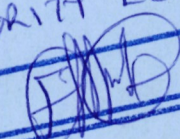


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 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 JUN 2020	DAY: TUESDAY
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LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

MEMORANDUM OF THE LAW SOCIETY OF KENYA

(CONVEYANCING COMMITTEE)

TO

THE TASK FORCE - LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

8TH JUNE 2020

June 8, 2020

**The Chair,
The Task Force - Land Transactions (Electronic) Regulations, 2020**

Greetings,

LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020 - MEMORANDUM OF THE LSK

Introduction

- A. **Article 68** of the Constitution of the Republic of Kenya, 2010 provides for enactment of new land legislation to consolidate and rationalize the registration of titles to land and to generally give effect to the principles and objects of **Chapter 5** on Land and Environment.
- B. The Land Registration Act (Act No. 3 of 2012) (“**LRA**”), the Land Act (“**LA**”) and the Community Land Act (“**CLA**”) (together “the **Land Acts**”) sought to achieve in part this objective with regard to establishing a modern and credible land registration system. Towards this end in 2017, various Land Regulations were published to operationalize the new Land Acts.
- C. As part of reform in the land sector, the Land Acts provide for maintaining land records and documents in electronic form and the LRA Regulations provide for e-Conveyancing.
- D. Pursuant to section 8 of the Statutory Instruments Act (No. 23 of 2013), the Cabinet Secretary, Ministry of Lands and Physical Planning, appointed a Taskforce on Electronic Land Transactions, Registration, Conveyancing and Other Related Activities under the Land Registration Act, 2012, the Land Act, 2012 and the Community Land Act, 2016 (the “**Taskforce**”) to provide for the relevant regulations to support the e-Conveyancing platform.
- E. The Task Force has the enviable task of proposing regulations and legislative changes that will enable the growth of e-Conveyancing in Kenya. It is an exercise which countries like the UK, Canada, Australia and New Zealand, with more reformed land law systems and procedures and with enormous resources at their disposal, have taken decades to implement with mixed results.
- F. The Task Force has prepared draft e-Regulations and pursuant to section 8 of the Statutory Instruments Act (No. 23 of 2013), the Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the Cabinet Secretary, the National Treasury and the National Land Commission notified the general

public that a Regulatory Impact Statement on the proposed Land Transactions (Electronic) Regulations, 2020 had been prepared to assess the impact of the e-Regulations on the community and businesses.

G. By virtue of the notice, all persons likely to be affected by the proposed Regulations are required to submit written comments on the Land Transactions (Electronic) Regulations, 2020.

H. The proposed statutory instruments (“the *e-Regulations*”) are as follows:

- i. **Land Registration (Electronic Transactions) Regulations, 2020**
- ii. **Survey (Electronic Cadastre Transactions) Regulations, 2020**
- iii. **Survey (Amendment Regulations), 2020**
- iv. **Stamp Duty (Valuation) Regulations, 2020**
- v. **Stamp Duty (Amendment) Regulations, 2020**
- vi. **Land (Amendment) Regulations, 2020**
- vii. **Land (Extension and Renewal of Leases) (Amendment) Rules, 2020**
- viii. **The Land (Allocation of Public Land) (Amendments, Regulations), 2020**
- ix. **Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020**

I. The Law Society of Kenya (“LSK”) is a key stakeholder in reforms being undertaken in the land sector. Consistent with its broad mandate, the LSK is mandated to originate proposals on reform of the law and practice to address challenges encountered by practitioners.

J. The LSK contributed the chapter on electronic conveyancing in the Land Regulations and thereby planted the seed for the growth of e-Conveyancing in the country. The LSK has also sought judicial intervention to ensure the introduction and growth of e-Conveyancing proceeds within a legal spectrum so as to ensure a credible and legally defensible system.

K. It is the desire of the LSK that this paradigm shift in land management and registration proceed earnestly and with adherence to best practices. Indeed, it is only in those countries where the law society has taken a central position in the e-Conveyancing process that has shown marked success.

L. An examination of the terms of reference of the Task Force creates an expectation that this exercise will deliver definitive regulations and propose credible solutions to enable e-Conveyancing to take root in Kenya. While an end to end e-Conveyancing process remains the ideal achievable over time, we expect the Task Force to borrow from international best practice and offer a blue print that will deliver a phased credible and secure: *electronic system; procedure for certification of electronic instruments; procedure for execution and verification or certification of digital signatures; the form of e-Conveyancing that is possible in the circumstances of our country having regard to international experiences; electronic transfer and execution of deeds and contracts; seamless and timely electronic funds transfer etc.* These activities should work towards achieving seamless connectivity and access to the information and

resources of all stakeholders and ensure interoperability, accessibility, security etc. of land administration and registration.

M. It should be noted that the implementation of e-Conveyancing is often a structured task that takes several years and require a dedicated team of professional working full time. We would at the very least expect the Task Force to be given sufficient time to benchmark and deliver a workable solution rather than a compromise due to time constraints.

N. The LSK therefore welcomes the e-Regulations and hereby submits its comments structured as follows:

Part 1: General Comments

Part 2: The Present Lay of the Land - Overview of the Current Conveyancing Practice and Land Administration Environment

Part 3: The Future - Guiding Principles and Considerations for Credible E-Conveyancing and Land Administration - Key Priorities and Initiatives

Part 4: Review of the Draft e- Regulations

Part 5: Conclusion and Recommendations – What e-Conveyancing Model for Kenya?

O. We shall proceed to make our comments in the succeeding paragraphs and as per the attached table.

PART 1: GENERAL COMMENTS

1. Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property. Convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance.¹
2. For purposes of this memorandum we have limited the analysis to conveyance of land: the legal process involving the preparation of the sales deed, mortgage (including legal charge) and other related documents of creating, transferring and dealing with an interest in land of whatever tenure.
3. We have taken land administration² as the process of determining, recording and disseminating information about ownership, value and use of land, when implementing land policies.
4. Electronic conveyancing or e- Conveyancing means the exercise of conveying interest in land through electronic means and in this instance we have included the definition to cover tasks in land management which are effected electronically.
5. Kenya is at the infancy stage of e-Conveyancing and land administration. With the introduction of the Land Management Information System (LIMS), tangible progress has been made in the process

¹ Conveyancing and Law of Property Act 1881

² The United Nations' definition of Land Administration

of migrating documents and deeds to the digital platform. The exercise is however still at its infancy and localized to a few registries.

6. **Need for Benchmarking:** e-Conveyancing has had mixed results in most countries. We note a few pointers from the following jurisdictions:

- **UK** – after several years of trying to achieve an end to end conveyancing process, the exercise has been held in abeyance. They revoked the Land Registration (Electronic Conveyancing) Rules 2008 and the Land Registration (Proper Office) Order 2013, in order to allow HM Land Registry to continue with its digital transformation programme, and modernise and simplify its services.
- **New Zealand** – NZ has the most advanced e-Conveyancing system to date -*Landoline*- and has received high rating from the World Bank Ease of Doing Business. *Landonline* is a project initiated by Land Information New Zealand (LINZ) that has converted millions of title records, title instruments, plans, parcels and geodetic survey marks into an electronic format. The entire conveyancing process will be automated, cutting the turnaround of lodgments from days to 24 hours.

In the circumstances the Task Force should benchmark and ensure the e-Regulations have benefitted from the best reforms which others who have adopted the system have refined over time.

PART 2-0: THE PRESENT LAY OF THE LAND - OVERVIEW OF THE CURRENT CONVEYANCING PRACTICE AND LAND ADMINISTRATION ENVIRONMENT

1. Our conveyancing experience to date has not been cost and time efficient. The exercise is inefficient and overly bureaucratic. It has been characterized by a slow and largely unstructured reform process with gaps in the law and procedure. This phenomenon has created a fertile ground for rent seekers. Unsurprisingly, disputes relating to registration and land administration generally continue to clog our judicial space. The issues cut across and include identity frauds, irregular land allocations and titles, irregular approval processes, breach of lease terms and generally failure to comply with land administration procedures.
2. What causes this state of affairs is a combination of many factors. It is useful to understand the cause of the malaise in order to prescribe a solution. Essentially the status of our conveyancing and e-Conveyancing is characterized by the following:-

I. Incomplete migration of titles to the LRA Platform

- (i) The Constitution had a timeframe for reforms in the land sector and in particular the consolidation of the various land statutes to a new and comprehensive land platform. Pursuant to the Constitution, the Land Acts and Land Regulations were enacted. The **LRA** is the *procedural statute* for land registration and the LA and CLA are the *substantive statutes* for land administration.
- (ii) Unfortunately, the implementation of these critical laws and regulations is still pending. Consequently, the current conveyancing practice and land administration is irregular and not in consonance with the law.
 - *New land register not in place:* Although the LRA and LRA Regulations obliges the closure of the old land registers and the migration to the new comprehensive land register under the LRA, this is yet to be achieved. The new register under the LRA appreciated and provided changes in law and has provisions for notification of spousal rights, change of user, special covenants etc. Until the new register is implemented, these rights continue to present a challenge to practitioners.
 - *New wine, old wineskins:* Conveyancing practice has proceeded without due regard to the change in law or the constitutional requirement for harmonized law and procedure. Conveyancing procedures are varied and incongruous as practitioners struggle to accommodate the new law while still relying on titles issued under the repealed Acts. Thus, eight years after the enactment of the new land laws, we still have: (i) old land registers and conveyancing by deeds and by Torrens system - entries and notification on the title - depending on the root of the title; (ii) consents ostensibly issued by the defunct commissioner of lands; (iii) deed plans rather than RIMS etc.
- (iii) It is imperative that e-Conveyancing is anchored on a sound legal platform. If the platform is irregular and not in harmony with the law, the end product will be susceptible to legal challenge.
- (iv) Accordingly, one of the recommendations in this memorandum is an obligation to ensure the land register is in strict compliance with the law. This will entail the overdue migration of the repealed titles and registers to the new land register under the LRA. The procedure for this migration is set out in the LRA Regulations.

II. Incomplete Digitisation/Automation

- (i) In April 2018, the Ministry of Lands and Physical Planning launched the LIMS. The main objective of the LIMS is to gradually phase out manual land registration processes with the ultimate objective of a full migration to a digital platform for all land registration services.
- (ii) The digital platform was first introduced in the Central and Nairobi Land Registries and is gradually being introduced in other registries countrywide.
- (iii) LIMS has served a useful purpose of digitizing records and this exercise has been ongoing and is far from complete. This process forms a core platform to initiate a gradual e-Conveyance over selected items. A lot more is required to ensure a more robust engagement with e-Conveyance. At the moment, LIMs has faced challenges arising from the following:
 - LIMS was introduced without the relevant legal and regulatory reform.
 - LIMS has been implemented without sufficient resources to ensure quality controls and has as a result suffered from lack of credibility.
- (iv) LIMs should be enhanced to ensure the completion of the digital platform for proper record keeping.

III. Manual and paper based system

Our conveyancing and land administration are essentially manual and paper based. This breeds inefficiency and loss of time. That said, the experience of UK, Ontario, Singapore and New Zealand, shows that e-Conveyancing is a gradual process which is implemented in phases. There is no overnight leap from manual to electronic but a gradual implementation over the years.

IV. Poor record keeping

Our record keeping is sub-optimal which causes severe delays and lack of coordination. We encounter duplication of files and registers due to the absence of a coordinated record keeping.

PART 3: THE FUTURE - GUIDING PRINCIPLES AND CONSIDERATIONS FOR A CREDIBLE ELECTRONIC CONVEYANCING AND LAND ADMINISTRATION

1. As a result of the quagmire, that is the current conveyancing experience, there is legitimate expectation that e-Conveyancing represents a paradigm shift in land administration and registration processes, with clear and deliverable public benefits, both in terms of cost and time.
2. It falls on this Task Force to learn from the documented failures of those countries that have suffered missteps in e-Conveyancing and to benchmark with those who have forged a better and replicable experience. Having said that, the best practice elsewhere must also be tempered with the reality of Kenyan experience and resources.
3. The LSK would like to highlight the following principles for a credible e-Conveyancing system that will answer to our current challenges with the expectation that the e-Regulations will take cognizance of these ideals and incorporate them in the Regulations and your report.

3.1 *The Integrity and Reliability of the System*

The system proposed for use will be a key enabler of the success or failure of this exercise. We note from the e-Regulations that the system proposed for use is owned by the government. The Task Force should interrogate and confirm this detail. More importantly, the national electronic platform should also be a system that is proven to be fit for enabling e-Conveyancing. It should be responsive to the following minimums: -

- **Integrity of Data:** The e-Conveyancing service must ensure the integrity of data and messages against accidental or deliberate malicious alteration from the point at which they are sent by the originator to the point at which they are received. Integrity of the service must be demonstrable such that any changes to any data or message between the sender and the recipient can be identified and detected.
- **Authenticity:** The e-Conveyancing service must be capable of identifying and authenticating the buyers' and sellers' conveyancers (there may be several users on each side,), each party's lender(s), other Government departments with interfaces to the service, individual conveyancers, Land Registry staffs, anyone else authorized to have access to the service.
- **Non-repudiation:** The service must ensure the integrity, authentication and non-repudiation of data and information exchanged. No party using any part of the e-Conveyancing service must be

able to deny that they had sent or received any document(s), message(s) or data that had been sent or received.

- **Audit trails:** Comprehensive audit trails of all activities that take place within the e-Conveyancing service are required.
- **Capability to Handle Fluctuation in Volume:** The e-Conveyancing service must be capable of handling high volumes and periods of peak activity.
- **Systems Maintenance:** Routine maintenance and upgrades have to be achieved while the service is live but have to be scheduled at such a time as to minimize any disruption to the service.
- **Back-up and Disaster Recovery:** The disaster recovery tests should be run regularly to ensure business continuity. A disaster recovery plan for the e-Conveyancing service should be developed to ensure that the level of service specified in Network Access Agreements with users can be sustained in the event of the plan being activated.
- **Technology Upgrades:** The e-Conveyancing service should take advantage of advances in technology and maintains a progressive programme of improvement and development.
- **Change Management Policy:** The e-Conveyancing service must be able to adapt to accommodate changes arising from service review.

3.2 Government Guarantee of Process and of Title

Our conveyancing system is a system of title by registration that is guaranteed by the State. It is expected that the e-Regulations and any changes in law to enable e-Conveyancing do not take away this certainty. The registered landowners will continue to hold state-guaranteed title and be entitled to fair compensation where an innocent owner has suffered loss due to the operation of the system.

3.3 e-Signature

The essence of e-Conveyancing is the ease of undertaking transactions remotely using a private key that is able to interface with a public key through unique and secure identifiers. The proposed system should be able to deliver this service in a manner that is certifiable to eradicate frauds.

3.4 Third Party Certification

The introduction of e-Conveyancing should include robust provisions regarding certification of electronic instruments. This will also include certificates that can be relied upon and be available as evidence, if required.

4. *e-Statutory Changes*

The introduction of e-Conveyancing creates an opportunity to clean up the land registration and administration system for the common benefit of the society. It is important to ensure that land transactions done through e-Conveyancing system are legally sound. The proposed e-Regulations should be supported by necessary statutory enactments and changes to ensure the e-Conveyancing system is implemented lawfully and is not susceptible to challenge. The Task Force should consider and if thought fit make recommendations for the repeal or rationalization of the following pieces of legislation statutes:

- **Repeal of the Land Control Act:** The continued existence of this piece of legislation is anachronistic considering the resolution of Parliament³ to include the Act in the schedule of repealed Acts. As well, Justice Lenaola made an order on 12th October 2012, directing the Attorney General to “*move with speed and address the non-repeal of the Land Control Act in spite of Parliament’s decision to that effect*”⁴. This Act affects many land transactions and its continued existence and the bureaucratic manner in which it is implemented affects the efficiency of land registration and administration processes which is at the core of e-Conveyancing transactions.

5. *Electronic Fund Transfer (EFT) Service*

- (i) The e-Regulations include improvements in stamp duty and in the payment system. We expect that the opportunity offered with the e-Regulations will propose changes that will enable a system capable of processing electronically and in one platform the range of payments associated with conveyancing such as Land Registry fees, stamp duty and other disbursements.
- (ii) The EFT service should interface effectively with all associated services so that payments are effected promptly and users are notified automatically of transmission; instructions to pay are capable of change up until the last minute.

6. *Appreciation of the Roles of the NLC and the Ministry in Public Land Administration and Registration*

5.1 The recent history of land administration and registration has been characterized by seemingly cyclic territorial fights between the two lead agencies in this area- the Ministry and the NLC.

³ Parliamentary Hansard Proceedings of 26th April 2012 pursuant to a resolution of the House, LCB was included in the schedule of the repealed Acts.

⁴ Basil Criticos v Attorney General & 8 others & 4 others [2012] eKLR

5.2 To deliver credible and legally sound e-Regulations the Task Force should have due regard to the constitutional roles and functions of the two lead agencies in land administration and registration: the NLC and the Ministry. In doing so, the Task Force should be guided by the Constitution, the Land Acts and the judicial interpretation of the role of the two agencies.

5.3 We would refer the Task Force to the following constitutional references which are relevant to some amendments the Task Force has proposed:-

a) The Supreme Court Advisory Opinion – No. 2 of 2014

- (i) The Advisory Opinion was a decision of the Supreme Court within the terms of Article 163(7) of the Constitution and is, therefore, *binding on the Ministry and the Commission.*
- (ii) *The question for determination by the Supreme Court was the ‘proper relationship between the mandate of the National Land Commission, on one hand, and the Ministry of Land, Housing and Urban Development, on the other hand – in the context of Chapter Five of the Constitution; the principles of governance (Article 10 of the Constitution); and the relevant legislation.’*
- (iii) The Court made a determination on the following as a guide to the relationship between the two lead agencies, *inter alia*:

- **The NLC tasked with Preparatory Steps towards Registering a Title:**

“NLC has, by the Constitution and statutes, a lead role in the preparatory steps towards registering a title. These include: allocation of land; alienation of public land; disposing of public land; format of lease; setting up terms of leases and licenses; finalizing on the contract of lease up to the point of execution; coordinating change and extension of user; setting up the rules regarding renewal of leases before expiry; and coordinating sub-division.”

- **The Ministry as the Special Entity to Deal with Registration and Issuance of Titles Generally:**

“The Ministry of Land is the special entity with authority to register, issue and guarantee land title.”

b) **High Court in Petition Number 54 of 2015 - Anthony Otiende *versus* Public Service Commission, The Cabinet Secretary, Ministry of Housing, Land & Urban Development and Another.**

The High Court declared that *“the registration forms as well as forms of title including Leases, Title Deeds, Grants and Certificates of Title or of Lease” made and promulgated by the Cabinet Secretary, Ministry of Housing, Land & Urban Development without the advice or input of the NLC and without the necessary public participation and or Parliamentary scrutiny and approval were unconstitutional null and void.*

- 5.4 There are several cases that have followed the principles set out in the two leading judicial cases on the relationship and functions between the NLC and the Ministry. It is therefore prudent for the Task Force to have regard to these judicial guidance while preparing the e-Regulations and when proposing amendments to the existing Regulations and the Land Acts.
- 5.5 Flowing from the Supreme Court advisory opinion, the Law Society invites the Task Force to review the 2018 amendment of section 23 (2) of the Land Act. We have noted that this section has formed the basis of the e-Regulations in the area of public land administration as well some sections of the land registration regulations. The section is therefore at the core of public land administration as it deals with the process of leases over public land.
- 5.6 We are respectfully of the view that the recent amendment to Section 23 (2) conflicts with the Constitution, the Land Acts, the current LRA and LA Regulations and judicial precedents. The LSK would like to draw your attention to the following:-

(i) *Judicial clarity*

The Supreme Court in the advisory opinion above has reiterated that the NLC has the mandate and power of *‘setting up terms of leases and licenses; finalizing on the contract of lease up to the point of execution; coordinating change and extension of user; setting up the rules regarding renewal of leases before expiry.’*

(ii) *Statutory clarity*

- Section 23 falls under Part III of the LA which deals with *“Administration of Public Land”*. Section 23 (1) deals with the implied covenants and conditions governing a lease of a public land. Section 23 (2) has undergone two amendments in a space of two years. Prior to its amendment, the section read as follows:

“(2) A lease or licence for public land shall be issued by the Commission and shall be registered by the Chief Land Registrar”.

- Pursuant to an amendment in 2018, (*Act 18 of 2018*) Section 23 (2) of the LA was amended to read as follows: -

“(2) A lease or licence for private land within the meaning of article 64 (b) of the Constitution shall be issued by the Cabinet Secretary and registered by the Chief Land Registrar”.

- This amendment constitutes an *error on the face of the record*. It refers to leases over *private land* while the deleted section dealt with leases over *public land*. It introduces private leases in a section dealing with leases over public land.
- The amendment also created *ambiguity and is clearly defective*: it purports to grant the Cabinet Secretary power to grant leases over private land or property, which would be unconstitutional and an unwarranted interference with private interest, a preserve of the registered proprietors.

(iii) It should be noted that Article 64 (b) of the Constitution defines “*Private Land*” as follows:

“64. ***Private land***

Private land consists of—

- (a) *registered land held by any person under any freehold tenure;*
- (b) *land held by any person under leasehold tenure; and*
- (c) *any other land declared private land under an Act of Parliament.*

(iv) It is unclear in what circumstances the Cabinet Secretary would issue leases or licences over “*land held by any person under leasehold tenure*” under article 64 (b) of the Constitution. Such an intervention would be an illegal and unconstitutional enterprise.

- (v) The Task Force should review the current section 23 (2) and determine whether it is legally coherent and in the right place. In doing so, the Task Force should also have regard to Article 62 (1) (c) of the Constitution which deals with grants powers to the NLC to deal with “*land transferred to the State by way of sale, reversion or surrender*”. Most leases over public land are preceded by a legal incidence of surrender or reversion to the State.
- (vi) It is the recommendation of the LSK that the amendment in 2018, (*Act 18 of 2018*) Section 23 (2) of the LA is incurably defective to the extent that it purports to grant the Cabinet Secretary power to issue leases over private land. It is also incurably defective if it intended to grant the Cabinet Secretary power to issue leases over public land as this is the preserve of the NLC as per the Constitution and as conclusively determined by the Supreme Court in the advisory opinion.

PART 4: SPECIFIC COMMENTS ON THE E-REGULATIONS

1. LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020

I. Need to harmonise the Regulations

- a) The Constitution recommends the consolidation of the land laws and regulations. Flowing from this, there is need to rationalize whether it is more useful to merge the Proposed E-regulations with the existing are Land Regulations. The two regulations complement each other and are best read together. It is duplicitous to have two similar sets of regulations covering the same issues.
- b) Accordingly, it makes infinite sense to harmonise the two regulations into one set of comprehensive Land Regulations covering both paper and e-Regulations.
- c) This has been achieved in other jurisdictions with e-Conveyancing such as New Zealand and will enable a more robust and easier process for practitioners.

