and (6)

5. DRAFT LAND (ALLOCATION OF PUBLIC LAND) AMENDMENT REGULATIONS, 2020

The National Land Commission raised similar issues on the proposed rules. A team of experts drawn from the Ministry and NLC was constituted to look into the issues and report back to us. The Council of Governors may identify a few experts to join the already existing committee so that a joint report may be presented us at a date jointly decided upon by us.

-END-