II. Definition of User

- a) We propose the deletion of the words in the definition section from “ *and may include a property owner or a professional on the instructions of a property owner*”. Access to public information is a constitutional right available to all regardless subject only to compliance with any procedural

requirements. For example, the current definition does not take into consideration banks and other creditors who are consumers of public information and who may wish to access information for a myriad of reasons.

- b) The LRA Regulations appear to use the word “User” and “Authorised User” interchangeably. Many of the succeeding regulations referring to “User” actually relate to “Authorised User”. There is need to clean up the proposed regulations and harmonise accordingly.

III. **Definition of an Authorized User - Regulation 7**

- a) A clear characteristic of systems where e-Conveyancing has been a success, it is the central role played by the law society and advocates in ensuring the integrity and continuity of the system. Invariably, the person authorised to interface and make changes to the system is the Advocate.
- b) The LRA Regulations need to substitute the definition of a “Authorized User” as currently defined (for purposes of who qualifies as an authorized user under Regulations 2,7 and 9) to be an Advocate.
- c) Advocates will still be mandated to have a User Account and authorized User Agreement before using the e-system. A User on the other hand will be a member of the public who has a User Account and have electronically signed a User Agreement.

IV. **Electronic Land Register - Regulation 5**

It is useful to harmonise the present Regulation 8 (4) of the Land Registration (Registration Units) Order 2017 and the proposed Regulation 5 to clarify that the register contemplated in section 7 and 9 of the Act shall from the date prescribed by the Cabinet Secretary be maintained in electronic form. This is to obviate the existence of two parallel land registers which would create ambiguity.

V. **Users to have a User Agreement**

We note that the e-system will be accessible to members of public generally and this is in order. It is however important for any User to sign a User Agreement upfront upon opening a User Account to understand the terms and conditions of use in clear and concise details.

VI. **Authorised User Agreement**

The Authorised User will have more engagement with the system and some permitted discretion to change the register. This calls for a special agreement with indemnities. The agreement should cover:

- a) The electronic workspace stations. In New Zealand, the **electronic workspace facility** means a facility approved by the Registrar for use in interfacing with the system.
- b) Obligation on the part of the Authorised User.
- c) Any indemnity issues arising therefrom.

VII. Liability of the State (The Ministry and Officers)

- a) The use of e-Conveyancing does not excuse the state from its core obligation to give indemnity to those who rely on information in its records.
- b) There is therefore need to amend the Disclaimer Clause in the Third Schedule under Clause 5 of the Regulations. The Ministry as the custodian of land records as well as its officers should be responsible for the completeness and reliability of documents processed online as well as confidentiality, integrity and security of the e-system.
- c) The state (Ministry) should be liable to any user for any direct, indirect or consequential damage or loss arising as a result of relying on any misleading information contained in an instrument or document or record generated by the system.
- d) The draft Regulations should also prescribe how the compensation will be made to the User in the event of any loss arising from relying on any electronically processed document.
- e) We propose adoption of indemnities such as the clauses in New Zealand and in the UKs, which provides for –
 - (i) Compensation for loss or damage resulting from Registrar's error or from system failure and includes loss or damage due to -
 - an error or a wrongful act or omission of the Registrar or of a person to whom a power or function is delegated; or
 - a failure or malfunction of a system or facility used to keep the register.
 - (ii) Compensation for loss of estate or interest in land
 - (iii) Compensation for loss or damage occurring after search and before registration
 - (iv) Exceptions to compensation- The State is however not liable in the following instances:-
 - the loss or damage results from a breach of trust by the claimant;

⁵ See the Table to the Memorandum attached

- the loss or damage results from the improper exercise of a power of sale under a mortgage or re-entry under a lease;
- the loss or damage results from the operation of an enactment other than this Act that overrides or limits the title to an estate or interest in land.

VIII. Stay of Registration

- a) The draft Regulations make provision under Regulation 23 (4) allowing the Registrar to reject documents submitted for registration with a substantial defect. There is need to introduce a new clause under Regulation 23 to allow for stay of registration pending the filing of an appeal by a User at the Electronic Appeals Committee.
- b) This will ensure that the procedure of rejection of documents submitted under the system for registration is in line with Regulation 35 (1) of the Land Registration (General) Regulations, 2017.

IX. Express Preclusion of Attestation of Instruments Processed Electronically

- a) We have noted that the draft Regulations do not provide for attestation of documents processed and executed electronically under Regulation 15 (b). The client bears the risk of execution using the client's unique identifier.
- b) Regulation 19 (b) expressly precludes witnessing and attestation for documents signed electronically. To buttress this position, there is need to review make necessary recommendation for amendment of the LRA section 45 and also section 3 (3) of the Law of Contract Act to preclude attestation by advocates.
- c) Further, the Regulations need to make provision for: -
 - (i) the type of electronic signature to be adopted; it is useful to be more elaborate about the uniqueness of this private key than is presently provided in the schedule;
 - (ii) the manner and format in which the electronic signature shall be affixed;
 - (iii) the manner and procedure which facilitates identification of the person affixing the electronic signature;
 - (iv) control of the process and procedure to ensure adequate integrity, security and confidentiality of electronic execution;
 - (v) certification of electronic signatures;
 - (vi) how spousal consents and creditor consents will be included in the instruments for completeness.
- d) Regulation 15 (2) suggest an alternative method of paper execution and uploading to the system. There is need to develop this issue further. Is this process precluding submission of physical documents? Is this the new form of registration? *Who is to keep the original documents and for how*

long? It should be noted that advocates are obliged to keep documents for a duration and there is need to establish whether there will be changes made in this regard.

IX. Certification of Electronic Instruments

- a) In the absence of attestation, the integrity of electronic signatures relies on certification by trusted third party. The proposed regulations do not have robust provisions regarding certification of electronic instruments. This is a fundamental area that requires proper engagement.
- b) The purpose of certification is to ringfence the liability of the state arising from the indemnity it provides.
- c) The regulations should provide for *which* documents require certification and an elaborate provision *who* should certify and *how* this will be done.
- d) In Kenya, like in most other jurisdictions, the logical certifier should be an Advocate of Kenya who will have entered into an agreement with the Registrar for this purpose. To enable Advocates to readily take up this duty there is need for clear obligation of what this task will entail and the duties and liability it entails. There ought to be some flexibility extended to Advocates and the scope for this work should be covered by the regulations. In some cases, the certifier will have to rely on confirmation by third parties such as notary public in certain circumstances where the person signing is not in Kenya.
- e) The certifier must have authority to act for the party or to certify the party's execution. Some of the basic requirements for confirmation should include the following: -
 - (i) that the certifier has authority to act for the party and the party has the legal capacity to give the authority; and
 - (ii) that the certifier has taken reasonable steps to confirm the identity of the party; and
 - (iii) if statutory requirements have been specified by the Registrar for instruments of a particular type, that the instrument complies with those requirements; and
 - (iv) the certification about evidence in relation to the certified matters in paragraphs (a) to (c).
- f) To ringfence the risk to the state for frauds, it is useful to benchmark and see how other jurisdictions have dealt with the matter. In the UK, the process has been suspended. In Norway, the advocates are still performing the traditional role of attestation. In New Zealand, the Registrar relies on third party certification of electronic signatures. We attach a document styled "*Authority and Identity Requirements for E-Dealing Standard 2018*" used to set 'safe harbour' requirements in New Zealand which, if met, will satisfy a practitioner's obligations as to:

- (i) Establish client authority and legal capacity;
- (ii) Verify client identity.
- (iii) The system in use is *Landonline* which relies almost entirely on automatic checks with little or no human interface. This reliance on automatic checks has been interpreted as meaning that lawyers are permitted to alter the content of the register without involvement from any third party: "*conveyancers now become de facto Registrar - Generals of Land or guardians of the integrity of title by taking on much more overt responsibility in the certification process*"⁶

X. Adoption of the Prescribed Land Forms

- a) The draft Regulations need to make express provision for the prescribed fees and that all documents submitted electronically shall be in the prescribed land forms set out in the Sixth Schedule of the Land Registration (General) Regulations, 2017.
- b) This will ensure that the online system is aligned with the existing land laws and land regulations.

XI. Controlled Transactions/Spousal and other special consents

- a) The system must take cognizance of certain services where the law requires a process that is yet to be harmonised under the Land Acts. We have mentioned about the processing of the Land Control Board consents. Another key issue is spousal consents.
- b) The draft Regulations should outline the services under Regulation 27, which will be offered online and those which will be processed manually.
- c) In the interim, we propose the introduction of a two-year transition period for a manual back up system until all records are not only available but have been verified on the electronic system, and the electronic registry is fully operational.

XII. Appeal Process

- a) We note that the appeal process is very long as it entails hearing of disputes by the Chief Land Registrar, and if aggrieved, an appeal with the Electronic Appeals Committee and if further aggrieved, file an appeal against the decision with the court. The process is lengthy and will in tandem delay registration.

⁶ Greenwood and Jones, 2003, p. 330

- b) The draft Regulations need to make provision for one Appeals Committee to hear and determine any issues arising. A party aggrieved can later file an appeal with the Environment and Land Court. In addition, the Committee should compose of one representative from the LSK of Kenya, who should ideally be the chair.
- c) The draft Regulations should also prescribe how one may approach or lodge such a claim before the Appeals Committee as well as the standing rules of the Committee. In addition, there is need to also clarify that the “Court” here refers to the Environment and Land Court.

XIII. Electronic Certificate of Lease or Title

- a) The issuance of an electronic certificate is a confirmation that the registration process has been duly completed. Regulation 25 which makes provision for electronic processing of a certificate of lease or title, the word “*may*” should be replaced with the word “*shall*” so that the issue of this document, if applied for is a certainty and should also be accompanied by an online search.
- b) Further, there needs to be a way in which a User can verify the authenticity of an online generated document since titles and land rights are sensitive matters. It is our view that the Ministry of Lands should ensure that the electronic certificates of title or leases issued have a unique serial number or security feature that prevents any duplication or tampering with the issued title document.
- c) We also understand that the effect of e-registration under Regulations 4 to 6 is that documents generated in the new online system have the same legal effect as paper documents. We would propose that this position be expressly stated.

XIV. Multiplicity of Rejections

- a) There is need to align the provisions of the draft Regulations particularly, Regulation 23 on rejection of documents with Regulation 35 (1) of the Land Registration (General) Regulations, 2017.
- b) Regulation 35 (1) of the Land Registration (General) Regulations, 2017 provides that the Registrar shall reject a document submitted for registration and state reasons thereof, where there is a substantial defect or where the document is submitted without the requisite documents required under the Act.
- c) An applicant who is dissatisfied with the decision of the Registrar can later file an appeal against the decision with the County Registrar and thereafter, the Chief Land Registrar.
- d) Regulation 23 (3) of the draft Regulations on the other hand, provides for multiplicity of rejections contrary to Regulation 35 (1) which mandate the Registrar to only have one rejection. Where a party is dissatisfied, the draft Regulations should allow an applicant to appeal the decision at the Electronic Appeals Committee and not restart the whole process of Registration.

XV. Suspension Notice for Users

- a) The provision on service of “*suspension notice*” discussed in Regulations 11 to 13 is convoluted. In the event the Chief Land Registrar suspends a user account, the notice should be immediately emailed to the user via the email provided at the time of creating the account and SMS through the contact provided.
- b) It is our opinion that providing the option to include notice of service via post would defeat the essence of the draft Regulations.
- c) The grounds for suspension need to be reviewed further to ensure this only happens after an objective criteria.

2. SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS, 2020

I. Electronic Survey Plans and Maps

There is need for the Ministry to ensure security, integrity and reliability of survey maps, survey plans, forms and documents processed electronically. This includes allowing Users to access and download survey plans with non-edit rights and ensuring the plans have unique serial numbers and security features for identification.

II. ICT Infrastructure cost to surveyors and stakeholder involvement

- a) Under the Survey Act, surveyors are required to present their work using computational procedures that do not conform to technological advancement.
- b) The changes proposed under the Regulations will require surveyors to use new technologies such as the Global Navigation Satellite Systems (GNSS) or Total Stations to convert the electronic data to paper (analogue data) before presenting their work. This will require stakeholder meetings with surveyors and this will involve a huge capital outlay for surveyors in terms of ICT infrastructure.
- c) The draft Regulations are silent on how surveyors shall present their work to the Electronic Cadastre system for approval. There is therefore need for clarification on the type of computational procedures to be adopted by surveyors.

III. Authorized User

- a) The draft Regulations provide that an authorized user shall be a person qualified to carry out survey and submit as per the Survey Act. This definition needs to be expanded to include professionals who rely on survey plans as well e.g. Advocates, Architects, Surveyors and Land Valuers.

- b) As a general comment, the Regulations provide that users will be provided with a one-time password to access the system. However, the Regulations also provide that the User will be required to change their login credentials from time to time and to nominate “subscribers” who must be approved by the authority to use the account. The Regulations are silent on who may qualify as a “subscriber” to use the account.

IV. Survey Gaps

There is need for consideration of the current disconnect that sometimes appears between subdivisions and the registry index maps which has led to multiplicity of issuance of titles and provision made under the Regulations.

3. STAMP DUTY (VALUATION) REGULATIONS, 2020

I. Generally

- a) The proposed regulations are by way of amendment to the existing regulations. The changes are not comprehensive and merely mention action points being done electronically without elaborating how this will be done.
- b) It is preferable for a new set of comprehensive regulations with clauses on electronic exercises are enacted to replace the existing regulations.

II. Access to Electronic Valuation Mode

We note that the provisions on accessing the Electronic Valuation module under Regulations 4 and 5 are not clear, since they do not specify whether a User will have to obtain a user account to access the module.

III. Timeline for valuation process

The draft Regulations should provide timelines to guide the valuation process under Regulations 6 to 12 i.e. on receipt of the applications by the Chief Government Valuer, timelines for acknowledgement of receipt, forwarding of the application to a valuer and notification of a user on the valuer’s visitation for purposes of the valuation exercise.

IV. Scope of the Regulations

- a) The draft Regulations should expand the scope of application under Regulation 3 to include other documents to which duty is payable such as charges, discharges and share transfer documents. This will entail amendment to Regulation 9 which makes reference to the contents of a valuation report only with respect to land.

- b) Further, there is need to specify that the Regulations apply to documents submitted electronically for valuation for stamp duty purposes.

V. Engage Private Valuers to Complement Government Valuers.

- a) Regulation 10 requires that a valuer on completion of a valuation exercise, shall electronically submit to the Chief Government Valuer the valuation report for approval.
- b) Pursuant to the recent change in law that has allowed private valuers to undertake valuation exercise, there is need to allow licensed private valuers be engaged in the exercise to reduce any delays experienced in the past.
- c) We understand that there are draft regulations to allow licensed private valuers to be engaged in the valuation exercise. This should however not preclude the Task Force from providing for private valuation.

VI. Provide for Indemnity on Valuation

- a) The valuation exercise is carried out by either government valuers or government certified private valuers acting independently.
- b) The draft regulations need to make provision to ensure that mistakes of land valuers during the valuation exercise should not be visited on the registered owners as has been the case in the past.
- c) The regulation should therefore include an indemnity to a registered proprietor in the event a valuation is subsequently found to have been incorrect or to attract additional duty save in the case of collusion.

VII. Timeline for stamping

- a) We note that section 6 of the Stamp Duty Act provides that every instrument shall be duly stamped with the proper duty before the expiration of thirty days *after it is first executed*. This is ambiguous and has been a challenge for most practitioners.
- b) We suggest an amendment to this provision of the Act to allow for time to start running from the date the valuation is completed and the amount assessed for payment.
- c) Stamping should be online and end to end. The present procedure leads to delay.

4. **STAMP DUTY (AMENDMENT) REGULATIONS, 2020**

Proposal for e-Stamping

- a) We note that although the draft Regulations provide for e-stamping, the process of e-stamping has not been outlined. We suggest the e-Regulations on e-stamping be established. The model e- stamping process in Hong Kong can be adopted as it has been touted as being credible secure and efficient.
- b) The e-Regulations on e-stamping should include the following features: -

(i) Establishing an e-stamping system

- An effective e-stamping system will need to ensure harmonization of the processes and steps that need to be under taken before an instrument is deemed as '*duly stamped*.'
- This will therefore entail harmonization of the process of valuation, assessment, payment and finally the generation of the electronic stamp certificate.
- Further, it is important that the system provides for how all the relevant information as to the instrument and the parties that will be relied upon in generating the stamp certificate is to be keyed for purposes of generating the stamp certificate.
- In Hong Kong for example, once payment has been received to the Inland Revenue Department, the *stamp certificate* is made available for download and can then be attached to the instrument.
- Accordingly, each instrument will have a unique "*Instrument Reference Number*" and the *stamp certificate* shall have its own "*Stamp Certificate Number*." The electronically generated *stamp certificate* shall have the same legal status as the conventional stamp duty.

(ii) Reliability of the Electronic stamp certificate

- To enable confirmation that a *stamp certificate* is valid, the stamp certificate has distinct security features which are not capable of being tampered with and which will allow a User to verify the authenticity of the certificate using the system.

(iii) Accessibility of the stamp certificates/system by the public

- The *stamp certificates* which will be available on the online portal must not be made available to the members of the public. In Hong Kong for example, the Stamp certificate can only be accessed when the user inputs the following information:

1. **Instrument reference number**
2. **Date of Instrument**

3. Stamp Certificate Number

4. Date of Stamping

- The *stamp certificate* record shall only be then made available when all the above details are correctly inputted. This means that even individuals who did not make the application for the stamp certificate shall be able to access the stamp certificate if they have the information at hand. This therefore ensures some form of protection as it controls who can access the stamp certificate and limits third parties from accessing the stamp certificates.
- For purposes of our system and amendment e-Regulations, this should only be available to Users.

(iv) Rectification of an Electronic Stamp certificate

- In case of an error, the system should allow an applicant to may make a written request to the Collector of Stamp Revenue online to cancel the *stamp certificate* and issue a new one.
- It is therefore important to make provision for rectification or cancellation of stamp duty certificates under the e-Regulations in the event of a mistake or error.

(v) Storage of the Stamp Certificate under the e-stamping system

- In Hong Kong, the e-system stores stamp certificates for a period of 15 years from the date of generation. Users may therefore reprint the stamp certificates within this period. It is important to have a secure feature that allows storage of stamp certificates set up on the e-stamping system so as to ensure that users are able to access them and reprint them within a specific period of time as may be prescribed by the Regulations.
- The security should also ensure that the stamp certificate cannot be tampered with during the period of storage. The security measures of the e-stamping system in Hong Kong are:
 1. **Encryption:** employing the network and security measures under the GovHK website, i.e. the end-to-end encryption methodology using Secure Sockets Layer (SSL) and Public Key Infrastructure (PKI).
 2. **Authentication:** by (i) a digital certificate (via existing authentication means); and (ii) pre-registered accounts identified by Taxpayer Identification Number and E-Stamp Account Number with password control.
 3. **Resilience:** using separate cluster of midrange servers with high availability and fault-resilient features like dual network cards and mirrored disks.
 4. **System Security Control:** Advanced security devices against hacker attack; access control features; regular security assessment and audit.

- The security features of the e-stamping system are an important issue that must be considered. This is to ensure security of the e- stamping process as well as stamp certificates generated.
- We propose that the Task Force considers similar provisions for the e-Regulations.
- It is also important that the e-Regulations on Stamp Duty include a provision that, an instrument that is electronically stamped is considered as a duly stamped document.

5. **LAND (AMENDMENT) REGULATIONS, 2020**

a) **General comments**

(i) **Rationalisation of Roles of the National Land Commission and the Ministry**

- As a general observation and as per the detailed analysis above, there is need to rationalize the changes proposed in these e-Regulations that purport to simply replace the “*Commission*” with the “*Cabinet Secretary*”. Such recommendations should be well founded in law as the respective roles of these two lead agencies are anchored in the Constitution.
- A review of essentially ALL the proposed changes seeking to “*the Commission*” with the “*Cabinet Secretary*” are at variance with the enabling statutes and/or the Constitution and judicial pronouncement.

(ii) **Incomplete Amendments**

- Most of the amendments have simply added the words “*in electronic form*” without making any further input to the process. This is insufficient as the new regulation proposed need to be more comprehensively addressed.
- There is need to have a hybrid system allowing for manual submission. The changes proposed have made a complete change from paper based to paperless. Who will be required to keep the originals and for how long? How will submissions be authenticated or certified?

b) **Regulations 9, 10, 11, 12 and 13**

- (i) These Regulation deals with the power to grant licences over public land. Section 20 of the LA gives the Commission power to grant licences over public land.
- (ii) It is therefore not clear why there is a proposal to take this power from the Commission to the Cabinet Secretary.

(iii) The proposed e-Regulations in these areas are not well founded in law.

c) **Regulation 14 - Conversion of freehold and leasehold Tenures owned by non-citizens**

(i) Part 2 of the 6th schedule to the Constitution provide as follows at part 8:

“Existing land holdings and agreements relating to natural resources

- (1) On the effective date, any freehold interest in land in Kenya held by a person who is not a citizen *shall revert to the Republic of Kenya to be held on behalf of the people of Kenya, and the State shall grant to the person a ninety-nine year lease at a peppercorn rent.*
- (2) On the effective date, any other interest in land in Kenya greater than a ninety-nine year lease held by a person who is not a citizen *shall be converted to a ninety-nine year lease.*”

(ii) It should be noted that freehold land held by a non-citizen was deemed *reverted to the state* and leasehold greater than 99 years was similar converted to 99 year lease.

(iii) Article 62 (1) defines “Public Land” as including: “ (c) land transferred to the State by way of sale, **reversion or surrender;**”

(iv) Article 62 (2) provides as follows:

“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—*

(a) clause (1)(a), (c), (d) or (e);”

(v) It is therefore clear that once the freehold land held by noncitizens reverts to the state it becomes public land and it’s administration is as per the Constitution mandated to the National Land Commission.

(vi) The Law Society would like the Task Force to review these proposed amendments to the Regulations with regard to their legal efficacy.

d) Electronic Appeals Standing Committee

- This Committee is a *quasi-judicial* body and the composition of its membership as provided under Regulations 21 E should include an Advocate for purposes of ensuring due process in hearing and determination of disputes.
- The draft e-Regulations should provide the rules of conduct of the business of the Electronic Appeals Committee.
- The e-Regulations should also have regard to the recommendations of the task force on ADR that is currently sitting.

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

a. Collaboration between the NLC and the Ministry of Lands

- (i) As detailed above, the provisions giving rise to the changes in the e-Regulations are derived from the changes in section 23 (2) of the LA. We have made a detailed analysis of this change in law as above and we invite the Task Force to consider our views on the matter.
- (ii) In any event, the process must entail the involvement and collaboration of both the NLC and the Ministry.

b. Timelines for a Lessee:

- The Regulations are silent on the timeline for the new e-processes that the lessee should abide by with respect to revaluating, resurveying and the geo-referencing of the land in the event the application for extension or renewal is approved pursuant to Regulation 3.
- The Regulations are also silent on the timelines for extension of lease exercise. In practice the whole exercise is often unstructured and without timelines, a perfect fertile ground for rent seekers. There is therefore need to create a timeline for action points.

7. THE LAND (ALLOCATION OF PUBLIC LAND) (AMENDMENTS, REGULATIONS), 2020

a. Whose task is this -NLC or the Ministry

Our comments above on the Constitutional role for both NLC and the Ministry will colour the proposed e-Regulations in this area.

b. Timelines for preparation and execution of leases

- Whilst the e-Regulations grant the Cabinet Secretary the power to prepare and execute leases electronically (Regulation 36 (1)), they do not provide timelines for how long this process should take.
- For this reason, it is our view that introducing systems to allow documents to be prepared, executed and lodged electronically will only affect transactions positively if there are appropriate fixed timelines for each stage to prevent delays.

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

a. Generally

Our comments generally on electronic requirements apply to all the e-Regulations. Where e-signatures are used there is need to have a third party certifier to ringfence the exercise from frauds and identity theft.

b. Application – Regulation 1 (2)

- Regulation 1(2) (i) appear incomplete.
- Regulation 1(2) (ii) grants a power to the Cabinet Secretary that ought to be derived from the substantive Act.

c. Licensed professionals

To enhance service delivery, licensed professionals from the private sector, who have signed agreements with the regulator and given sufficient indemnities, should be allowed to perform tasks inspections and certifications otherwise performed by civil servants.

d. Cost of ICT Infrastructure and Transition Period

- We note that the digitization process may be tasking due to the high cost of developing the necessary ICT **infrastructure**, the time to be taken in uploading large records, which may occasion delays in the short-term. For this reason, we propose a two-year transition period to allow the current physical system to support the new digital process until the same is fully operational.

e. Electronic Appeals Committee

- The composition of the Electronic Appeals Committee as provided under Regulation 12 should include an Advocate for purposes of ensuring due process in hearing and determination of disputes.

- It would also be useful to have nominees from licensed professionals rather than from the private sector.

9. SURVEY (AMENDMENT) REGULATIONS, 2020

a) Generally

- There does not appear to be comprehensive e-Regulations and it is not clear the level or extent of automation which is being introduced.
- It would be useful to see an interphase between the survey and other land administration departments and the Ministry and the County as there are significant delays emanating from gaps in the intermediation.
- Our comments generally on electronic requirements apply to all the e-Regulations. Where e-signatures are used there is need to have a third party certifier to ringfence the exercise from frauds and identity theft.

b) Migration to the new register

The survey function is a key determinant of the transition to e-Conveyancing as the migration to the new e-Register is dependent on cadaster and authentication by surveyors. It would be useful for the Task Force to address these deliverables and to include comprehensive e-Regulations on this part.

c) Licensed professionals

To enhance service delivery, licensed professionals from the private sector, who have signed agreements with the regulator and given sufficient indemnities, should be allowed to perform tasks certifications otherwise performed by civil servants.

PART 5 : CONCLUSION AND FURTHER RECOMMENDATIONS

The LSK reiterates the contents of this Memorandum and buttresses the various findings and comments with the following additional or iterative recommendations.

A Case for More time for the Task Force and the Need for a Standing Committee

- A. The LSK recognizes and appreciates the tremendous amount of time and effort by the Task Force in getting these draft e-Regulations published in record time. We are however of the respectful opinion that the enormity of this exercise warrants more time to enable the Task Force to engage in more benchmarking and to consider all nuances of this exercise.

- B. Ideally this exercise is usually performed by a standing committee that is able to come up with a program of action. This should be recommended.

Which e-Conveyancing System for Kenya?

- A. We would like to reiterate the need for the Task Force to give a comprehensive report regarding the system of e-Conveyancing that should be adopted. It is not clear from the e-Regulations what method of e-Conveyancing is being proposed. Some of the e-Regulations particularly in land administration have amended the e-Regulations to provide only for electronic dealings. The e-Regulations on registration have a pragmatic approach and suggest that the paper-based system will operate alongside the electronic one and can be used interchangeably.
- B. For purposes of a cohesive program, it is important for the e-Regulations to provide clearly which method is being proposed and whether this will be end to end system or will be introduced in phases by the Chief Land Registrar.
- C. Having regard to our capacity so far, it is practical for Kenya to encourage a phased development of e-Conveyancing along the steps that were adopted by New Zealand- the most advanced e-Conveyancing system to date. The phased approach will enable a hybrid system where we introduce automation gradually while still having the certification by advocates as third party certifiers to reduce incidences of ensure identity frauds.
- D. LIMs has so far been proceeding with digitization. It is possible to convert title records, title instruments, plans, parcels and geodetic survey marks into electronic formats. The project can proceed in a phased roll-out schedule just like the way in which New Zealand rolled its system with definite phases and deliverables such as: -
- *Stage One*, through which the old land registers can be migrated to the new electronic register in phases as per the Regulations and all affected titles are consolidated to new generation issued in conformity with the new platform. This exercise will require cadaster and verification and validation exercises;
 - *Stage Two*, through which land professionals can conduct remote online searching survey and title database from their own PCs via the Internet;
 - *Stage Three*, the introduction of remote digital lodgment of survey plans and routine title dealings via a secure system;
 - *Stage Four*, transactions - mortgage discharges, transfer of titles and registration of new mortgages, done electronically.
- E. As part of the phased implementation, the e-Regulations should:

- a. give better clarity on e-signatures;
 - b. classify specific instruments that require certification before they are lodged as well as the persons authorised to certify electronic instruments. Invariably and with good reason, the *practitioners and persons of a class authorised by the Regulations to certify electronic instruments are Advocates*.
 - c. Provide for the relevant agreements for Advocates who will take up that role with clearly set out deliverables and indemnities with due regard to best practice considerations.
- F.** On registration, an electronic instrument certified as per the rules of certification is to be treated as having been made in writing and executed by every party specified for the purposes of the Regulations and has effect according to its terms.
- G.** The proposed e-Regulations will require huge outlay in terms of ICT and leverage on modern technology such as blockchain and cryptography to guarantee security, confidentiality, reliability of the system as well as documents generated.

Stakeholder Engagement

- A.** There is also need for stakeholder engagement with the lead agencies - the Ministry, NLC, Communications Authority, all professional industry players as well as KBA to agree on a program of implementation and unified approach.
- B.** The LSK looks forward to a robust engagement with the Task Force and indeed all the industry players as the process progresses to the next stage.

We trust that you will find the foregoing useful for your purposes. Should you require any clarification, please do not hesitate to contact us.

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**RE: The Electronic Land Transaction, Registration and Conveyancing Regulations:
Stamp Duty (Valuation) Regulations, 2020**

The Regulations seeks to effect Section 10A (1) of the Stamp Duty Act which provides-

- (1) The Collector of Stamp Duties shall refer to the Chief Government Valuer or a Registered and Practicing Valuer appointed by the Chief Government Valuer any conveyance or transfer on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value of such property as at the date of the conveyance or transfer for purposes of ascertaining whether any additional stamp duty is payable.

Introduction

The ease of doing business surveys have singled out land transactions as one of the hindrances towards business processes contributing to the poor ranking of the country, year in year out. While issues such

as business permits, and registration of Companies were transformed to single day online transactions, land transactions have maintained the old-way.

In an effort to ease land transactions, parliament introduced an amendment to the Stamp Duty Act. The amendment culminated into Section 10A of the Stamp Duty Act, effectively allowing Valuers in the private sector to carry out Stamp Duty Valuation. The Collector of Stamp Duty was thus authorized to refer such valuations to either the Government Valuer or a Registered and Practicing Valuer. The amendment effectively increased the capacity of Government to carry out Stamp Duty valuations promptly and efficiently.

The Regulations to effect the amendments were prepared by a Taskforce appointed by the Ministry of Lands comprising of members from ISK, KRA (being the Collector of Stamp Duty) and Chief Government Valuer. The said document was coherent and borne out of wide consultation. It just lacked the requisite provisions to enable electronic submission and analysis. Evidently, The Taskforce on Electronic Transactions had/has an easy task of adopting the Regulations as they were and introduced a section or two on electronic submission.

Analysis of the Proposed Regulations.

i. Inconsistencies between the Draft Stamp Duty (Valuation) Regulations and Regulatory Impact Statement (Page 24 of the RIS).

The Regulatory Impact Statement has listed the various objectives of the regulations in line with Section 7 of the Statutory Instruments Act. These objectives have been captured in the regulations as envisaged by the Statutory Instruments Act, save for one of them. The particular objective ‘...Provides for appointment process of the panel of Private Valuers by the CGV...’ is not a part of the proposed regulations. The inconsistencies between the regulations and the Regulatory Impact Statement is thus illegal and voids the proposed regulations. It can only be interpreted as an attempt to hoodwink parliament into passing regulations that are inconsistent with the law.

ii. Exclusion of Private Valuer (Registered and Practicing Valuer) as provided by Section 10A of the Stamp Duty Act.

As earlier noted, Section 10A (1) of the Stamp Duty Act provides that...The Collector of Stamp Duty Shall refer...to the Chief Government Valuer or a Registered and Practicing Valuer appointed by the Chief Government Valuer any conveyance or transfer on sale of any immovable property...in order to determine the true open market value of such property.

The reference to an 'authorized user' as a dysphemism for a Valuer is in effect exposing land transactions to quacks and essentially fraud. Valuation is a regulated profession under the Valuers Act Cap 532 of the Laws of Kenya and licensed by the Valuers Registration Board.

iii. Appointment of Registered and Practicing Valuer as provided by Section 10A of the Stamp Duty Act.

The appointment process of the Registered and Practising Valuer by the Government Valuer has not been provided for. A clause to that effect should be added after regulation 4 and should read as;

'All Registered and Practising Valuers Gazetted by Valuers Registration Board shall be appointed by the Chief Government Valuer'.

iv. Authorised User (Regulation 5)

The Regulation should be specific on the qualification of the 'authorized user'. The title of the regulation 5 should preferably be 'Valuer's Access to the System'. Consequently the regulation should read as follows-

'The Chief Government Valuer shall authorize an appointed Valuer to access the module for purposes of undertaking an electronic transaction under this regulations'.

v. Uploading of Electronic documents (Regulation 6).

Regulation 6 (1) (b) provides for the signing of stamp duty valuation by the 'authorized user'. The regulations should be unequivocal and as such the Valuation reports should either be signed by the Chief Government Valuer or a Registered and Practicing Valuer. The regulation should be titled 'Uploading of Valuation Reports'.

vi. Application for Stamp Duty Valuation (Clause 6 (2)).

The Stamp Duty Act provides for reference of Stamp Duty valuations by the Collector of Stamp Duty to the Valuers. The impugned section of the Stamp Duty Act reads '*...The Collector of Stamp Duties shall refer to the Chief Government Valuer or a Registered and Practicing Valuer...*'. The Act is thus unequivocal on the source of the Valuation work done by the Valuer. The Collector of Stamp Duty is the office bestowed the responsibility of distributing the stamp duty valuations. Nevertheless, the Transferee has a constitutional right to choose the Valuer of his/her choice. In that regard, the electronic module should allow the transferee to choose whether to deal with the Chief Government Valuer or a specific Registered and Practicing Valuer.

vii. Payment of Valuation Fees.

This takes us to the basic element of a contract; consideration. Indeed, much of the opposition to involvement of Valuers in the private sector in Stamp Duty valuations has been the issue of payment of the requisite fees. Land transactions involve a myriad of processes and documents prepared by various professionals. The largest chunks are prepared by Advocates, whose fees are paid by the transferee and/or the transferor, as the case maybe. It is thus a no brainer that the requisite valuation fees would be paid by the transferee.

viii. Contents of a Valuation Report (Regulation 9)

Valuers Registration Board and Institution of Surveyors of Kenya recently came up with Kenya Valuation Standards that sets out the minimum contents of a valuation report besides laying a detailed analysis of the various Basis of Valuation. The Taskforce should adopt or reference the Kenya Valuation Standards that have incorporated and domesticated various valuation international standards including International Valuation Standards published by International Valuations Standards Committee (IVSC). Be that as it may, a valuation report should include the following additional contents:

- Value of the Property;
- Rental income of the property;

- User of the property;
- Date of inspection;
- Qualification of the Valuer;
- Signature and or seal of the Valuer;
- VRB and ISK Number;

ix. Use of the term Land as defined by Article 260 of the Constitution of Kenya rather than the term Property.

Land as defined by Article 260 of the Constitution excludes improvements and various other interests/rights over land. Valuation for Stamp Duty includes land, improvements thereon and various other long-term interest capable of being transferred.

The appropriate term should be Property as defined under Article 260 of the Constitution. On the other hand, the regulations should provide a definition of the term land that is consistent with the Stamp Duty Act.

Conclusion

The proposed regulations are probably an attempt at circumventing the provision of Section 10A of Stamp Duty Act. The specific section governs the Valuation of properties for Stamp Duty Valuations. Further, parliament allowed Registered and Practicing Valuers in the private sector to undertake Stamp Duty valuations. The intention of parliament was to speed land transactions and indeed lower the cost associated with lengthy delays.

The increased valuations to the private sector will also increase employment opportunities for the young professionals leaving our Universities. Worth noting is that institutions offering training to valuers have increased, in the recent years, and so has the numbers of graduates. Currently, Universities are offloading more than 200 Valuers each year, in the ever contracting real estate market. Consequently, meeting a jobless young Valuer is the norm nowadays.

The inclusion of private Valuers in Stamp Duty valuations will go a long way into increasing employment opportunities. Indeed, increasing employment remain one of the central agenda of his Excellency President Uhuru Kenyatta. The Ministry of Lands should do its bit in contributing to employment opportunities.

Kind Regards,

Valuer Jesse Kihoro

Full Member Institution of Surveyors of Kenya (MISK),

Registered and Practicing Valuer,

Registered and Licensed Real Estate Agent

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Email: jekihoro@gmail.com

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Date: 15th May, 2020

David Mwangi
P.O Box 12548
NAIROBI, KENYA

18th May, 2020

The Principal Secretary,
Ministry of Lands & Settlement,
Ardhi House, 1st Ngong Avenue,
P.O Box 30450 - 00100,
NAIROBI

Dear Sir,

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations

The introduction of the Land Transactions Regulations is a very welcoming idea into the society and to the people of Kenya. It will encourage many Kenyans in owning property and getting access to housing as its intended purpose is to lower the cost of housing. The effect will definitely be felt in the recent future where the real estate sectors develop in a big way. In addition, it should be ensured that full proof parameters are put to identify first-time homeowners as it should primarily benefit them first. Secondly, there should be public awareness of this very initiative by the Government so that people will be informed on the necessary procedures. Thirdly, the rebates and taxes should be given to special interests groups' e.g the youth, women groups and the disabled as a way of empowering them. These will open up opportunities in economic growth and in pursuance of their personal development

The government in pursuit of its BIG 4 AGENDA which is aimed at improving the economic welfare of its citizens as well as the socio conditions has in the recent made strides by making various amendments so as to attain this in the near future as discussed below. Among this is to ensure smooth transfer of property by putting mechanisms in place to give rise to a conducive environment for property transfer. In order to make sure that this is implemented the executive, through

delegated laws and the Legislature arm of government through amendments and making of laws have offered a conducive environment for property transfer in the country.

On this note the government has been able to come up with regulations on electronic transfer of property in a bid to reduce the cost and time spent in the transfer of property. This has enabled the government to generate more income through revenue from the Stamp Duty and that has informed the government to use the collector of Stamp Duty in facilitating the process.

The amended Stamp Duty Act, Cap 480 of the Laws of Kenya reads as;

“The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing Valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.”

The Ministry of Finance and National planning having undertaken to come up with the Stamp Duty (Valuation) Regulations, 2020, I would like to make the following recommendations as a concerned citizen in the spirit of public participation as envisaged in our constitution of Kenya 2010.

The following definitions should be incorporated to Section 2 on interpretation

- I. “True open Market Value” for purposes of Stamp Duty Valuations means the Market Value of an immovable property defined as the estimated amount for which an immovable property should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and wherein the parties had each acted knowledgably, prudently and without compulsion.
- II. Chief Government Valuer shall have the meaning endorsed in the Valuers Act, Cap 533 of the Laws of Kenya.
- III. Registered and practicing Valuer shall have the meaning as recognized in the Valuers Act, Cap 532 of the Laws of Kenya.
- IV. The Collector of Stamp Duty shall have the meaning credited to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.

a) Valuers panel

In order to promote strict adherence to the amendment;

- i) The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing Valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.**
- ii) The Chief Government Valuer shall assign valuation assignments to the various Valuers in the panel of Valuers for purposes of carrying out valuations for stamp duty purposes.**

b) Section 6:

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i) Electronic Format;**
- ii) Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;**
- iii) In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer;**

c) General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;**
- ii) Date of Valuation which shall be the date of transfer/conveyance;**

- iii) Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

d) Contents of the Valuation Report shall include the following:-

- a) Title number/LR Number of the subject property;
- b) Location of the subject property;
- c) Tenure of the property;
- d) Names and addresses of the registered owner(s);
- e) Details of the property and the developments thereon, if any;
- f) Signature of the Valuer;
- g) Seal of the Valuer;
- h) Copy of the VRB Certificate;
- i) Copy of the current practicing Certificate of the Valuer;

j) Any other relevant information that the Valuer is likely to come across in the course of his inspection of the property.

e) The term “property” should be used in place of “land”

I hope that the Ministry shall find sense and consider the aforementioned reasons to incorporate the Stamp Duty Regulations recommendations in the laws of Kenya.

Yours Truly,

DAVID MWANGI

LBA ECONOMICS, UNIVERSITY OF NAIROBI

NIKITA OPENDA
P.O BOX 30197
NAIROBI

THE PRINCIPAL SECRETARY
MINISTRY OF LANDS AND SETTLEMENT
ARDHI HOUSE, 1ST NGONG AVENUE
P.O BOX 30450-00100
NAIROBI, KENYA

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations 2019

The government Big Four Agenda touches squarely on affordable housing. This being one of fundamental human rights espoused under Article 43 (1b) which prescribe, accessible and adequate standards of housing and sanitation. In realization of this right, the government has come up with Stamp Duty (Valuation) Regulations 2019. The said regulation will not only reduce the cost of doing business but also reduce the time taken in carrying out property transfer. In addition to embracing technology, Stamp Duty on transfer of property is one of the prime sources of revenue for the government. It has mandated the collector of Stamp Duty (Kenya Revenue Authority) to oversee its collection.

In furtherance of this, the President assented to the amendment of **Section 10A (1) of the Stamp Duty Act, Cap 480** of the Law of Kenya to read as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

Subsequently the Cabinet Secretary for National Treasury, Finance & National Planning has sought to make the Stamp Duty (Valuation) Regulations, 2020 operational, and in line Article 10 on principles of good governance; Public Participation, the Cabinet Secretary in obedience to this cardinal principle of good governance, has requested the public to give their opinions on the regulations. It is on this basis that I seek to present my recommendations on the said regulations as follows:-

a) Section 2: Interpretation:

Kindly include the following definitions:-

1. Chief Government Valuer shall have the meaning attributed in the Valuers Act, Cap 532 of the Laws of Kenya.
2. The Collector of Stamp Duty shall have the meaning ascribed to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.
3. Registered and Practicing Valuer shall have the meaning as assigned in the Valuers Act, Cap 532 of the Laws of Kenya.
4. "Property" has the meaning ascribed to it under Article 260 of the Constitution of Kenya, 2010. Delete the word "*land*" and replace with the word "*property*".

b)Section 6

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i) Electronic Format;
- ii) Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;
- iii) In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer;

b) General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;
- ii) Date of Valuation which shall be the date of transfer/conveyance;
- iii) Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

- c) The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

d) Panel of Valuers

To ensure that the spirit of the amendment is adhered to:-

- i) The Chief Government Valuer shall prequalify and maintain a panel of Registered and Practicing valuers who shall be authorized to carryout Valuations for Stamp Duty Purposes.

- ii) The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.
- iii) The Chief Government Valuer shall assign valuation assignments to the various valuers in the panel of valuers for purposes of carrying out valuations for stamp duty purposes.

e) Contents of the Valuation Report shall include the following:-

- i) Title number/LR Number of the subject property;
- ii) Location of the subject property;
- iii) Tenure of the property;
- iv) Names and addresses of the registered owner(s);
- v) Details of the property and the developments thereon, if any;
- vi) Basis of Valuation;
- vii) Valuation Methodology used;
- viii) Professional Qualifications of the Valuer;
- ix) VRB number of the Valuer;
- x) ISK number of the Valuer;
- xi) Date of the Valuation;
- xii) Signature of the Valuer;
- xiii) Seal of the Valuer;
- xiv) Copy of the VRB Certificate;
- xv) Copy of the current practicing Certificate of the valuer;
- xvi) Any other relevant information that the valuer is likely to come across in the course of his inspection of the property;

Hope that these recommendations will be put into consideration.

Yours sincerely

Nikita Openda

MUTHENGI MUNYALO

P.O BOX 7-30197

NAIROBI, KENYA.

THE PRINCIPAL SECRETARY

MINISTRY OF LANDS AND SETTLEMENT

ARDHI HOUSE, 1ST NGONG AVENUE

P.O BOX 30450-00100

NAIROBI, KENYA

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations

The government in its undertaking to decrease the expense of running businesses, increment proficiency and diminish the time taken in completing property transfer has thought of the above alluded guidelines on electronic exchange of property in Kenya. Stamp Duty on transfer of property is one of the wellsprings of income for the administration and as such it has ordered the Collector of Stamp Duty (Kenya Revenue Authority) to supervise its assortment.

Article 43 (1b) Constitution of Kenya, 2010, states that each individual has a right to accessible and sufficient housing and to sensible principles of sanitation. Moreover, reasonable housing is one of the Big Four Agenda that is being sought after by the administration under the stewardship of H.E The President Uhuru Muigai Kenyatta.

The President in his own shrewdness consented to the change of Section 10A (1) of the Stamp Duty Act, Cap 480 of the Law of Kenya to stipulate as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

Subsequently, the Cabinet Secretary for Finance and National Planning has tried to make the Stamp Duty (Valuation) Regulations, 2020 operational, and in accordance with the soul of the Constitution of Kenya on Public Participation, has mentioned general society to offer their input on the guidelines. It is on this reason I try to introduce my proposals on the said guidelines as follows:-

a) Section 2: Interpretation:

Kindly include the following definitions:-

- i. Registered and practicing Valuer shall have the meaning as ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
- ii. The Collector of Stamp Duty shall have the meaning ascribed to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.
- iii. Chief Government Valuer shall have the meaning ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
- iv. "Property" has the meaning ascribed to it under Article 260 of the Constitution of Kenya, 2010. Delete the word "*land*" and replace with the word "*property*".
- v. Institution of Surveyors of Kenya shall have the meaning ascribed to it by the Valuers Act, Cap 532 of the Laws of Kenya.

b) Contents of the Valuation Report shall include the following:-

- i) Title number/LR Number of the subject property;
- ii) Location of the subject property;
- iii) Tenure of the property;
- iv) Names and addresses of the registered owner(s);
- v) Details of the property and the developments thereon, if any;
- vi) Basis of Valuation;
- vii) Valuation Methodology used;
- viii) Professional Qualifications of the Valuer;
- ix) VRB number of the Valuer;
- x) ISK number of the Valuer;
- xi) Date of the Valuation;
- xii) Signature of the Valuer;
- xiii) Seal of the Valuer;
- xiv) Copy of the VRB Certificate;
- xv) Copy of the current practicing Certificate of the valuer;
- xvi) Any other relevant information that the valuer is likely to come across in the course of his inspection of the property;

c) General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

Market Value of the property; Date of Valuation which shall be the date of transfer/conveyance; Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

d) Section 6:

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i. Electronic Format;
- ii. Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;
- iii. In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer;

e) Panel of Valuers

To ensure that the spirit of the amendment is adhered to:-

- i. The Chief Government Valuer shall prequalify and maintain a panel of Registered and Practicing valuers who shall be authorized to carryout Valuations for Stamp Duty Purposes.
- ii. The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.
- iii. The Chief Government Valuer shall assign valuation assignments to the various valuers in the panel of valuers for purposes of carrying out valuations for stamp duty purposes.

Hope these recommendations shall be considered in shaping the Regulations.

Yours Sincerely,

Muthengi Munyalo

Patriotic Citizen.

BENJAMIN NGALA

P.O BOX 122

MACHAKOS

THE PRINCIPAL SECRETARY

MINISTRY OF LANDS AND SETTLEMENT

ARDHI HOUSE, 1ST NGONG AVENUE

P.O BOX 30450-00100

NAIROBI, KENYA

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations 2019

The government has come up with the above referred regulations following its attempt to increase efficiency in business, reduce the duration of executing property transfer and reduce the cost of business operations. Stamp duty (on the transfer of property) being one of the sources of government revenue has mandated the Collector of Stamp Duty (Kenya Revenue Authority) to supervise its collection. Under Article 43 (1b) Constitution of Kenya 2010, every person has a right to accessible and adequate housing and to reasonable standards of sanitation. Moreover, the administration of President Uhuru Kenyatta has sought the big four agenda which advocates for affordable housing. In his on astuteness and wisdom, the president approved the amendment of section 10A of the Stamp Duty Act, Cap 480 of the Laws of Kenya to read as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

In line with the essence of the Constitution of Kenya on Public Participation, the Cabinet Secretary for Treasury Finance & National planning has requested the public to air their opinion on the Stamp Duty (valuation) Regulations 2019, which he has consequently sought to make operational. Following this occurrences, I seek to present my contributions/recommendations on the said regulations as follows:-

a) Section 2: Interpretation:

Kindly include the subsequent definitions below:-

1. "True open Market Value" for purposes of Stamp Duty Valuations means the Market Value of an immovable property defined as the estimated amount for which an immovable property should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and wherein the parties had each acted knowledgeably, prudently and without compulsion.
2. Chief Government Valuer shall have the meaning ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
3. The Collector of Stamp Duty shall have the meaning ascribed to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.

b) Contents of the Valuation Report shall include the following:-

- i) Title number/LR Number of the subject property;
- ii) Location of the subject property;
- iii) Tenure of the property;
- iv) Names and addresses of the registered owner(s);
- v) Details of the property and the developments thereon, if any;
- vi) Basis of Valuation;
- vii) Valuation Methodology used;
- viii) Professional Qualifications of the Valuer;
- ix) VRB number of the Valuer;
- x) ISK number of the Valuer;
- xi) Date of the Valuation;
- xii) Signature of the Valuer;
- xiii) Seal of the Valuer;
- xiv) Copy of the VRB Certificate;
- xv) Copy of the current practicing Certificate of the valuer;
- xvi) Any other relevant information that the valuer is likely to come across in the course of his inspection of the property;

c) Panel of Valuers

To ensure that the spirit of the amendment is adhered to:-

- i) The Chief Government Valuer shall prequalify and maintain a panel of Registered and Practicing valuers who shall be authorized to carryout Valuations for Stamp Duty Purposes.
- ii) The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.
- iii) The Chief Government Valuer shall assign valuation assignments to the various valuers in the panel of valuers for purposes of carrying out valuations for stamp duty purposes.

d) Section 6:

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i) Electronic Format;
- ii) Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;

e) General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;
 - ii) Date of Valuation which shall be the date of transfer/conveyance;
- A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;
 - The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;
 - The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

Hope that these recommendations will be put into consideration.

Yours sincerely

Benjamin Ngala

JOSEPH KABIRU
P.O BOX 122-00519
MACHAKOS

THE PRINCIPAL SECRETARY
MINISTRY OF LANDS AND SETTLEMENT
ARDHI HOUSE, 1ST NGONG AVENUE
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NAIROBI, KENYA

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations 2019

The above referred regulations on the electronic transfer of property are one of the ways the government has construed in its attempt to ease the cost of business operations, increase efficiency and lessen the duration of executing property transfer. Stamp Duty imposed on these processes of transfer of property has consequently mandated Kenya Revenue Authority (which is the Official Collector of Stamp Duty in Kenya) to supervise its collection. Every person in Kenya (under Article 43 (1b) Constitution of Kenya, 2010) has a right to adequate and accessible housing and to practical standards of sanitation. Consequently, affordable housing is (under the administration of President Uhuru Kenyatta) one of the Big Four Agenda that is being sought by the government. The amendment of Section 10A (1) of the Stamp Duty Act, Cap 480 of the Laws of Kenya was approved by the President to read as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

The Stamp Duty (Valuation) Regulations 2019 are in the process of being made operational by the Cabinet Secretary for Treasury, Finance & National Planning. In light of this, he has called on the public to air their opinion on the regulations. It is on that note that I seek to present my contributions/recommendations on the said regulations as follows:-

a) Section 2: Interpretation:

Kindly include the ensuing definitions below:-

1. Chief Government Valuer shall have the meaning ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
2. Institution of Surveyors of Kenya shall have the meaning ascribed to it by the Valuers Act, Cap 532 of the Laws of Kenya.
3. The Collector of Stamp Duty shall have the meaning ascribed to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.
4. "Property" has the meaning ascribed to it under Article 260 of the Constitution of Kenya, 2010.

b) Contents of the Valuation Report shall include the following:-

- i) Title number/LR Number of the subject property;
- ii) Location of the subject property;
- iii) Tenure of the property;
- iv) Names and addresses of the registered owner(s);
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- vi) Basis of Valuation;
- vii) Valuation Methodology used;
- viii) Professional Qualifications of the Valuer;
- ix) VRB number of the Valuer;
- x) ISK number of the Valuer;
- xi) Date of the Valuation;
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- xiv) Copy of the VRB Certificate;
- xv) Copy of the current practicing Certificate of the valuer;
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c) General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;
- ii) Date of Valuation which shall be the date of transfer/conveyance;

- iii) Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

d) Panel of Valuers

To ensure that the spirit of the amendment is adhered to:-

- i) The Chief Government Valuer shall prequalify and maintain a panel of Registered and Practicing valuers who shall be authorized to carryout Valuations for Stamp Duty Purposes.
- ii) The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.
- iii) The Chief Government Valuer shall assign valuation assignments to the various valuers in the panel of valuers for purposes of carrying out valuations for stamp duty purposes.

e) Section 6:

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i. Electronic Format;
- ii. Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;
- iii. In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer.

Yours sincerely

Joseph Kabiru

YVONNE KARIUKI,
P.O BOX 30197-01100
NAIROBI.
MAY 18TH 2020.

The Principal Secretary,
Ministry of Lands & Settlement,
Ardhi House, 1st Ngong Avenue,
P.O Box 30450 - 00100,
NAIROBI

Dear Sir,

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations

I submit my application while complaining for the very hard issues Kenyans are going through and which am a living testimony. The constitution has given Kenyans a plethora of rights including the rights to housing and ownership of property. Again the government's arm parliament has come up with measures to encourage anyone who has the capacity to own property by removing money taxed by the collector of Stamp Duty.

Although am happy about these actions and willingness to confront the challenges facing Kenyans in housing matters, am also disappointed in equal measures. Of what use can it be if the process of acquiring property is a gate that the keys are nowhere to be seen. In short, it is difficult and has been difficult for anyone willing and in the process of acquiring property. This is like giving a person free clothes that cannot fit him/her. Of what use will they be? Why remove the taxes for first-time home owners without even giving an eye to how it is done and ensuring all through things will flow?

The questions above are left unanswered and left for the average Kenyan to struggle with. I tried acquiring property but I found it is a hard task.

Affordable housing and access to reasonable standards of sanitation as advocated for in our 2010 constitution is one of the fundamental human rights articulated in Article 43(1b) of the 2010 constitution. This has led the government to shift its focus to include the aforementioned rights as one of their main agendas which is now commonly known to many as the BIG FOUR AGENDA. In order to achieve this, the government has put in drastic measures to realize the aforementioned agenda of which one of the mechanisms deployed by the government is the introduction of stamp Duty (valuation) Regulations 2019 which is aimed at;

Reducing the amount of time spent in the transfer of property.

Generating revenue for the government of which Collector of Stamp Duty (Kenya Revenue Authority) to oversee its collection.

In the spirit of promoting the aforementioned, President assented to the amendment of Section 10A (1) of the Stamp Duty Act, Cap 480 of the Law of Kenya to read as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing Valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

Subsequently the Cabinet Secretary for Finance & National Planning has sought to make the Stamp Duty (Valuation) Regulations, 2020 operational, and in line with the spirit of the Constitution of Kenya on Public Participation, has requested the public to give their opinion on the regulations. Based on this principle I seek to present my recommendations on the said regulations as follows:-

Section 2: Interpretation:

It is my considered opinion that the following definitions should be included;

1. Institution of Surveyors of Kenya shall have the meaning recognized by the Valuers Act, Cap 432 of the Laws of Kenya.
2. "True open Market Value" for purposes of Stamp Duty Valuations means the Market Value of an immovable property defined as the estimated amount for which an immovable property should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and wherein the parties had each acted knowledgeably, prudently and without compulsion.
3. Registered and practicing Valuer shall have the meaning as ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
4. The Collector of Stamp Duty shall have the meaning ascribed to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i) Electronic Format;
- ii) Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;
- iii) In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer;

General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;
- ii) Date of Valuation which shall be the date of transfer/conveyance;
- iii) Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

Contents of the Valuation Report shall include the following:-

- i) Title number/LR Number of the subject property;**
- ii) Tenure of the property;**
- iii) Details of the property and the developments thereon, if any;**
- iv) Basis of Valuation;**
- v) Valuation Methodology used;**
- vi) Professional Qualifications of the Valuer;**
- vii) Date of the Valuation;**
- viii) Signature of the Valuer;**
- ix) Seal of the Valuer;**
- x) Copy of the VRB Certificate;**
- xi) Copy of the current practicing Certificate of the Valuer;**

Am looking forward for the government to incorporate the above recommendations.

Yours Sincerely

YVONNE KARIUKI

.....

DAVID CHIURI MWANGI,
P.O BOX 30197-0100,
NAIROBI, KENYA.

18TH May, 2022

THE PRINCIPAL SECRETARY,
MINISTRY OF LANDS & SETTLEMENT,
ARDHI HOUSE, 1ST NGONG AVENUE,
P.O BOX 30450 - 00100,
NAIROBI.

Dear Sir,

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations

The matter above refers:

Chapter 4 of the constitution (Bill of rights) provides a fundamental right of accessible and adequate housing and reasonable standards of sanitation. This is a constitutional right provided for every person. Moreover, it is among the big four agendas of the current regime among manufacturing, universal healthcare and food security by H. E The president Uhuru Muigai Kenyatta and his Cabinet secretaries. In order to make sure that this is implemented the executive through delegated laws and the Legislature arm of government through amendments and making of laws have offered a conducive environment for property transfer in the country. In addition the government has come up with regulations on electronic transfer of property in a bid to reduce the cost of transferring property and also to increase efficiency of transfer of property between individuals and corporations. The government gets revenue from the process and to be specific on Stamp Duty and that has informed the government to use the collector of Stamp Duty in facilitating the process.

The amendment of the Stamp Duty to read as; *“The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.”* was assented.

The Ministry of Finance and National planning has undertaken to come up with the Stamp Duty (Valuation) Regulations, 2020 and I make the following recommendations as a concerned party.

That Section 2 on Interpretation ought to include the following definitions;

.The word ‘Property’ has the meaning assigned to it under chapter 17 of the 2010 Kenyan constitution.

. The words ‘institution of Surveyors’ and ‘Chief Government Valuer’ have the meanings assigned in Cap 532 of the laws of Kenya.(Valuers Act)

.The meaning of collector of Stamp Duty should be lifted from the Stamp Duty Act.

In Sec 6(b) kindly incorporate that a valuation report shall be submitted in electronic format signed by Registered and Practicing Valuer and in such a format that may be authorized by the Collector of Stamp Duty or Chief Government valuer.

For purposes of Stamp Duty evaluation the following factors should be included as guidelines for consideration in the process of evaluation in the General Principles and Standards.

A) Market value of the property,

B) Date of valuation/date of transfer

C) International valuation standards, Institution of surveyors of Kenya standards and standards by Valuers Registration Board.

Also in the General principles and Standards include that; the Stamp Duty shall be signed by the Chief Government Valuer and the registered and practicing Valuer in line with Section 10A (1) of Cap 480 of the laws of Kenya.

Contents of the Valuation Report shall include;

- i) Title number/LR Number of the subject property;
- ii) Location of the subject property;
- iii) Tenure of the property;
- iv) Names and addresses of the registered owner(s);
- v) Details of the property and the developments thereon, if any;
- vi) Basis of Valuation;

- vii) Valuation Methodology used;
- viii) Professional Qualifications of the Valuer;
- ix) VRB number of the Valuer;
- x) ISK number of the Valuer;
- xi) Date of the Valuation;
- xii) Signature of the Valuer;
- xiii) Seal of the Valuer;
- xiv) Copy of the VRB Certificate;
- xv) Copy of the current practicing Certificate of the valuer;

I am deeply appreciative of considering this request for such a deserving citizen. I have honor to remain a patriotic citizen, humble, obedient to the laws of Kenya and fruitful person to the country Kenya.

Yours Faithfully,

Chiuri Mwangi

Legal Profession

Dated 18th May 2020

Review of the Electronic Land Transaction, Registration and Conveyancing Regulation

Provision	Commentary	Recommendation
General Views		
The Electronic Land Transaction, Registration and Conveyancing Regulation	Community Land Law has not been considered in this amendments yet it is a new law which is being implemented and it is important to ensure that the process of awareness creation goes hand in hand with its implementation.	It is recommended that the amendments appreciate the Community Land Law to facilitate its implementation.
	Further, Covid-19 has halted the awareness creation that had begun to facilitate the implementation of Community Land Law thus stretching its implementation. The electronic transition shall therefore be highly appreciated in facilitating its implementation.	
	It is foreseen that on enactment of these amendments, there may be duplication of processes.	
		It is recommended that the enactment ensures harmonization of the existing processes such as the e-Citizen and the digitization of the land record.
		It is recommended that the digitization process be transparent and that the records be verified to

		establish the rightful owners to ensure proper records are maintained.
		It is recommended that the concurrency of the manual and electronic processes be efficiently laid out in the regulations to avoid duplication of records once the law is operationalized.
	It is foreseen that on enactment of these amendments, there may be issues of data insecurities and cybercrimes.	It is recommended that the regulations be clear on the obligations of all users whether authorized user or authorized staff to facilitate transparency and accountability especially with the backend users. It is recommended that the system has backup to maintain record keeping.
Review of the Land (Amendment) Regulations, 2020		
Regulation 2 (b) 'electronic form' has the same meaning assigned under the Kenya Information and Communication Act	This term has been defined by the Land Registration Regulations 2017 to 'mean a form produced by making a copy image or reproduction of a written instruments' Being that this is a subsidiary law, the terms in the principal law needs to be upheld.	It is recommended to harmonize the terms and their interpretation to avoid duplication of terms thus confusion.

Regulation 2 (c) 'register' includes electronic form; and	This term has been defined by the Land Registration Act, 2012 and the Land Act, 2012 defines the term 'register' in reference to what is in the Land Registration Act, 2012. 'Register' mean the register maintained under section 7 of the Act. Being that this is a subsidiary law, the terms in the principal law needs to be upheld.	It is recommended that the terms and their interpretation be harmonized to avoid duplication of terms thus confusion. It is recommended that the term be amended in the Land Registration Act by adding the term 'includes electronic form' before introducing the term in the Land Regulation as an amendment.
Regulation 2 (d) 'system' means the National Land Information System developed under Section 6(h) of the Land Act.	This term has been defined yet it has used the same word in its definition that being 'System' though at the same time the Land Registration (Electronic Transactions) Regulations, 2020 has elaborated the term further under regulation 2 into details.	It is recommended that the terms and their interpretation be harmonized to avoid duplication of terms thus confusion. It is recommended that the term be defined as 'means the electronic land registry system in which all documents that are registered or recorded under the Act are maintained and is the NLIMS to be developed under S6 (h) of the Land Act'.
Regulation 2 (f) 'user' means a persons who has created an online electronic account for access or submission of information by electronic account for access or submission of information by	This term as defined does not maintain the same meaning as per the definition in the Land Registration (Electronic Transactions) Regulations, 2018.	It is recommended that the terms and their interpretation be harmonized to avoid duplication of terms thus confusion. It is recommended that the term 'proxy' be introduced to appreciate the literacy levels where one may not necessarily have an advocate but

electronic means in the system, and may include a property owner or a professional.		rather a proxy who shall assist in the use of the system.
Regulation 3: Regulation 3 of the principal Regulations is amended by adding the words “including electronic form” appearing after the word land. Regulation 4: Regulation 4 of the principal Regulations is amended in sub-Regulation (1) by adding the words “including electronic form” appearing after the word resources.	This provision may insinuate that the principal laws (acts) maintenance of the database and inventory was to only be physical/manual yet the transition to electronic is long overdue from the National Land Policy to the Land Law 2012 which recognizes and appreciates this transition.	It is recommended that rather than adding the words ‘including electronic form’ the definition of ‘data base’ in regulation 3 while in regulation 4 the word ‘inventory’ be defined to include physical and electronic form.
Regulation 3, 4, 5, 6, 7 (a), (e), 8, 11 (c), 12 (c), 13 (b), 14, 15 (i), (iii), (iv), (viii), 16, 17 (i), (iii), (iv), (vii), 18. These provisions appreciates the transition into electronic form by adding the term ‘including electronic form’ among others that appreciates the transition.	This provisions are to appreciate the transition into electronic form of transactions though at the same time by adding a term to this provision may imply that all Land Laws and their regulations have to be amended to include the term and appreciate the transition. The Land Registration (Electronic Transactions) Regulations, 2020 is operationalizing the provisions in the Land Registration Act on the issue of the registry and the Land Act section 6	It is proposed that the Land Registration (Electronic Transactions) Regulations, 2020 should highlight all applications that are explicit supposed to be in electronic form and those that are to be physical/manual form or those that applies both.

	then including the term 'including electronic form' adds little and/or no value to justify the amendments.	
	The language used under this provisions confuses the interpretation in the entire document, while on one end it may insinuate that it is a must that the application be done in electronic form the other provision insinuates that it is not necessary as it uses the phrase 'may be' for instance Regulation 6, 7, 14, 15, 16, 17.	It is recommended that the provision that need amendment have 'Any notification, application and written feedback under this regulation may be given in electronic form' is suitable.
	While the amendments are appreciating the electronic transition it beats logic that the Land Regulations are being amended yet the Community Land Regulations and its Act are not being amended to include the terminology 'electronic form' among other provisions as proposed.	It is recommended that the amendments are included in the Community Land Act and its Regulations to harmonize the language and all Land Laws in its entirety.

Regulation 7 (b), (c), (d), 9, 10,11, 12 (a), (b), 15 (ii), (v-vii), 17 (ii) proposes to delete the roles of the Commission as envisioned in the Land Laws and its Regulations.	These provisions, are an amendment to the Administration of Public Land part 3 and part 2 of the Land Act on and Land Regulation respectively. The administration and management of public land is a task of the National Land Commission based on the Constitution of Kenya Article 67. Further, these powers are those of the National Land Commission under the National Land Commission Act section 5 therefore these amendments are a repetition of the situation that resulted to NLC Case No. 2 of 2014. For instance, provision 7 of the Land (Amendment Regulations, 2020 are amending regulation 9 of the Land Regulation, 2017 which in turn affects Section 21 of the Land Act on the roles of Commission.	It is recommended that if at all the amendments are to stand then a holistic amendment to the Acts and regulations as well as revision of the Case be undertaken. It is recommended that if at all the amendments are to stand then clarity is given to the public on the essence of the NLC and its roles.
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Regulation 19 - 21A - 21E (Part IVA)	This provision is an extract from the Land Registration (Electronic Transactions) Regulations, 2020 from Regulation 7- 14 thus a duplication of the provisions, adding no value or little value to justify an amendment to the Land Regulations, 2017. The operationalization of the Land Registration (Electronic Transactions) Regulations, 2020 is by the Land Registration Act, 2012 thus it beats logic to have this provisions in the Land Regulations, 2017.	It is recommended that this provisions be done away with as it adds no and/or extremely little value to the Land Regulations, 2017
	Further, there is some inconsistency in some provision as the Land Registration (Electronic Transactions) Regulations 2020 has the Chief Land Registrar undertaking some of the functions such as suspension of the user's access to the system Regulation 11 while the Land (Amendments) Regulations, 2020 has the Director Land Administration Regulation 21C performing such duties.	It is recommended to harmonize the terms, office(s) and their interpretation to avoid duplication and confusion. It is recommended that any office being established for purposes of operationalization of the Land Registration (Electronic Transactions) Regulations 2020 being anchored under an office in the Ministry rather than creating a new office out of the vacuum.
Review of the Land (Electronic Transactions) Regulations, 2020		

Regulation 1: These Regulations may be cited as the Land Registration (Electronic Transactions) Regulations, 2020.	These Regulations are being proposed during a traumatic period in Kenya Covid-19 that has limited the public participation which might result to rejection by the public of the regulation and inefficiency in its implementation.	It is recommended that all efforts are undertaken to ensure public participation is efficient to avoid loopholes of its enactment and on enactment a programme is launched to ensure sufficient awareness creation is undertaken to secure implementation.
Regulation 2: The terms ‘user’, ‘electronic form’ and ‘instrument’.	The term ‘user’ is not same as what has been prescribed in the Land Regulation (Amendments) Regulations 2020. The term ‘electronic form’ has been described by the Land Registration Regulations to ‘mean a form produced by making a copy image or reproduction of a written instruments’. The term ‘instrument’ has been defined by the Land Act ‘means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this Act or any other law relating to land an, except where otherwise provided includes, any variation of an instrument’. Being that this is subsidiary law, the principal law needs to uphold the terms and definitions.	It is recommended to harmonize the terms and their interpretation to avoid duplication of terms and confusion. On the term ‘user’ it is recommended that the term ‘proxy’ be introduced and not only to consider a professional. This shall appreciate the literacy levels where one may not necessarily have an advocate but rather a proxy who shall assist in the use of the system.

Regulation 2: The term 'document'.	As the Regulation is acknowledging the term 'document' it should also retain the term 'legal document' which has been interpreted under the Land Regulations, 2017 'means the letter of offer, transfer, notification of charge, ancillary agreement, notification of discharge of charge issue under settlement program'. This shall provide harmony of the terms.	It is recommended to add the term 'legal document'.
Regulation 2: The term 'user', 'authorized staff' and 'authorized user'.	The term user and authorized user are confusing as for one to be a user then the person automatically becomes an authorized user. As at now the terms assume that all persons shall undertake their tasks through an advocate and minimal undertakings such as a search, no ordinary person can undertake. This is in reference to Regulation 14 of the Land Registration (Electronic Transactions) Regulations, 2020: what is term is assigned to such as applicant. The term user is then used under the term 'user account' and the term 'authorized user' is forgotten in most provisions as the document uses the term 'user'.	It is recommended that the proposed terms consider the following: • Who shall be an account holder (authorized user). • Who shall be an authorized staff. • Who shall be a professional. • Who shall be a proxy. • Who shall be a viewer. It is recommended that once the definition are dealt with then it shall affect Regulation 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, due to the repeated term 'user'.

Regulation 2: The term 'unauthorized user'.	This term suggest that an unauthorized user can only be given access by an authorized user what of an authorized staff or a hacker among other who may end up accessing the system?	It is recommended that the term be 'A person who illegally access or is given access to the system'.
Regulation 2: The terms 'system'.	This term has been defined by the Land (Amendments) Regulations.	It is recommended to harmonize the terms and their interpretation to avoid duplication of terms and confusion. It is recommended that the term be defined as 'means the electronic land registry system in which all documents that are registered or recorded under the Act are maintained and is the NLIMS to be developed under S6 (h) of the Land Act'.
Regulation 3: These Regulations shall apply to the system in the registries set out in the First Schedule. FIRT SCHEDULE: 1. Nairobi	Implies that the application of these Regulations shall only be in Nairobi whereas registries have been devolved based on the Land Registration (Registration Units) Order, 2017. Unless this insinuates that the Regulations shall once again be reviewed which shall be duplication of transition then these regulations should appreciate the devolved process of the Land Registration (Registration Units) Order, 2017.	It is recommended: Regulation 3: These Regulations shall apply in the first instance in Nairobi and replicated in all registries as identified in the Land Registration (Registration Units) Order, 2017.

Regulation 4 (2): The electronic land registry shall be part of the National Land Information System established in accordance with section 6(h) of the Land Act.	Section 6(h) 'coordinate the development and implementation of the National Land Information System in collaboration with the Commission'.	It is a desire that the 'collaboration' is being taken into consideration to avoid a repetition of the situation that resulted to NLC Case No. 2 of 2014.
Regulation 11 (2): The Chief Land Registrar shall on making the decision under paragraph (1) (a), (b), (c) and (d) immediately inform the use of that decision and shall specify in the notification- (b) the grounds of suspension; (c) the facts which, in the opinion of the Chief Land Registrar, justify each ground of suspension and intention to terminate; and (d) the period within which the user shall be required to respond to the notification.	The numbering is wrong as it begins with (b). The period to which the Chief Land Registrar is to inform of the decision to suspend an account to be indicated to reduce of delays and avoid bulk. The period to which the user is required to respond should not be left open ended to avoid bulk of cases.	It is a desire that the final document shall have efficient numbering. It is recommended that a period of at least 30 days be maintained in both occasions to ensure swift response.
Regulation 11 (3):	The numbering is wrong as it begins with (e). The list of the approach for services does not have a conjunction (and/or) to indicate whether the	It is a desire that the final document shall have efficient numbering. It is recommended that a suitable conjunction be indicated to show that the Chief Land Registrar

	Chief Land Registrar shall serve notification by both approaches or choose either.	has through all means ensured service has been undertaken.
Regulation 13 (2):	The membership of the Electronic Appeals Standing Committee should also have someone from the Ministry of Information, Communication and Technology as the regulations has largely borrowed terminologies from the Keya Information & Communication Act.	It is recommended that the Ministry of Information, Communication and Technology be considered as they shall provide expertise on information technology rather than relying on the private sector.
	It should be highlighted the exact officer that shall come from the provided sectors especially in the Ministry and Private sector to cut off speculations and provide transparency of the composition.	It is recommended that the regulations provide clarity on the officers to be appointed.
	The membership of Electronic Appeals Standing Committee composition should take cognizance of the 2/3 rd gender rule.	It is recommended that a provision be indicated under this regulation to ensure that the 2/3 rd gender rules is adhered during appointment.
Offences and Penalties	These regulations is introducing the dynamism of electronic transaction therefore by identifying that there may be an 'unauthorized user' it therefore signifies that the regulations need to identify offences and penalties.	It is recommended to provide regulations on the offences that may occur in implementation of the regulations such as: An authorized user who gives access to an unauthorized user upon conviction is liable to a fine not exceeding....

		- An user who gives access to an unauthorized user upon conviction is liable to a fine not exceeding..... - An authorized staff who gives access to an unauthorized user upon conviction is liable to a fine not exceeding.....
Third Schedule Paragraph 2: Access and Use	Part iii is introducing a new term, 'authorized representative' who shall be given access to the system. The regulation already refers to an authorized user in the description. This begs the question, are the two classes of people different? Part iv talks about the different Acts to which these regulations shall apply to including the Community Land Act though it has done amendments to this effect. It has failed to take cognizance of the dynamics in the nature of community land management in its proposal more so on the user obligation.	It is recommended that the term, 'authorized representative' be given a description for avoidance of doubt and confusion with the other term, 'authorized user' which has been described. It is recommended that the regulations take cognizance of the community land recognition, protection and registration.
Third schedule paragraph 3: Availability of service and support	Part v is speaking to suspension of the system by the Cabinet Secretary in whole or in part owing to a significant 'breach of security' of security has occurred. The concern is on the term 'significant	It is recommended that clarity is given as to what kind of security breaches amounts to significant breach and what shall guide the CS in making the decision to do so.

	breach' whereby it is not clear as to what level shall amount to significant breach and the parameters that will be used to measure this.	
Third Schedule paragraph 4: User Obligations	Part (a) (iv) (shall) introduces the term de-activation of the accounts of the persons no-longer in the users' employ. Due process however has not been stipulated in the regulations.	It is recommended that a form should be provided for purposes of facilitating the deactivation of such accounts.
	Part (a) (iii) (shall not) the user is exempted from collecting information about other users. This raises a concern as to what information shall be accessible to the public and the users amongst themselves within the system.	It is recommended that a detailed list of the information made available on the public domain be made available and those that can be accessed by the users within the system for the members of the society to make an informed decision about the system.
	The regulations have provided obligations for the users, organization and the ministry as an entity. It is important that relevant actors including the Cabinet Secretary and the Chief Land Registrars are obligated to undertake certain actions for the smooth working of the system.	It is recommended that the regulation identifies the obligations of the Cabinet Secretary and the Chief Land Registrar be clearly stipulated as they have a mandate to undertake actions to ensure the functionality of the system including on the issue of insecurities.

	Part on the obligation of user, the obligation to ensure security of information lies heavily on the user in as much as a security breach is likely to occur from either side of the system. This applies to part 4 on Obligation and Part 5 on Security of the System.	
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The Principal Secretary
Ministry of Planning and Physical Planning
Ardhi House, 1st Ngong Avenue
P. O. Box 30450-00100
NAIROBI
May 22nd 2020

Via Electronic mail to; elandtransactions@gmail.com

Comments on Amendments to Land Regulations

To the Principal Secretary, Ministry of Planning and Physical Planning with reference to the public notice shared in the Nation newspaper pursuant to section 8 of the Statutory Instruments Act (No. 23 of 2013), Natural Justice would like to submit comments on the following:

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

We are happy to engage with you further on these and any developments on the same.

Looking forward to a robust legislative process

On behalf of Natural Justice
Maryama Farah



Senior Program Officer

Land Registration (Electronic Transactions) Regulations, 2020

Draft Regulation	Sub-heading	Comment	Proposed Amendment
2	Interpretation	A “user” is defined in a way that only envisages private property owners and not community land owners yet, the convenience of this service may equally be needed by community land owners given that these regulations also apply to community land.	To cure this, the Cabinet Secretary should consider including a definition of a “person” to include both natural and artificial persons.
3 (1)	Application	The fifth schedule to these regulations provide that these rules shall only apply to the Nairobi registry. Since the Electronic Land Registry is part of the National Information System envisaged under Section 6(h) of the Land Act¹, it should also include information on all registries besides the Nairobi Registry. This is in line with Section 7(3) of the Land Registration Act² which stipulates that in establishing the land registry, the Cabinet Secretary, shall be guided by the principle of devolution set out in Article 174 and 175 of the Constitution. In addition, Section 8 of the Land Registration Act provides for the creation of a separate Community Land Register for land classified as community land. Section 2 of the Community Land Act³ also establishes a Community Land Registration Unit for that purpose. In	Based on this analysis, we recommend the establishment of an Electronic Land Registry and a separate Community Land Registry which shall both be part of the National Information System. Secondly, the electronic registries should be established in all registries and not only the Nairobi Registry.

¹ No. 6 of 2012.

² No. 3 of 2012.

³ No. 27 of 2016.

		our view, the community land registry should be part of the National Information System but separate and distinct from the Electronic Land Registry envisaged under Section 7 of the Land Registration Act. That is because these regulations will also be applicable to the Community Land Act. ⁴	
		Although an electronic land registry aims to provide convenience to the users, it also has certain disadvantages. Electronic systems are not only prone to vulnerabilities like hacking but may also be interrupted due to technical issues.	We recommend the inclusion of an express requirement to establish a parallel manual registry system to complement the electronic system.
22	Registrar's source of information	This regulation requires the Registrar of lands to rely on the documentation available within the electronic system and refer to the backup of manuals only where necessary. However, due to the vulnerabilities of the electronic system, it is unclear which one of the two types of registries will supersede the other particularly where there is a contradiction between the electronic and manual records.	To avoid future conflicts over land ownership particularly where the two types of registries contradict each other, the regulations should expressly provide for which registry will supersede the other.
Third Schedule to the Proposed	Data Privacy Statement	Paragraph 7 of the Terms and Conditions allows the Ministry to disclose a user's information to any other person that the Ministry deems legitimately necessary to share the	These regulations should emphasize that before sharing any information, the person affected must be notified and the reasons stated, except where

⁴ See Para. 2(iv) of the Third Schedule to the Regulations on Terms and Conditions of Use.

Regulation s		data with. This may lead to the violation of the rights to privacy particularly where the information shared is intended for use in a manner that contravened the principles of data protection.	there is compelling evidence to demonstrate that they have committed a crime or offence.
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General Additional Comments

Comment 1: Time frames for implementation and transition to the electronic system.

These regulations do not provide a timeframe within which its provisions should be implemented. To ensure smooth transition, we propose the inclusion, in the form of a schedule, an implementation plan requiring the Cabinet Secretary and National Land Commission to implement the provisions within a specified reasonable timeframe. The implementation plan and time frame should incorporate provisions on adequate training and capacity building of communities to use the new electronic system.

Comment 2: Fees charged for using the system should be reasonable.

Any fees to be imposed by the Authority for the use of the products and services associated with the National Land Information System should be reasonable, taking into account the social and economic constraints that communities are facing when trying to access such services.

Survey (Electronic Cadastre Transactions) Regulations, 2020

Regulation n	Language	Suggestion	Notes
2	"Authorised User" means a person qualified to carry out survey and submit as per the Survey Act.	Amend to read: "Authorised User" means a person qualified to carry out and submit a survey as per the Survey Act.	
4(3)	The section sets out that survey plans, filed notes and computations shall be submitted electronically	"Notwithstanding paragraph (1), where transactions cannot be carried	For the sake of clarity and consistently, the provision should set out the alternative method(s) which

	and that "Notwithstanding paragraph (1), where transactions cannot be carried out using the Electronic Cadastre, the person seeking to carry out the transaction shall carry out the transaction through such other means as the Director may determine	out using the Electronic Cadastre, the person seeking to carry out the transaction may submit physical copies provided adequate reasons are provided for doing so."	shall be allowed. In the interest of making the system available to those who might have difficulty accessing electronic communication devices, provision should be made for the physical submission of documents provided reasons are given.
7(1)	"A user may electronically access Cadastral maps, cadastral plans or other plans..."	Amend to read: "A user may electronically access and download..."	Provision for a right to access and download should be provided for, not least because it is subject to a fee.
7(3)	"The Director may restrict access to specific data in the system as may be deemed necessary in the public interest, as provided for in the Access to Information Act No 3 of 2016."	Amend to read: "The Director may restrict access to specific data in the system as may be deemed necessary in the public interest, as provided for in the Access to Information Act No 3 of 2016. Provided that the reasons for such restriction shall be set out in writing and any person dissatisfied with those reasons may appeal the decision	It is important that any restrictions be communicated in writing and that users have a right of appeal against the decision.

		to the Electronic Appeals Committee."	
9(1)	The provision sets out the bases on which a user's access may be suspended and these include circumstances where a user "(c) allows an unauthorised/unqualified person to access the system" and where the user "(d) in the case of professionals, is not in good standing"	For clarity, (d) should specify the specific professions that shall be caught by this provision. "In the case of the following professions..., is not in good standing with the respective professional bodies."	Since any person can set up a user account it is important to define who an unauthorised/unqualified person is. (d) as drafted is too broad and might, for example be interpreted to mean a medical professional, for example can't access the portal if not in good standing with the Medical Practitioners and Dentist Board.
9(2)(c)	The provision sets out the information to be communicated to a person whose account is suspended and this includes: "(c) the period within which the period within which the user shall be required to respond to the notification."	Amend to read: "(c) the period of 10 days from the date of notification within which the user shall be required to respond to the notification."	There is a need for clarity on timelines for to ensure consistency.
11(5)	"A user aggrieved by the decision of the Electronic Appeals Standing Committee may appeal <u>to the court</u> within 30 days	Amend as follows: "(5)(a)A user aggrieved by the	For clarity there is need to specify the specific court to which an appeal will lie.

	from the date of such decision."	decision of the Electronic Appeals Standing Committee may appeal to the <u>Commission on Administrative Justice/ the Environment and Land Court</u> within 30 days from the date of such decision. (b) A user may appeal the decision of the Commission on Administrative Justice to the High Court within 30 days of the decision.	Given that this is arguably an access to information question, it might be worth considering whether the appeal should first lie to the Commission on Administrative Justice with a further and final right of appeal to the High Court.
13(2)	"The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal."	Amend as follows: "The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal and the recommended	For ease of transactions, the communication should set out the steps the user should take to rectify their submission.

		steps to rectify any defects in the documents submitted."	
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Draft Land Amendment Regulations

Regulation	Language	Suggestions	Notes
10	Deletes regulation 12 of the Principle legislation	Do not delete	This regulation provides for the obtaining of a land rent clearance form. This should be kept as a matter of record for land owners.
14 (1) (a)	Inserts "...shall be processed and approved in Electronic form"	Instead of 'shall' 'may'	Making the process purely electronic can subject sensitive information to hacking and other interference. There should be an option for hard copy registration as well as the electronic one. There is also the issue of accessibility, electronic might not be an easy medium for many Kenyans
15(1)(a)	AS above	As above	As above
21B(b)	"Shall be responsible for the security of his or her details..."	Add (e) Information shared on the electronic portal will be protected by (relevant data security legislation)	While it is important and essential that individuals have responsibility for their personal information, it is also prudent for the regulations to be protected and subjected to relevant cyber security, data protection etc laws in Kenya and internationally.

21C(1)(a)	"Is suspected to commit..."	"Is reasonably suspected with evidence.."	By allowing summary deletion of a persons access on something as vague as suspicion without providing for the need to produce evidence therefore, it opens up the possibility of abuse and deprivation of rights to people who may be innocent.
21C(2)(c)	"the period within which the user shall be required to respond to the notification"	Add; The period in days eg 90	Leaving out the number of days is unnecessarily ambiguous. Giving a prescribed number of days will reduce the change for rights abuses.
20	RE: Land rent	See Regulation 10 above	

The Land (Allocation Of Public Land) (Amendment) Regulations 2020

Regulation	Language	Suggestion	Notes
Various	"...to the Cabinet Secretary..."	County Land registry? County CEC for Land? Cabinet Secretary Perhaps and/or	These changes are made instead of the Commission. Having everything go through the Cabinet Secretary risks creating a bottleneck and a drastically slow process even where it is electronic. With so many land registration authorities, it seems odd to have it all be vested with one person. There is a

			higher chance of rights violations where one person is responsible.

Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations

Regulation	Language	Suggestion	Notes
1(2)(i)	“Without prejudice to the generality of sub-Regulation 1(1) - (i)....; and (ii) the Cabinet Secretary may through a notice in the gazette, make regulations as set out in Part VII of the Act.”	The draft regulations should apply even to projects of strategic national importance. This may be better set out as follows: “(2) (i) The Regulations shall also apply to applications for development permission for projects of...”; and (ii) Where deemed necessary, the CS may through a notice in the gazette make alternate regulations applicable to development of permission for projects of inter-county or strategic national importance and such regulations will take	The drafting of Regulation 1(2)(i) is not clear: As drafted it may be read to mean that the draft regulations also apply to applications for development permissions for projects of inter-county or strategic national importance; or that the CS may make regulations for projects of an intercounty or of strategic national importance.

		precedence over this regulation."	
4(2)(iii)	"a member of the public or authorised agent of an institution desirous to access data for research purposes."	Delete "...for research purposes"	If the information is classifiable as public information then there should be no restriction of access to the public on the basis of the use for which the information is sought. (See section 4(2)(a) of the Access to Information Act Access should only be limited on the reasonable grounds set out in Section 6 of the Access to Information Act. These grounds should be applied on a case by case basis. Furthermore, a mechanism should be put in place to challenge such restrictions. Or at the very least an obligation to provide reasons for the restriction which can be appealed.

6(1)	The section provides details		
7(v)	The section sets out the terms of use of information obtained from the system and in particular provides that they shall “not copy, exchange, disclose or use the land related information accessed from the system other than for purposes of the transactions under these Regulations”	The copy, exchange, disclosure or use of information should be proscribed for irregular and unlawful purposes: Amend as follows: “not copy, exchange, disclose or use the land related information accessed from the system for any irregular and unlawful purpose, including personal profit or interference with any transactions under these Regulations”	The restriction is drafted too narrowly and might catch the use of information in public interest litigation for example.
10(1)(b)	The provision for situations where a Director-General or County Director may suspend a user’s access to their account and includes a situation where the person is “suspected to have committed any fraud, identity theft or system misuse”	Amend to read “reasonably suspected” This provision should also apply to “authorised officers” who abuse their rights to access the system.	There should be reasonable grounds for suspension and these reasons should be communicated to the authorised user and “authorised officer”
10(2)(c)	The provision addresses the notification conditions for suspension of a user’s account and includes the requirement to include	Amend the section to read: “...specify in the notification - (c) that a response shall be required within 7/14	In the interest consistency between cases, there should be a set statutory time frame of at least 7 - 14 days.

	"the period within which the user shall be required to respond to the notification."	days from the date of the receipt of the notice."	Provision should additionally be made for extension of time if requested.
12(5)	"...Committee may appeal to the court within 30 days from the date of such decision."	"...may appeal to the Environment and Land Court within 30 days from the date of such decision."	There is a need to specify the specific court for clarity.
14(3)(v)	The section includes the documents which should support development permissions including: "Publication Notification (where applicable) in accordance to section 58(7)(8)"		There is need to specify the circumstances where public notification is not required.
15(4)	"An application shall not be considered duly completed until..."	Amend to "an application shall not be duly submitted until..."	This should be amended for consistency with section 14(6)
24(1)(i)	The section provides the site inspection procedures, including visiting "the project site within 24 hours"	Amend to 72 hours	Given the likely demand, perhaps this should be amended to 72 hours which seems feasible. If the 24 hours is to be maintained, are departments adequately staffed to meet the timelines.

Stamp Duty (Amendment) Regulations, 2020

Regulation	Language	Suggestion	Notes
2	The section provides the means by which stamp duty may be paid "by electronic means"	The provision should be made to read "by means of a revenue stamp impressed by a franking machine or by electronic means"	The provision should be amended to provide the alternative means of franking and electronic means.

Land (Extension and Renewal of Leases) Amendment Rules 2020

No	Regulation	Sub-heading	Comment	Proposal
1.	16	Land for public purpose	Regulation 16(4) provides that the national or county government acquiring land for a public purpose shall carry out an inventory of the developments on the land. This contradicts the provisions of the Land Act at section 107 (4) which requires the Commission to cause the land to be mapped out and valued using the valuation criteria set out under this Act. The reason for this is that, the NLC as an independent body, will ensure that the valuation is done objectively as opposed to the acquiring body.	Therefore, we recommend the amendment of this regulation to align with the Principal Act (i.e. the Land Act) which places this obligation on the NLC.
2.	20 (1)	Appeals	The regulations provide for the establishment of an Ad Hoc Independent Appeals Committee to hear and determine appeals from the decision of the County	All appeals from the decision of the Commission and an acquiring authority not to extend a lease where the land is subject to compulsory acquisition should be

			government not to extend or renew a lease. This may result in the multiplicity and duplicity of institutions given that the Land Act has already established the Land Acquisition Tribunal to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.	made to the Land Acquisition Tribunal.
			The regulations also need to specify the timeline for decision-making for any appeals. This amendment proposes to eliminate the sixty-days period that is currently provided for determining appeals in the Land (Extension and Renewal of Leases) Rules of 2017. Having such timelines is important for ensuring access to justice without unnecessary delays.	The provision of sixty days for making a determination on an appeal should be retained.
3.	21	Decision	In this regulation, a person aggrieved by the decision of the Appeals Committee can further appeals to the Court. The regulations do not specify to which court such parties can appeal, rendering this provision ambiguous and subject to misinterpretation.	The regulations should provide a definition of the Court to mean the Environment and Land Court.

Regulatory Impact Assessment (RIA) on The Electronic Land Transaction, Registration and Conveyancing Regulations

Pg. no.	Section	Discussion	Remarks /Recommendations
Comment 1: The technicalities of transition from a manual to a digitized land transaction, registration and conveyancing system may introduce possible land discrepancies and aggravate the underlying ones.			
Pg. 5	Introduction	“.... Before the roll out of the (electronic) system, existing paper records will be scanned to extract all relevant data , the records will be validated...”	It is indicated in the RIA that one of the challenges of the physical documents include; cases of erased data, tattered or missing files/documents. We propose that the Ministry takes into consideration these technicalities and give provisions of how they will handle possible mishaps.
Comment 2: The technical realities of the envisaged efficiency of electronic land transactions need more technological and capacity building initiatives of the end-users and all professionals across region.			
Pg. 5	Introduction	“...The system will immensely contribute to the ease of doing business, as it will shrink the nine steps of business process for property registration requiring seventy-three working days to three short steps requiring only twelve days .”	Considering the pre-existing challenges of poor connectivity and illiteracy, and lack of awareness (or familiarity of the new process) of both professional and end-users be considered. Context-specific capacity building interventions could support efficient navigating of the process, and help in the realization of the ease of doing business.

Comment 3: Gaps on the security of the system.

Pg. 6	Salient Features of a digitized LIMS	"The following system security measures have been implemented: (c) Regular backups (f) Use of SMS and email notifications."	c. There is need for specificity (clear provisions) on how and how frequent backups will be done, since the data is crucial and guarantee of security is extremely important. f. Other alternatives other than the use of SMS and email notifications be provided in cases there are connectivity-related challenges.
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Comment 4: The practicalities of the lessons/conclusions drawn from benchmarked countries (with similar land tenure and registration system) at the local context.

Pg. 11	International Context	"..Transformation/digitization is an intense and time-consuming process."	We recommend that Ministry expands the capacity of the engaged departments to ensure that not all focus, resources and time is diverted towards the 'anticipated time consuming process without plaguing other activities. This is to ensure that the public continue to access other essential land-related services from these departments.
		"...Before embarking on digitization, it is important to reorganize the registries /cadaster and review the manual processes and workflows to remove duplicities while enhancing efficiencies..."	It is important to consider transparency so that the process is not plagued by any potential mistakes or manipulations, to advance any kind of interest.

			Give provisions/ protocols on how various users can track or verify the process.
		e. "Searches are open to public upon payment of some fee in most countries, however historical searches are restricted, and more fees are chargeable. To be able to request for the searches one has to register in the platform for authentication.."	We recommend considerations of the challenges that this may present to local communities (especially the illiterate) and how it may give a chance for manipulation by elites.
		f. "Digitization of land records and e-conveyancing is bound to be relatively budget intensive."	In the event that there is no additional (or sufficient) funding for the process, what are the alternatives considered and how could this limit other necessary services in the ministry?
		i."Most countries that successfully digitized land transactions adopted an all-inclusive consultative multi-sectoral user driven approach. Stakeholder participation is very important to eliminate incidences of resistance as was witnessed in countries " Also, on approaches and methodologies section	Given the current situation presented by the pandemic, we recommend consideration of consultative approaches to gather views of local communities and grass root networks that may have accessibility challenges.
General Comments			

1.	The Roles of registrar (as submitted in the comments on the Taskforce) are still broad and may present opportunities of misuse of powers. There is need to give sufficient provisions to regulate any possible misconducts.
2.	Cadastral maps will be kept in electronic form. Some users (professional and end-users) may face challenges interpreting coordinates, hence the need for simpler alternative system.



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MEMORANDUM SUBMITTED BY THE KENYA INSTITUTE OF PLANNERS (KIP) ON THE DRAFT PHYSICAL AND LAND USE PLANNING ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM

REGULATIONS 2020.

(PRESENTED ON 21ST MAY 2020)

GENERAL OBSERVATIONS:

- Regulations to operationalize the Physical and Land Use Planning Act 2019 have not yet been finalized. The law is a cohesive document that requires that the institutional framework, the processes in plan preparation, implementation, development control, enforcement and dispute resolution be synchronized. This can best be done when the overall regulations are finalized to be the foundation for the e-transaction.
- The institutional framework needs to recognize all the actors that are assigned responsibilities in various statutes. The e-regulations have singled out the Director General and The County Director of Physical and Land Use Planning and assigned them critical responsibilities.
- However, it is necessary to note that most development control and enforcement transactions occur in urban areas and municipalities. The regulations therefore should assign the urban and municipal management institutions in line with Section 20(d) of the Urban Areas and Cities Act.
- Further, to enable the National Land commission to effectively perform its responsibility assigned in section 9(a-d) of the principal act, the regulations should be clear on the place of the commission in the system. The National Land Commission (NLC) have not been incorporated in the development control process but only appear at the appeals stage.
- Major actors such as the Urban Boards, relevant agencies, etc. have also not been incorporated into the processes that should have been made into a "one-stop-shop" for development applications.
- The regulations require a clear separation of the system to show independence of the Counties. Additionally, the regulations lack clear checks and balances regarding responsibilities of national and county authorities (such as timelines for various approval stages, powers of suspension, etc).
- The scope of the system is unclear (so many users). It is also unclear how much a user can see after log-in into the system. What synchronizes all the lands sector transactions electronically?

- The regulations are too extensive and look like the Mother Act (PLUPA) itself.
- The regulations are therefore inadequate in addressing e-applications.

SPECIFIC COMMENTS:

Existing Regulations or Law	Proposed Electronic Regulations	KIP Proposal	Justification for the proposal
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>Sec 2. Interpretation</u> i. "licensed professional" means a Physical Planner, Architect, Engineer, Landscape Architect or Urban Designer. ii. "relevant Professional Registration Board" has the meaning assigned to Physical Planners Registration Act, Architects and Quantity Surveyors Act and Engineers Registration Act; <u>Sec 3. System Establishment</u> 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. The NLIS should be clearly established in law.	i. "licensed professional" means a Physical Planner, Architect or Engineer.	These regulations have introduced professionals who are not licensed by the professional registration bodies listed under Section 2 (ii).
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>Sec 4. Database and Operation Tools</u> 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;	Under regulation 3, is there a broad-based regulation for establishment of the NLIS before regulating the sub-component of "e-application module" for a cohesive system 3 (1) this module will be composed of two sub-components: - i. National module ii. County module This module should have a segment for NLC. The NLC will maintain in the system monitoring frameworks and oversight parameters as provided for in section 9(c) of the principal act.	The system must respect the powers and functions of County Governments outlined in the Constitution of Kenya. 1. Section 9 of the principal act reinforces the monitoring and oversight role of the commission. 2. Section 33 of the principal act requires approved physical and land use plans to be

	(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.	Re-write Section 4 (1)(iii) to read "determinations made by respective planning authorities on applications for development permission as provided in Schedule 1".	submitted to Director general and NLC 3. Section 35 of the principal act provides that progress reports on implementation of various categories of plans shall be submitted to NLC and the Cabinet secretary. 4. Development control is an element of plan implementation. 5. What role does the Director General have in keeping registers of documents of all development applications submitted in Kenya? This is not in line with schedule 4 of the Constitution of Kenya.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec 5. Requirements for handling applications for development permission (1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall— - establish online links with relevant authorities for ease of information cross-referencing; - enable module integration for property searches, cadastre outlay and property survey attributes for retrieval of such information for submission of development applications; and - process development applications within the prescribed projects of national importance in accordance with section 69 of the Act.	Rename the section 5 heading to read: "Framework for handling development applications" Re-write Section 5 (1) to read: "In respect to development applications made to national government for purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall	Heading does not correspond to the content within this section. NB: - The role of NLC in overseeing applications is missing throughout the regulations. - The entire regulations are ambiguous that the Director General is the superintending authority on all

	(2) There shall be a County Government system operators who shall be – - the County Director of Physical and Land Use Planning in accordance with section 20(h) the Act; - such authorised planning officers in designated planning units in accordance with section 20(g) of the Act; - 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.	Re-write Section 5 (1) to read: "In respect to development applications made to county government, the County Director of Planning shall....." A separate section can be written outlining the system operators of the national and county government systems.	development applications. • There are no other national government system users other than the Director General.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>Sec 8. Public Access</u> 8. A person may access the system if that person has— - established a user account; and - submitted the requisite information in the designated fields.	Public access: Is this part of the national LIS? Can a professional access across all other modules (land searches etc.) is it a one-stop shop that once the system accredits you, it is possible to access across the entire NLIS? Can you directly access it on e-citizen? How does this system link to the NEMA approval system? And other licensing bodies e.g. WARMA, NCA	All the lands sector transactions should be harmonized and synchronized.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>Sec 10. Suspension of a user's access to the system</u> 10. (1) The Director-General or County Director may immediately suspend a user's access when it comes to his/her notice that the user – (a) has contravened the obligations or the terms and conditions of access; (b) is suspected to have committed any fraud, identity theft or system misuse; (c) allows an unauthorised/unqualified person to access the system; (d) in the case of professionals, is not in good standing; (e) is dead; (f) is declared insolvent; (g) is declared of unsound mind.	Who is the "chief land register" being referred to? There should be a "show cause" letter before suspension. Maximum timelines for suspension should be stipulated. Suspending authority should indicate in	As written the Director General and County Director can use their powers to unfairly target professionals for suspension. There is no safeguard against misuse of section 10(1)(2). The Director General and County Director should not have unilateral suspension

	(2) The Director-General or County Director shall on making the decision under Paragraph (1) (a), (b), (c) and (d) immediately inform the user of that decision and shall specify in the notification - (a) the grounds of suspension; (b) the facts which, in the opinion of the Chief Land Registrar, justify each ground of suspension and intention to terminate; and (c) the period within which the user shall be required to respond to the notification. (3) Subject to Paragraph (2), the Director-General or County Director shall serve notification by— (a) an electronic transmission to any electronic address specified in the user agreement as the user's through SMS Notification, email notification or any other form of electronic transmission; (b) post, to any postal address specified in the user agreement as the user's address of service. (4) A user may respond to a suspension notice in writing or in electronic form stating the reasons why the suspension of access should be withdrawn and the response served upon the Director-General or County Director before the expiry of the period specified in Paragraph (2) (c). (5) The Director-General or County Director shall upon receipt of a response under Paragraph (4) if satisfied that it is no longer appropriate to suspend the user's access withdraw the suspension and send a notification to that effect to the user within 7 days	writing the reasons for suspension. 10 (1) " is suspected to have committed a fraud" the same as established to have committed a fraud? Only professional bodies should recommend a person for suspension. "authorized system administrator" and not Director General and County Director should have suspension power as they lack technical capacity to detect electronic fraud.	powers as they lack technical capacity to detect electronic fraud.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec 11 and 12. Termination & Appeals 11. (1) Subject to Regulation 10 (1), the Director-General or County Director shall immediately terminate the user's access to the system upon confirming that the user is dead, is declared insolvent or is of unsound mind. (2) The Director-General or County Director shall terminate the user's access if – a. not satisfied with the user's response given under Regulation 10 (4) b. the user does not respond within the specified period in Regulation 10 (2) (c) (3) The Director-General or County Director shall communicate the decision under Paragraph (2) to the user within 7 days.	There is no county appeals process. This does not respect devolution. Extension of lease for instance is an NLC process yet they do not appear in the main body of the Act. Also, professional bodies have no role as this is a quasi-judicial process	If NLC has had no role in the system up to this point, why have they suddenly appeared at Appeals. How can they arbitrate matters they are unaware of? There is no county appeals process. This does not respect devolution.

	(4) The user may file an appeal to the Electronic Appeals Committee, through the Cabinet Secretary, within 14 days of the decision to terminate the user's access. 12. (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. (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; (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. (3) The Electronic Appeals Standing Committee shall nominate from among the members of the Committee one member from the Ministry and one member from the Commission who shall serve as the secretariat. (4) The Electronic Appeals Standing Committee shall hear and determine any matter referred to it within 30 days and notify the user of its decision within 7 days. (5) A user aggrieved by the decision of the Electronic Appeals Standing Committee may appeal to the court within 30 days from the date of such decision.	What is the connection between this committee with the liaison committee?	
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Section 12 (2) Electronic Appeals Committee (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; (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. (3) The Electronic Appeals Standing Committee shall nominate from among the members of the Committee one member from the Ministry and one member from the Commission who shall serve as the secretariat. (4) The Electronic Appeals Standing Committee shall hear and determine any matter referred to it within 30 days and notify the user of its	Provides for four member from the private sector One of the representatives from the private sector should be a practicing planner nominated by the Kenya Institute of Planners	i. this being a planning subject, then apart from specifying the IT specialist, the appeals committee should have a Planner.

	decision within 7 days. (5) A user aggrieved by the decision of the Electronic Appeals Standing Committee may appeal to the court within 30 days from the date of such decision.		
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	13 Preparation of application 13 (3) For applications whose policy interpretations may not be clear or constitute comprehensive development, the authorised user may – (i) prepare preliminary application for concept evaluation and recommendations; (ii) submit electronically the said application under the submission guidelines in these Regulations, or (iii) physically consult the authorised officer of the planning authority	13 (3) opens up the avenue for whims of authorizing/planning authority to apply their opinions	The fact that only a licensed professional should submit applications for development permission should be sufficient enough basis for the professional to have clarity as to the policy interpretations and implications on any development application.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec 14 Submission of application Sec. 14(3) (3) All applications for development permission shall be accompanied by supporting documents including – (i) Title Deed, Certificate of Lease or any legal ownership documents and a current search; (ii) Written consent in accordance to section 58(4) of the Act; (iii) Geo-referenced Cadastral map, sectional plans or other filed plans; (iv) Scheme plans/building plans in accordance to submission guidelines, approved standards and specifications. (v) Public Notification (where applicable) in accordance to section 58(7)(8); (vi) Planning Brief (where applicable)	- consent from land control board be one of the attachments for applications involving subdivision of agriculture land and change of user so this section should include "written consent from land control board (where applicable)" -The regulations could provide for ESIA certificate as one of the documents to be submitted. This should be done in advance to reduce unnecessary red tape	Third schedule of the principal act: 4). Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment. 3). If any development application requires subdivision or change of user of any agricultural land, the county government shall require the applicant to obtain consent from the relevant Board The two-step ESIA process (separated from planning approval processes) has been causing unnecessary

PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>17 Circulation and Reviewing of application</u> Sec 17 2(ii) and Sec.18	There should be time limit for circulation from application to approval. The system should have its own internal checks e.g. a control room that should be aware if officials intentionally slows down the system It is necessary to clarify what happens if an application relates to the jurisdiction of a municipality Sec 17 2(ii) and sec.18	delays in the development permission process The lack of clarity in the time required for the development application approval processes have resulted in losses within Kenya's private sector. Its necessary to clarify what happens if an application relates to the jurisdiction of a municipality
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>The Development Technical Validation Committee:</u> 18. (1) The County Executive Committee Member shall – (i) establish the Development Technical Validation Committee to validate comments and recommendations received from the relevant authorities and agencies; (ii) appoint members of the committee who shall include: – - Chief Officer in charge of Physical and Land Use Planning or a designated representative who shall be the chairperson; - City or municipal director of physical and land use planning or designated representative; - County, city or municipal architect or a designated representative; - County land surveyor or a designated representative; - County city or municipal Engineer or a designated representative; - County, city or municipal director of land administration or a designated representative;	This committee should be renamed "Development Technical "Evaluation" Committee not "validation". 18 (1) The development technical committee should include all agencies outlined in sec 60 of PLUPA -Include county Director of agriculture as well as those listed in section 60 of the principal act -Include NLC representative at the county level Other agencies including; - county, city and municipal boards.	The Constitution of Kenya espouses the values of stakeholder participation and professionals are a core player within the planning and land use sector. Development applications include subdivision and change of user of agriculture land. Regulation 16(2)(c) of regulations to the land act 2017 Its necessary to clarify what happens if an application relates to the jurisdiction of a municipality

PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	18. (2) Members of the Development Technical Validation Committee shall – (i) hold scheduled meetings set out on an annual basis;	That this period be stipulated clearly by the Regulations. We propose one meeting every month.	The lack of clarity in the time required for the development application approval processes have resulted in losses within Kenya's private sector.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec 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;	1. Provide a segment for NLC to be in the technical committee that reviews applications prescribed as projects of strategic national importance. (this may require that the regulations for the principal act details this) 2. the decision to approve or disapprove to be communicated by the CS and NLC to receive this decision	-The attorney general in the advisory advised that NLC should be involved throughout the process to avoid raising issues when a matter has been concluded. -The NLC is required to prepare status reports on implementation of plans and development control sec. 9(b) The Commission will need this information to update its inventory of public land
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec.20(1) A consultant who receives approval decision with conformance conditions shall – (i) Appoint qualified and authorised user as sub-sub-consultant and share the conformance conditions to be fulfilled; (ii) Instruct the sub-consultant to prepare secondary applications for the purpose of –	This section needs to be clear on who appoints the sub consultants. Can the registered owner also receive a copy of the approval so that they can recruit an appropriate consultant for the next stage of implementation	There is need to safeguard developers from unscrupulous consultants who may hold them at ransom.
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec. 22 issuance of development permission	The regulations should clarify to whom the decision will be communicated to. We propose that this decision be communicated to the applicant (consultant) with a copy to the registered owner or developer. As well,	This safeguards the developer or registered owner from consultants who may become uncooperative along the way. The NLC is required to prepare status reports on implementation of plans and

			Copy of development permission granted should be communicated to NLC	development control sec. 9(b)
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec.24(2) The registered owner of a property carrying out the development shall not proceed with the development unless issued with a copy of the inspection report and interim certificate authorising progress.	Commit the inspecting officer to file their inspection report within 24 hours (strict timelines)	This will safeguard the developer from undue delays	
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	Sec. 66 of the principal act. A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building, or in respect of any premises or land, for which development permission has not been granted by the relevant county executive committee member This is not addressed in the regulations	Can the system have an interface with licensing authorities for quick confirmation	This will further the government agenda of enhancing the ease of doing business	
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	<u>FIRST SCHEDULE: Prescribed forms:</u> <u>Form EPLUPA 1: Application for Development Permission:</u> If filled by Agent: Name Address Profession.....	That this be re-written as: "Name of Registered Planner: Address: PPRB Registration Number:"	The development application types anticipated under Form EPLUPA 1 are all legally submitted by a Registered Planner (Sub-division plans; and Extension of Lease or User or Change of User). The lack of clarity on the submitting professional will create avenues for clashes between professionals and confusion for approving authorities.	
PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)	EPLUPA1 (subdivision, change of user, renewal of lease)	Introduce three different forms as follows: <u>Form EPLUPA 1a: Application For Planning Permission</u>	The lack of clarity on the submitting professional will create avenues for clashes between professionals and confusion for approving authorities.	

		This form shall be prepared and filled by a registered and licensed physical planner. This form shall cover applications for subdivision, change of user, renewal of lease. Introduce Section D for: Billboards, Adverts, wayleaves and Easements Introduce Section E: Civil Works (laying of fibre optic works, road construction/maintenance works, restoration works, proposal for protection of pedestrians, greenery, decommissioning of works). Section E of this form should be recommended by both a licensed engineer and signed off by the licensed planner (to recommend suitability of proposed activity). Form EPLUPA1b: <u>Application for Building Plan Permission</u> be introduced. This form shall be prepared and filled by a registered and licensed architect Form EPLUPA1c: <u>Application for Engineering Permission</u> (structural engineers' drawings, electricals, plumbing) be introduced.	
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PLUPA 2019 (No regulations have been made for this law. Reference is made to the principal law)		This form shall be prepared and filled by a registered and licensed engineer. Forms EPLUPA 1b & 1c should capture credentials of both the architects and Engineers.	
Third schedule Terms and conditions of use 3(v) The Cabinet Secretary reserves the right to suspend the system in whole or in part in the circumstances where a significant breach of security has occurred or that a security system has failed that compromises or that could compromise the integrity or security of the system's databases or service until such security breach or failure has been rectified. 8 (ii) The Ministry reserves the right to change and adjust these terms and conditions without any further reasons as long as it is necessary due to legal adjustments or technical progress		3(v) the Cabinet Secretary can suspend the entire system yet counties are also co-owners (without stakeholder engagement). A system lockdown has serious revenue implications. 8(ii) Zero consultation (it may be useful that the ministry also should notify and consult the authorized users.	For checks and balances, there should be consultation and or notification of relevant actors in the sector. A case in point is the recent attempt by the Director General of Nairobi metropolitan services to suspend the e-transaction system in the city

ONYANGO MORGAN

P.O BOX 7

KISUMU

THE PRINCIPAL SECRETARY

MINISTRY OF LANDS AND SETTLEMENT

ARDHI HOUSE, 1ST NGONG AVENUE

P.O BOX 30450-00100

NAIROBI, KENYA

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations

The government of Kenya in its astuteness to reduce the cost of doing business, increase efficiency and reduce the time taken in carrying out property transfer has come up with the above regulations on electronic transfer of property in Kenya. Stamp Duty on transfer being one of the sources of revenues has been realized under the supervisory revenue collector body (Kenya Revenue Authority). The issue of housing being one of the cornerstones of President's Big Four Agenda as well as one of the fundamental right as espoused in Article 43 (1b) in the Constitution of Kenya 2010; which envisage that every citizen has a right to access and adequate standards of housing and sanitation is truly being realized.

The upshot of the foregoing has been actualized by the President assent to the amendment of Section 10A (1) of the Stamp Duty Act, Cap 480 of the Law of Kenya to read as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

The Cabinet Secretary for National Treasury, Finance & National Planning in furtherance of the foregoing, has sought to make the Stamp Duty (Valuation) Regulations, 2020 operational, and in line with the spirit of the Constitution of Kenya on Public Participation, has requested the public to give their opinion on the regulations. It is on this principle that I seek to present my contributions on the said regulations as follows:-

a) Section 2: Interpretation:

Kindly include the following definitions:-

- i. Chief Government Valuer shall have the meaning ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
- ii. "Property" has the meaning ascribed to it under Article 260 of the Constitution of Kenya, 2010. Delete the word "*land*" and replace with the word "*property*".
- iii. Institution of Surveyors of Kenya shall have the meaning ascribed to it by the Valuers Act, Cap 532 of the Laws of Kenya.

b) Section 6:

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i) Electronic Format;
- ii) Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;
- iii) In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer;

c) Contents of the Valuation Report shall include the following:-

- i) Title number/LR Number of the subject property;
- ii) Location of the subject property;
- iii) Tenure of the property;
- iv) Names and addresses of the registered owner(s);
- v) Details of the property and the developments thereon, if any;
- vi) Basis of Valuation;
- vii) Valuation Methodology used;
- viii) Professional Qualifications of the Valuer;
- ix) VRB number of the Valuer;
- x) ISK number of the Valuer;
- xi) Date of the Valuation;
- xii) Signature of the Valuer;
- xiii) Seal of the Valuer;
- xiv) Copy of the VRB Certificate;
- xv) Copy of the current practicing Certificate of the valuer;

xvi) Any other relevant information that the valuer is likely to come across in the course of his inspection of the property;

d) General Principles/Standards

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;
- ii) Date of Valuation which shall be the date of transfer/conveyance;
- iii) Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing valuer assigned from the panel of valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

e) Panel of Valuers

To ensure that the spirit of the amendment is adhered to:-

- i) The Chief Government Valuer shall prequalify and maintain a panel of Registered and Practicing valuers who shall be authorized to carryout Valuations for Stamp Duty Purposes.
- ii) The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.

- iii) The Chief Government Valuer shall assign valuation assignments to the various valuers in the panel of valuers for purposes of carrying out valuations for stamp duty purposes.

Hope that these contributions will be put into consideration.

Yours sincerely

Onyango Morgan

ASSOCIATION OF LAND SURVEYORS OF KENYA

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1st June, 2020

Ref: ALSK/STAKE/VOL.1/3

**The Principal Secretary,
Ministry of Lands and Physical Planning,
Ardhi House, 1st Ngong Avenue,
P. O. Box 30450-00100,
NAIROBI.**

elandtransactions@gmail.com

Dear Sir,

RE: PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS 2020

Please refer to our letter Ref. ALSK/STAKE/VOL.1/2 dated the 31st May, 2020 on the above matter.

Further to our previous comments, we wish to submit additional comments as follows:

1. Draft Survey Electronic (Cadastre) Regulations, 2020

Citation	Amendment	Remark
PART IV, V , VI, VII and IX	14,15,16,17 and 19	Ensure there will be security features in all documentations. Need for timelines to access survey documents.

2. The Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020

Citation	Amendment	Remark
Submission of application	14 (3) All applications for development permission shall be accompanied by supporting documents including – (i) Title Deed, Certificate of Lease or any legal ownership documents and a current search; (ii) Written consent in accordance to section 58(4) of the Act; (iii) Geo-referenced Cadastral map, sectional plans or other filed plans; (iv) Scheme plans/building plans in accordance to submission guidelines, approved standards and specifications. (v) Public Notification (where applicable) in accordance to section 58(7)(8); (vi) Planning Brief (where applicable)	i. Georeferenced base maps prepared by the Director of Surveys or Licensed Surveyor should be the basis for all spatial development planning. ii. The authentication of surveys by the Director of Surveys the final stage before submission to the Chief Land Registrar, the National Land Commission and any other authority. iii. Preparation of spatial development plans should be preceded by ground survey or ascertaining availability of land and provision of large scale georeferenced topographical maps.
Development Technical Validation Committee	18 d. County land surveyor or a designated representative;	Recommend County Director of Surveys instead of County Land Surveyor
Site Inspection Procedure	24 (2) The authorized planning officer shall coordinate the final joint inspection exercise and consolidate all inspection reports and forward to the County Director of Physical and	Need to set timeline

	Land Use Planning;	
Form EPLUPA003	Compliance certificate	Paragraph 4. Instead of asking for coordinates let it ask for RIM or Plan No. (b): - Subdivision and Advisory plans were approved as per PPA 2 Form and surveyed. Seeking for their compliance after the Director of Surveys plan authentication is subjecting his office to further scrutiny thus infringing into his authority under the Survey Act. Recommend its removal and if retained it for other approval needs, then (b) to read Subdivision and Advisory as per the approved survey plan.

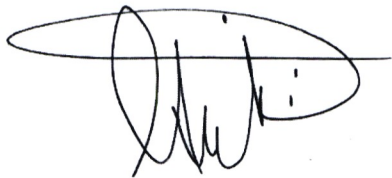
3. Land Registration (Electronic) transactions

Citation	Amendment	Remark
Preparation of instruments and documents	15. (1) For purposes of preparation of an instrument or document for electronic registration or filing, an authorized user shall -- (a) enter the required information in the applicable electronic form. (b) Cause the instrument or documents to be executed by use of electronic signatures of parties. (c) Attach the relevant	Terms and conditions of sale: - The contract is subjected to law society conditions not giving a vendor an option of expressly drawing the same as interpreted and currently practiced. Other Acts e.g. succession Act only comments on proper

	supporting documents as may be required under the Act. (2) Where it is not possible to execute the instruments/documents by way of electronic signature, the user may download the duly filled form for execution and attestation and uploading into the system.	particulars of a will. Denying the vendor, the freedom to draw appear to conflict with his bill of rights under chapter 4. Article 10(5) among others.
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We look forward to considering our additional comments in the proposed Land Transactions (Electronic) Regulations, 2020.

Yours Sincerely,



Surv. Julius K. Rotich, MBS, MISK, CLS (EA), LS (K)
Chairman,
ASSOCIATION OF LAND SURVEYORS OF KENYA

ASSOCIATION OF LAND SURVEYORS OF KENYA

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31st May, 2020

Ref: ALSK/STAKE/VOL.1/2

**The Principal Secretary,
Ministry of Lands and Physical Planning,
Ardhi House, 1st Ngong Avenue,
P. O. Box 30450-00100,
NAIROBI.**

elandtransactions@gmail.com

Dear Sir,

RE: PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS 2020

Please refer to your letter dated the 14th May, 2020 and the virtual meeting held on the 22nd May, 2020.

Land is undoubtedly the most important resource in any country hence the need to manage it in a sustainable manner. Land is a major resource for economic activity in Kenya. Good land governance is a pre-requisite to sustainable development which ensures proper resource utilization and a land heritage for future generations. A national land information management system (NLIMS) aids in achieving this goal through improving the efficiency and effectiveness by electronic land transactions.

ALSK appreciates and supports efforts by your Ministry towards developing NLIMS in a business model and drafting the land transactions (electronic) regulations for implementation of the system. ALSK participated in the Taskforce virtual stakeholders meeting held on the Friday, 22nd May, 2020s on the proposed land transactions (electronic) regulations. Further to our views submitted during the virtual meeting, we wish to enhance our oral submission with the following comments:

1. Survey (Electronic Cadastre Transactions) Regulations-2020

Citation	Amendment	Remark
Electronic Cadastre	(2) The Director of Surveys, may by electronic means on the Electronic Cadastre: (a) issue a notice, certificate, instrument or document which is required to be issued by the Director under the Act; (b) certify a map, plan, form, document or extract of a map required to be certified by the Director under the Act;	Quote the sections of the Act the regulations are referring to.
Survey Plans and Records	4 (1) a. The Director shall give direction on the format of data submitted for checking and authentication	This is due to various survey software used by Licensed Surveyors
Suspension of a user's access to the System	9(2) The Director shall on making the decision under Paragraph (1) (a), (b), (c) and (d) immediately inform the user of that decision and shall specify in the notification b) <u>the facts which, in the opinion of the Chief Land Registrar, justify each</u> <u>ground of suspension and intention to terminate; and</u>	It is not clear why the Chief Land Registrar should be involved; The facts that justify the grounds for suspension and intention to terminate should be from the Director of Surveys and not the Chief Land Registrar. Delete Chief Land Registrar
Receiving and authorization for processing	13. (1) The Director shall review documents received under Regulation 12 and authorize authentication.	Delete authentication and replace with processing

	(2) The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal.	
Checking of Survey	15 (3) For purposes of submission of checking of survey records, the Director shall— establish online links with relevant authorities for ease of information cross-referencing and enable module integration with land use plans, development plans among others	Suggestion for a new regulation- in regard to approval documents as per Form SR3
FORM SR2	Column 3 Column 4	Indicate the LR No. or Parcel No. Does apply in electronic data Need to develop a shopping CAT where buy online on registration. It however requires an electronic database of survey data. As input to shopping CAT, we should include LR. Nos, RIM/Topo sheet Nos, Deed plan no. etc Approval/Accounts/Survey records can be addressed within the shopping CAT if need be.
FORM SR3		Indicate the LR No. or Parcel No. Electronic submission does not require pages. Add item 12 -Softcopy

		observation data- GNSS(RINEX) data, Total station, Level electronic data sets
FORM SR6		The regulations have retained the same forms used in checking without improvement; How do the regulations accommodate use of new technologies. (iii) replace 'of chain' with measuring instrument Insert (ix) with GNSS surveys (we can discuss tomorrow) a. RINEX data submitted, yes- -----no..... b. Final coordinates, 3cm in East and North c. Adjusted final base line vectors, 3cm in XYZ, 3cm in residual/Length d. Repeated baseline vectors, 3cm in XYZ, 3cm in residual/Length e. Loop closures, 3cm length or 3cm in XYZ f. RTK picking and placings, 3cm East & North g. Observations record/information h. observation time, height of the antenna, antenna types etc)

2. Survey (Amendment) Regulations, 2020

Citation	Amendment	Remark
7	7(1)(a) delete “who shall be Chairman of the Board” 7(1)(b) delete “or holders of an East African Land Survey Certificate” 7(1)(b)(ii) replace “Transport, Local Government, Forestry and Housing” to reflect all time status like City status, County’s, Housing, Roads, Water, Agriculture 7(1)(b)(iii) replace “One from academia” 7(2) delete and replace with “The Board shall, from time to time, elect one of its members to be Chairman and Deputy Chairman. The chairman shall not be a civil servant.	NB. We cannot restrict this University of Nairobi only
Amendment of Regulation 86 of the Survey Regulation, 1994	Sub-Regulation 86(1) of the Principal Regulations is deleted and substituted therefore the following new sub-Regulation— (1) The Director may specify such special forms and formats on which plans may be drawn.	Sub-Regulation 99(1) of the Principal Regulations reads much the same way as Sub-Regulation 86(1) -
Amendment of Regulation 25 of the Survey Regulation, 1994	Reg.No. 25(4)- Maintenance of measuring Instruments.	Whereas it is okey for the Director of Surveys to refuse to authenticate survey carried out with inappropriate/defective measuring equipment, the regulation has not provided what the Director will do with

		the faulty equipment upon receipt. ALSK therefore proposes inclusion of the following statements: 1. All instruments shall be calibrated at least annually and prior to undertaking a major project. 2. Director shall issue calibration guidelines from time to time adapting to measuring instruments technological advancement 3. Calibration services shall be carried out by measuring instruments laboratory in Kenya approved and accredited in Kenya as testing and Calibration laboratory of measuring instruments in Kenya and who must provide proof of the following; a. Existence of physical facility and calibrations equipment b. Authority letters and support from manufacturers to calibrate their instruments c. Certified as ISO 17123 on testing and calibration of optics and Optical measuring instruments d. Accredited by Kenya
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		Accreditation Authority as testing and calibration laboratory in Kenya e. Approved by Director of Survey for cadastral survey submissions 4. All works submitted to the Director for approval shall have a copy of the most recent calibration certificate from authorized testing and calibration laboratory as per clause 3 above. Director may prescribe the format(form) and information in the certificate 5. The Director may keep record the measuring instrument (<i>this clause may help recovery of the instrument when instruments are lost/stolen</i>)
Field notes to be on special forms.	69. (1) Field notes and field note cover pages shall be made on such forms as the Director may require.	Transactions will be electronic and therefore hard copy forms. Include digital field and equipment log files,
Computations to be on special forms.	78. (1) Computations shall be made on such forms as the Director may require.	Transactions will be electronic and therefore hard copy forms. Include survey software computations and analysis reports.
Amendment of the Fourth Schedule	10. The Fourth Schedule of the Principal Regulations is deleted.	Removal of the fourth schedule is not necessary. Without it what authority will provide approval for

of the Survey Regulations, 1994.		subdivision/amalgamation?
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3. The Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020

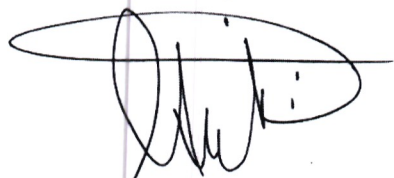
Citation	Amendment	Remark
Interpretation	“licensed professional” means a Physical Planner, Architect, Engineer, Landscape Architect or Urban Designer;	The list of licensed professionals should also include Surveyor
	“relevant Professional Registration Board” has the meaning assigned to Physical Planners Registration Act, Architects and Quantity Surveyors Act and Engineers Registration Act;	The list of “relevant Professional Registration Board” should include the Land Surveyors Board
Decision Making and Communication	19 (3) County Director of Physical and Land Use Planning shall – (i) transmit the decision to such electronic address provided by the consultant supported by email or short message service to the property owner; and (ii) re-circulate deferred applications to the relevant authorities for further review and reporting in the subsequent validation meeting	No time limit

4. Land Registration (Electronic) transactions

Citation	Amendment	Remark
Authorized User	7 (2) In the case of a legal person;	Define the legal person and include Licensed Surveyors since they process client's documents executed by lawyers.
FORM eLRA1		amend to include authorized professionals (including Licensed Surveyors) so that they can put their registration numbers as per the Land Surveyors Board

We look forward to considering our comments in the proposed Land transaction (Electronic) regulations.

Yours Sincerely,



Surv. Julius K. Rotich, MBS, MISK, CLS (EA), LS (K)
Chairman,
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P.O. BOX 30450-00100

NAIROBI-KENYA

ARDHI HOUSE

Friday 22nd May, 2020

**RE: CALL FOR PUBLIC PARTICIPATION ON THE LAND REGISTRATION (ELECTRONIC TRANSACTIONS)
REGULATIONS, 2020.**

Reference is made to the call for public participation on the above subject matter. This is in line with principles of good governance as contemplated under Article 10 of the Kenyan Constitution 2010.

The Lawyers Hub is a Legal-Tech organization incorporated within the Republic of Kenya serving the global south. It exists to provide innovative and technology-driven solutions to policy, legal practice and access to justice with a particular focus on technology-driven enterprises and policy alternatives. In line with our organization's objectives, it is our goal to encourage government ministries and parastatals to come up with innovative ways to increase efficiency and ease of access to services. We welcome the move by the Ministry of Lands & Physical Planning to come up with the National Land Information system.

To ensure that the proposed regulations are as thorough as possible to address the new challenges posed by the introduction of the NLIS we submit the following memoranda for your consideration.

Yours Faithfully,
Linda Bonyo,
C.E.O Lawyers Hub.

Land Registration (Electronic Transactions) Regulations, 2020.

We welcome the proposed Land Registration (Electronic Transaction) Regulations, 2020. We appreciate the effort made by parliament and other entities involved in the development of the regulations. The suggestions expressed herein reflect sections that in our opinion would better the provisions in the Regulations and enhance access to the services through the electronic Lands system easily and efficiently.

In our view, the following sections would be best suited if they were amended to be construed as follows:

Regulation	Amendment	Justification
7. Authorized User	Authorized User Require persons accessing the system to provide only needed personal information. The information should only include Name, ID, address, email address, phone number and KRA pin.	The other information is not necessary. Once you have the foundational identity which is the identity card then the rest of the information is really only maintaining too much personal data that is not necessary.
10. User Obligation (b)	Users should be only responsible for security details from their end and not for purposes of <i>any transaction</i> under the regulations. Security details in the system from storage and use of data should be catered for by the Government via the Ministry of Lands.	It is an undue burden on an authorized user to be responsible for the security of his/ her/its details for purposes of any transaction under these Regulations. This being that Data Protection relies heavily on the system.
11. Suspension of User Access	Include the duration of time in which the user should respond to the grounds for suspension. Should not be less than 14 days. This will ensure that the user has adequate time to prepare and submit their explanation.	Section 12 quotes a period which is provided under 11 (2) (c) but there is no provision as to the period.

13. Appeals against the decision to terminate a user's access	Include a representative from the Law Society of Kenya as a member of the Appeals Tribunal.	The law society of Kenya has the majority of the authorized persons to undertake transactions at the Lands' registries. Therefore, there must be a representative of the biggest stakeholder.
13(5) Appeal to Court	Appealing a decision from the Appeals Tribunal should not be capped to 30 days. The person aggrieved by the decision of the tribunal should be allowed to appeal the decision at least within 90 days.	Moving to court calls for huge costs and thus the person should have adequate time to prepare to move to court.
23. (c) Rejection of documents	Even where the document has glaring errors, upon rejection it should be presented on the same tracking number.	This will ensure that there is no multiplicity of transactions based on the same instrument.
24. (3) Registration	The date of registration should be deemed as the date when the registration was completed.	Some documents where time is of the essence can stall at the Lands registry thus defeating periods if the date of receiving the instrument for registration is the date that appears on the registered instrument.
28. Manual Payment of Fees	Delete this provision	There is no way that manual payment should be allowed. This will encourage corruption. With the availability of mobile money and Banks, manual payment should not be allowed at all.

The Lawyers Hub furthermore has constructed certain measures that we feel are prominent in ensuring Electronic Transactions of Land Registration are done with efficiency and security. These Measures include:

1. Identity theft

The NLIS should employ extra security measures such as double verification to ensure that unauthorized users who have stolen the identity of an individual to access the systems are not able to do so. This can be done by having an email, text or call prompt indicating that someone has requested access to the NLIS. In this regard, people who steal the identity and cannot double verify are locked from accessing the system. Furthermore, the electronic register should be continuously refreshed, either weekly or bi-monthly and updated to ensure that all authorized users are updated and ones that have ceased to be authorized are struck off to prevent identity theft.

2. System Security

Use advanced technology and store data in the most secure way such as blockchain. The data can also be secured by having measures such as strong key management. In case there is a data breach, encrypted data is safe because the encryption key is secure. Furthermore, updated IT expertise is needed to ensure that data is properly and securely used and stored. This entails creating a state of the art system with servers and reliable backups. It is also prudent to note that integrations to the system are dangerous as this presents major flaws to the protection of data and cybersecurity. Integration is a threat to the security and integrity of data.

3. User Interface.

To ensure the system is easy to use for all kinds of Authorized users, the interface should be simple to use, with elaborate instructions and guidance for all steps involved. A simple interface will ensure that real-time questions and concerns from authorized users are answered by use of catboats.

4. Terms and Conditions.

Terms and conditions stated in the regulations should be made in consultation with users of the system. This specifically entails the general term of the Ministry reserving the right to change and adjust the terms and conditions without any further reasons as long as it is necessary due to legal adjustments or technical progress. This general term should ensure that only important adjustments are made and users are notified of the changes. This will ensure that the users take necessary measures to expressly opt into the terms and conditions that affect their data.

5. Data & Privacy

The ministry should only share any personal data per the Data Protection Act 2019 and the Principles of data protection. This negates the provision that Personal Data can be shared with any other person that the ministry deems fit. A person should be equated with the right to be informed by the ministry of any data breach because of a security breach to the NLIS.

About the Lawyers Hub Kenya

The Lawyers Hub is a Legal-Tech organization incorporated within the Republic of Kenya serving the global south. It exists to provide innovative and technology-driven solutions to policy, legal practice and access to justice with a particular focus on technology-driven enterprises and policy alternatives. In the year 2020 alone, the Lawyers Hub has convened policy makers, academia and legal-tech organizations from 20+ countries within the African Continent, curated rapid tech solutions under the Global Legal Hackathon and developed key policy briefs for the African Continent on Artificial Intelligence, Data Privacy & Digital Identity, Tech and Migration, and Taxing the Digital Economy. In this regard, we offer our submissions on the proposed regulations.

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- The aim of the proposed regulations is to establish a National land information system and maintenance in the land registries and Land documents in Kenya.
- The intention is good and overdue in the current pandemic when most Kenyan are not able to access land registries.

Clause/Title	Comment	Amendment	Reason
LAND ACT 2012	Missing files, inconsistency and duplication.	It is the desire of FIDA-Kenya, if the records had been verified to establish the rightful owners before digitization to ensure that the proper records are maintained. The companies Registry has through the Business Registration service (BRS) hosted by e - citizen has been undertaking a verification exercise of the manual records held by registry through the system known as Linking. The records, the particulars of the directors and shareholders are verified through the e -citizen and integrated person's registration service.	Duplication of process
THE ELECTRONIC LAND TRANSACTION, REGISTRATION AND CONVEYANCING REGULATIONS: LAND REGISTRATION (ELECTRONIC TRANSACTIONS)			

REGULATIONS, 2020			
• SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS, 2020 • STAMP DUTY (VALUATION) REGULATIONS, 2020 • STAMP DUTY (AMENDMENT) REGULATIONS, 2020 • LAND (AMENDMENT) REGULATIONS, 2020; LAND (EXTENSION AND RENEWAL OF LEASES) (AMENDMENT) RULES, 2020; THE LAND (ALLOCATION OF PUBLIC LAND) (AMENDMENTS, REGULATIONS), 2020; - AND • PHYSICAL AND LAND USE PLANNING (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT			

SYSTEM)
REGULATIONS,
2020.

**LAND
REGISTRATION ACT
(2012)**

22 The Registrar shall, for the purposes of processing the applications, rely on the documentation and data available within the system and may, where necessary, refer to the backup of manual records.

13. (1) Appeals against the decision to terminate a user's access

Independency and impartiality of the Appeals Committee
The 2/3 Gender rule

The rules are not clear whether a manual and electronic system will run concurrently in the event where the Titles are manually held are not updated or uploaded

The appeals committee to be set by the Cabinet Secretary under the Regulations offends the rules of natural justice as the party that will have made the decision to suspend a user is the same one that will sit in the appeal and be involved in the appeal. The appointment of the committee and the parties sitting in it ought to be independent.

The members of the Appeals Committee are should comply with two thirds gender rule. The committee should have not have more than two thirds of its members from one gender.

To avoid abuse of the process by maintaining transparency and accountability.

The principles and values of the Constitution of Kenya, 2010

LAND ACT 2012

**THE ELECTRONIC
LAND
TRANSACTION,
REGISTRATION AND
CONVEYANCING
REGULATIONS:**

- LAND
REGISTRATION
(ELECTRONIC
TRANSACTIONS)
REGULATIONS,
2020
- SURVEY
(ELECTRONIC
CADASTRE
TRANSACTIONS)
REGULATIONS,
2020
- STAMP DUTY
(VALUATION)
REGULATIONS,
2020

• STAMP DUTY (AMENDMENT) REGULATIONS, 2020 • LAND (AMENDMENT) REGULATIONS, 2020; LAND (EXTENSION AND RENEWAL OF LEASES) (AMENDMENT) RULES, 2020; THE LAND (ALLOCATION OF PUBLIC LAND) (AMENDMENTS, REGULATIONS), 2020; AND PHYSICAL AND LAND USE PLANNING (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS, 2020.			
IND REGISTRATION ACT 2012 Authorized User 7. (1) A	Technology challenges	The rules are not clear on how the indigent women shall access the services with limited technological access currently facing our country. It will be important to have the information disseminated so as to reach out the indigent women. It will also be important to ensure this information is relayed in a manner that ordinary citizens understand.	Ensure equal access to information for all the citizens as outlined in the COK, 2010

LAND ACT 2012

**THE ELECTRONIC
LAND
TRANSACTION,
REGISTRATION AND
CONVEYANCING
REGULATIONS:**

- LAND
REGISTRATION
(ELECTRONIC
TRANSACTIONS)
REGULATIONS,
2020
- SURVEY
(ELECTRONIC
CADASTRE
TRANSACTIONS)
REGULATIONS,
2020
- STAMP DUTY
(VALUATION)
REGULATIONS,
2020
- STAMP DUTY
(AMENDMENT)
REGULATIONS,
2020
- LAND
(AMENDMENT)
REGULATIONS,
2020; LAND
(EXTENSION
AND RENEWAL
OF LEASES)
(AMENDMENT)
RULES, 2020;
THE LAND

(ALLOCATION OF PUBLIC LAND) (AMENDMENTS, REGULATIONS), 2020; AND PHYSICAL AND LAND USE PLANNING (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS, 2020.			
LAND ACT 2012 28 Manual Payment of fees Where payment of fee cannot be made electronically, the user shall be allowed to make payment through such other alternative means the Chief Land Registrar may determine	Security of electronic payment system	The security of the system is not addressed. In 2018 the media reported that two Kenyan Banks had lost \$ 860,000 to hackers in one month. Other reports stated that Kenya Banks lost about 1.4 Billion in less than one year to ATM fraud in 2012.	
LAND ACT 2012			

**THE ELECTRONIC
LAND
TRANSACTION,
REGISTRATION AND
CONVEYANCING
REGULATIONS:**

- LAND
REGISTRATION
(ELECTRONIC
TRANSACTIONS)
REGULATIONS,
2020
- SURVEY
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CADASTRE
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REGULATIONS,
2020
- STAMP DUTY
(VALUATION)
REGULATIONS,
2020
- STAMP DUTY
(AMENDMENT)
REGULATIONS,
2020
- LAND
(AMENDMENT)
REGULATIONS,
2020; LAND
(EXTENSION
AND RENEWAL
OF LEASES)
(AMENDMENT)
RULES, 2020;
THE LAND
(ALLOCATION
OF PUBLIC
LAND)

(AMENDMENTS, REGULATIONS), 2020; AND PHYSICAL AND LAND USE PLANNING (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS, 2020.			
(5) Any applications under sub-regulations (1) (2) (3) and (4) may be made in electronic form."	Joint ownership	A lot of women have land that is not titled or in family land. It will be important to ensure that they access information on how they will be able to get the title to their land through the system.	To comply with the CoK, 2010 provisions on equality of parties within marriage including with regard to property ownership. Access to information to parties within a marriage must be maintained.
(a) "electronic" has the same meaning assigned under the Kenya Information and Communication Act;	The Information Act 2015 :	Allows for smaller devices such flash disks "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;	Vulnerabilities
Amendment of Regulation 11 of L. N. No. 280 of 2017. 9 Regulation 11 of the principal Regulations is amended by— (a)	Is it this the role National Land Commission?		

deleting the word "Commission" wherever it appears in the Regulation and substituting therefor the words "Cabinet Secretary". (b) deleting sub-Regulation (2) and substituting therefor the following new sub-Regulation; (2) Land rent shall be payable to the Cabinet Secretary where the head lessor is the national government and into the County Revenue Fund account where the county is the head lessor. (c) deleting sub-Regulation (3). Amendment of Regulation 12 of L.			
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**ESTATE AGENTS
REGISTRATION
BOARD**



**REPUBLIC
OF
KENYA**

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Our Ref: **EARB/05/2020**

Your Ref: MOLLP/TFELTR/REGS/01

21st May 2020

The Principal Secretary

Ministry of Public Works & Housing
Ardhi House
1st Ngong Road
Nairobi

Dear Sir,

RE: PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS 2020

We confirm receipt of your letter dated 7th May 2020 and thank you for inviting us to offer our comments on the proposed Land Transactions (Electronic) Regulations 2020.

First is to commend the Ministry for your commitment towards digitization of land records and processes and the Task Force for the great work achieved in the preparation of the Proposed Statutory Instruments and the Regulatory Impact Assessment Report.

As you are aware, Estate Agents Registration Board (EARB) is the regulatory body for estate agency practice in Kenya and it derives its mandate from Estate Agents Act, 1984 Cap 533 which was operationalized in 1987. As per the provisions of the Act, the Board is charged with the responsibility of registering estate agents and ensuring the competence and conduct of practicing estate agents are of high standards. Indeed, the Board is committed to ensuring the registration of all estate agents in order to ensure professionalism and control in this sector.

The Estate Agents play a critical role in land transactions as they initiate land transactions. They are the first point of contact bringing property owners, buyers and tenants together. The Estate Agent carries out due diligence on the property, prepares the particulars of the property for marketing and attends to prospective buyers and tenants. He sets the initial terms of engagement between parties and oversees the entire transaction up to registration of the documents. It is therefore imperative that the Estate Agent is accorded the necessary recognition as professional user in the process of land transactions and is able to access the necessary documents and information on the title and survey records. He should be able to access the systems to lodge the necessary applications and documents and follow the progress on their applications.

The Board has reviewed the documents presented and would now like to make our comments, first general comments and then a schedule with specific comments in the various proposed electronic regulations.

A. GENERAL COMMENTS

1. Master Plan — as stated in the RIA there has been several attempts in the past to automate MoLPP functions. We propose the development of a Master Plan that covers in detail the entire process of automation with a detailed project plan covering activities, milestones, timelines, costs and other resources. The implementation can be phased out to manage available resources and implementation challenges. This will give a clear direction of what the Ministry wishes to achieve both in the short and long term. It will also be easier for future administrators, managers and leaders to continue with the plan instead of starting over every time there are changes in leadership or management.
2. Full Electronic Process – It is our observation that the regulations in many instances offers an alternative manual process. The liberal use of the word “may” gives an impression of two parallel systems where users have a choice between the electronic or the manual system. We propose that the regulations should in as far as is practical adopt electronic systems as an end to end process. Where manual interventions are anticipated, these instances should be clearly stated and an approval process provided to avoid the same being abused. A full electronic system will be easier to record, process, track and audit where necessary. Allowed manual cases should be recorded and a system of uploading them in the system provided. If the Task Force anticipates challenges in the initial implementation, they can allow say a 3- 6 month trial period to have the system settle after which full electronic process is implemented.
3. Authorized user Accounts – We propose that these be categorized to take care of the various interests and categories of users. We have 1) General users who are one off users, 2) Professional user like our members who need to access the systems on regular basis and requires different access rights depending on their professions, 3) Property Owners who need to access their invoices/demand notes, receipts, pay rent, access statements, and make applications relating to their properties, 4) other government agencies etc. The system can offer different payment plans for different categories of users including periodic (monthly, 3 months, half year, annual) subscriptions for access fees for professionals. An online wallet where the user can deposit money and make future withdrawals can also be considered.
4. Role of Professional Bodies – with the professionals being heavy users of the systems, the role of the professional registration bodies should be examined to ensure that those who register as professionals are registered with the bodies and are in good standing. A professional who is de-registered by their professional body like Estate Agents Registration Board, should also be removed from the professional category of user. We propose that the task force consider how to incorporate this in the regulations.
5. Appeals Boards – As previously stated, the Estate Agents play a central role in land transactions and we have therefore proposed representation by a Member of The Estate Agents Registration Board in all the Appeals Boards except that of Physical and Land Use Planning (Electronic Development and Enforcement System).

6. Data clean up – This should be done to ensure integrity of the information available in the online systems.
7. Users – The process of user application, authorization, removal and appeal should be harmonized across the regulations.
8. We propose harmonization of working hours across the regulations
9. Future aspects of the system – We propose a one stop Land Information Centre with full information on the property including developments on a particular land, proposed/approved developments in an area (critical for developers) and one that allows input by professionals for timely updates and rich data mining.

B. SPECIFIC COMMENTS ON DOCUMENTS

S/N	REFERENCE	PROPOSED CHANGE	JUSTIFICATION
REGULATORY IMPACT ANALYSIS			
1	Page 5 – 3 rd Paragraph	Include Estate Agents in the list of professionals	Plays a critical role in land transactions
2	Page 6 – Salient features of LIMS	Provide a portal for Estate Agents	Plays a critical role in land transactions
3	Page 25(Bullet 12) about Land Regulations,2020	There is no need to notify CLR on development proposals before approval	Development proposals are governed by the planning departments within County Governments and the Chief Land Registrar is notified once the proposals are approved. There is no rationale in burdening the CLR to be notified before approval as his comments are not required and besides, not all applications are approved.
LAND (ALLOCATION OF PUBLIC LAND) REGULATIONS 2020			
4	3	Allow for online auction	Ensures ease of tendering, openness and weeds out undue influences on the process.
5	All	Allow for a full end to end electronic process. Exceptions should be clearly stipulated	Promotes efficiency and accountability, ease of processes, data capture and records.
LAND (AMENDMENT) REGULATIONS 2020			
6	Amendment of Regulation 2 of L. n. no. 280 of 2017	Add 1) Estate Agent - as defined in the Estate Agents Act Cap 533 of the Laws of Kenya 2) Estate Agents Registration Board – as defined in the Estate Agents Act Cap 533 of the Laws of Kenya	Clarity

7	7(5), 11(7), 12(7),13(7), 14((3A),15(2A),16(2A), 16(7), 17 2(A), 17(7A), 18 b(7), 18(2), 21(3 &4)	Replace the word 'may' with 'shall'	All applications should be processed electronically and avoid use of both manual and electronic. This will ensure accountability and ease of tracking while avoiding confusion.
8	21(1)	Users should be categorized e.g. general user, professional user, property owner & government agency. Allow different fees and payment plans for different users e.g. a one of fee for the one off user and choice of periodic subscription for professional users e.g. monthly, quarterly, annually etc	Caters for the different interests and uses
9	21E	Appeals - Include a representative of the Estate Agents Registration Board	Estate Agents are heavy users of land administration processes as part of their professional works a should be adequately represented.
10	Forms	Should be availed in an electronic format	Ease of use, records, retrieval and audit

LAND (EXTENSION AND RENEWAL OF LEASES)(AMENDMENT) RULES 2020

11	2 - Interpretation	Add 1) Estate Agent - as defined in The Estate Agents Act Cap 533 of the Laws of Kenya 2) Estate Agents Registration Board – As defined in The Estate Agents Act Cap 533 of the Laws of Kenya	Clarity
12	4	Allow for application for extension of lease by a lessee either directly or through representation by an authorized agent on their behalf.	To allow for choice of representation
13		Introduce user categories, process of approval, removal and appeal as in other regulations.	This is missing
14	3(1)	Allow for electronic application for lease renewal. An electronic Form LA 22 should be introduced.	Ease of use, storage, retrieval and audit
15	Insert new clause after 3 (1)	After receipt of the application, the CS is supposed to circulate the application for comments to the relevant government departments i.e. Director of Survey, Director of Physical Planning, County Governments for comments. Allow an electronic process for that.	This part of the process is missing
16	3(1), 3(4), 8(4), 10(1), 10(5), 11(2), 12(2),14(2)	Replace the word 'may' with shall	Manual interventions should only be allowed as exceptions and not create a parallel manual system.
17	5	County Government renewals and extension of leases - Should consult the national government where the	Ensures national interests are protected and prevents county governments from making

		property in question is of national interest e.g. for economic, social, cultural, security, safety etc	unilateral decisions on cases with negative effects to the country at large.
18	10(1)	Application for renewals should be done electronically. Form LA 21- should be availed in an electronic format	An electronic end to end process offers more benefits, it's easier to manage, track application progress, maintain and retrieve records and audit.
19	10 -19	Lease renewals – the entire process of application and processing including inter-agency notifications and appeals should be done electronically	
20	20(1)	Add a representative of Estate Agents Registration Board as Members of the Public to appeals Board	Estate Agents acting on behalf of the lessee are key players to the lease renewals and extension processes.
21	Forms	All forms should be availed in an electronic format and filled electronically	Easier for data capture, processing, storage, retrieval and audit.

DRAFT LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS 2020

22	Interpretation	Delete “on instructions by the owner”	User definition should be expanded to include more players than the property owner. Professionals carry out searches and other land registration processes as part of their professional work and represents an array of clientele including buyers, investors, banks etc. Asking for express instructions by the owner will become tedious and a bottleneck.
23	Interpretation	Add 1) Estate Agent - as defined in the Estate Agents Act Cap 533 of the Laws of Kenya 2) Estate Agents Registration Board – As defined in the Estate Agents Act Cap 533 of the Laws of Kenya	Clarity
24	Interpretation	Under Electronic Appeals Committee – replace “13” with “14”	Error correction
25	3 (1)	The regulations should apply to all land registries not just Nairobi.	Although starting with Nairobi the rules should apply to all. The Ministry can then provide an implementation plan in the master plan and or provide a future application date for the other registries. This prevents coming back later to publish new rules/amendments
26	4(3), 11(4) & 25 ,	Replace the word “may” with “shall”	Uniformity and efficiency. Manual process should be the exception not an alternative to issuance of documents. In the instance that documents/notices cannot be

			issued electronically these should be explicit to avoid confusion and misuse.
27	7(1) & 8	Users should be categorized e.g. general user, professional user, property owner & government agency. Allow different fees and payment plans for different users e.g. a one off fee for the one off user and choice of periodic subscription for professional users e.g. monthly, quarterly, annually etc	Caters for the different interests and uses
28	7(1) & (2)(c)	Authorized User for corporate bodies – allow more than one authorized user	Allow for business continuity in case of absenteeism or indisposition of one person. Some organizations are heavy users and may require more than one person accessing the system.
29	8	Add EA (Estate Agent) in form eLRA1 – under “contact person” after P.105 add EA	This is part of Estate Agents routine professional work
30	10(c) & (d)	This restricts professionals use/application of information derived from the system in their professional work. Should be reworded or removed.	Professionals should be able to use the information obtained to advise their clients, in marketing or contracts as long as it is not for criminal/immoral activities.
31	11(1) d	Add “In case a professional ceases to be a member of the professional body registered under.	A person who ceases to be a member of the professional body should be removed if he/she applied as a user on the basis of that membership.
32	13(2)	Appeals Committee membership – Include a representative of the Estate Agents Registration Board	Our members are heavy users of the land registration system to register leases and property transfers etc as part of their professional work in agency.
33	14	Can allow for future advanced searches in category C e.g. developments on the land, approved developments in the locality etc. In future the ministry can also avail market data at a fee. Different levels of searches can attract different fees	Creates more value specially for professionals , NIS, Emergency 1 st responders etc
34	15(2)	Instances where it is not possible to append electronic signature should be clearly spelt out	Uniformity in handling applications, easier to tract and trace and store data. Prevent misuse of the manual option
35	16(1)	It is not clear what the words ‘where applicable’ refers to. Substantiate or reword	For clarity
36	16 (3)	Provide timelines for the notification	Accountability and efficiency

37	21	Manual presentation – clarify the instances	Clarity & prevent misuse
38	23	Provide a refund process for money paid but not utilized in failed applications e.g. money already paid say for stamp duty where the registration/transfer falls through.	Fairness
39	27 & 28	Clarify instances where an electronic transaction and payment cannot be done	To avoid misuse
40	Third Schedule No.(4a) (v)	Clarify/expound on “intended purposes”	Clarity
41	Third Schedule 4 (a) The use shall not (ii) & (vii) distribute or sell information	Provide an exception for professionals	Professionals should be able to use the information obtained to advise their clients, in marketing or contracts as long as it is not for criminal/immoral activities

PHYSICAL AND LAND USE PLANNING(ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS

42	10(4)	Replace the word ‘may’ with ‘shall’.	Provide uniformity and ease of management, tracking and storing/extracting data
43	10(4)	Propose a standard format for appeals	Consistency with other regulations
44	14(7)	Reasons for manual intervention should be explicit to avoid running both manual and electronic systems. Allow for electronic capture of any manual applications done	Ease of processing, uniformity, tracking and serializing
45	16(ii)	Allow for an electronic register	Ease of recording and retrieving

STAMP DUTY (VALUATION) REGULATIONS 2020

46	2. Interpretation	Add 1) Estate Agent as defined in the Estate Agents Act Cap 533 of the Laws of Kenya 2) Estate Agents Registration Board – As defined in the Estate Agents Act Cap 533 of the Laws of Kenya	Clarity
47	3	The regulations should apply to the entire valuation for stamp duty process as an end to end process.	Ease of managing the system, efficiency and accountability Lodging of documents is part of the process
48	5	Authorized user should be specified	Clarity, avoid subjectivity and encourage fairness

49	5 - 8	User - Provide a clear process of application and approval for a user Users can be categorized depending on their level of usage to take care of professionals Provide an appeal process including reference to court as in the other regulations. Introduce an appeals board missing.	Parts missing and what is provided is not as detailed as in the other regulations
50	7(2)(a)	Define who is a "qualified" person	Clarity
51	Appeals Board	Propose a representative of the Estate Agents Registration Board sits in the committee	Estate Agents are heavy users of the stamp duty valuation process as part of their professional work in registration of transfers, leases etc.
52	9	Contents of valuation – include google co-ordinates location/geo referencing, photos, registered owner details, tenure, land rent, signature by a Registered Valuer quoting their registration number and inspection date.	Added value
53	9	The CGV to accept valuations already done by private Registered Valuers to be submitted with other registration documents and/or instructed by CGV after lodging of application. The CGV who would then evaluate/review and approve.	Minimize costs and saves time by tapping into the many Registered Valuers outside the ministry.
54	12	Validity of valuation report – maintain the current period of Six (6) months.	To allow for sometimes volatile property market where prices change within a short duration
55	After 13	A person not satisfied with the CGV's decision on appeal should have an option to refer the matter to court	Administration of justice
56	15	Withdrawal of objections – should be done electronically. Replace the word 'may' with 'shall'	Ease of processing, uniformity, tracking and serializing, recording and retrieval and audit.
57	16	Service of Notices should be done electronically. Any other service method should be to supplement the electronic service	
58	Form IVA & 2VA	Amend: 1) Advocate/Estate Agent details 2) Amend "Name of Advocate/Estate Agent"	Clarity
STAMP DUTY (AMENDMENT) REGULATIONS			
59	3(2),5(13) & (14)	Replace the word 'may' with 'shall'. The entire process should be managed electronically and avoid use of both manual and electronic.	Ease of processing, uniformity, tracking and serializing, recording and retrieval and audit

SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS 2020			
60	Interpretation	Add 1) Estate Agent as defined in the Estate Agents Act Cap 533 of the Laws of Kenya 2) Estate Agents Registration Board – As defined in the Estate Agents Act Cap 533 of the Laws of Kenya	Clarity
61	All	Replace the word “may” with shall -	Avoid running parallel manual and electronic. Ease of management, data capture, storage and retrieval
62	Interpretation & 7	Allow non-surveyor user to access and download survey maps & provide more categories of users especially professionals.	There are other professionals who require maps as part of their professional work including Estate Agents in carrying out due diligence, site inspections etc
63	11(2)	Electronic Appeals Board – include a representative of the Estate Agents Registration Board	Estate Agents are heavy users of the maps which is a critical document in their daily professional work
64	12-19	Provide timelines	Accountability and efficiency

Again we want to applaud the Minister for Lands and Physical Planning for this initiative. As the Estate Agents Registration Board, we are available and ready to support the Ministry in every way as and when called upon. The success of this initiative will mark a great milestone in providing efficient, transparent cost effective service delivery on land transactions in our country and we look forward to their implementation.

Yours Faithfully,
For and on Behalf of the Estate Agents Registration Board



Eunice Macharia
Chairperson

Cc: Cabinet Secretary
Chief Administrative Secretary

NAKURU COUNTY PUBLIC OPINION CONSULTATIVE INITIATIVE

P.O BOX 10076 NAKURU Cell 0720988086

Promoting public discourse in governance issues

MEMORANDUM ON THE PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020.

Nakuru County Public Opinion Consultative Initiative is a respected and trusted public watchdog organization with keen interest in all governance issues including policy legislations and implementation at The National Government of Kenya and County Government of Nakuru.

This memorandum on the subject matter is borne out of the following three (3) fundamental principles;

- **To discharge progressive Public Participation as provided in the Kenya Constitution 2010.**
- **Need to share information and enrich governance policy formulation and anchorage in Kenyan.**

From the onset we wish to here confirm to the Ministry of Land and Physical Planning that we have individually and collectively gone through these eight (8) regulations as captured as follows;

- Land Registration (Electronic Transactions) Regulations 2020
- Survey (Electronic Cadastre Transactions) Regulations 2020
- Stamp Duty (Amendment) Regulations 2020.
- Stamp Duty (Valuation) Regulations 2020
- Land (Amendment) Regulations 2020.
- Land (Extension and Renewal of Leases) (Amendment) Rules 2020.
- Land (Allocation of Public Land) (Amendment Regulations) 2020 and Physical and Land Use Planning (Electronic Development Control and Enforcement Systems) Regulations 2020.

We also wish to make it clear that we actively participated in one of the Public Participation hearings of the Task Force that had been set up by this ministry to develop modalities and similarly collect views of Kenyans on the drive towards the roll out of a system of electronic land transactions in Kenya.

That said, and going by our strong believe that land matters will continue to be emotive in Kenya unless well managed and administered by the various agencies charged with the same in an environment of mutual trust with all the concerned land stakeholders especially and to be specific private land owners.

In this regards we are of the strong opinion that this process is doomed and for this we here want to raise preliminary objections (P.O.) based on the following grounds;

- Lack of broader and all inclusive Public Participation due the existing Convid 19 pandemic.
- Lack of consistency with constitutional provisions on land matters in Kenya.
- Lack of able and focused leadership in the ministry.
- Lack of support of key land stakeholders and professionals.

In all the above, we want to be honest to state here that in among others we share in the concerns of Kenyans both as individuals and institutions who have aired their reservations to these regulations dismissing the ministry in its blatant attempt to take over or purport to share functions which were devolved to county governments by the Kenya Constitution 2010 and other constitutionally established bodies.

Similarly, we want to make it clear that the Public Participation Hearings of the Task Force were poorly co-ordinated, convened and organized. For example, in the Nakuru County hearing of October 2, 2018, only four members of the public attended the same yet the forum was supposed to draw participants from three other counties of Narok, Bomet and Kericho.

We prefer a situation where the ministry suspends this move until the total containment of the Convid 19 epidemic when it will be possible to convene mammoth public hearings with maximum attendance of a majority of Kenyans are directly or indirectly affected by these new regulations.

The ministry should set aside these regulations just until when it will have marshaled total support of professionals directly involved in land transactions among them lawyers, surveyors, planners and architects both individually or their professional organizations.

Of note the Kenyans who are marginalized must have a say in this process and equally so those others occupying parcels of lands with caveats taking into consideration that land is a factor of production especially to the peasants

The noble intentions of an electronic land transactions system in Kenya will be watered down if the ministry continues to operate like it has something to hide or it merely want to lock some people out of business in land processes.

Finally, we want to make it clear that we are not convinced that the ministry is being run well with a Cabinet Secretary and a Principal Secretary without any requisite academic credentials and working experience in land matters.

We are aware that the High Court sitting in Kisumu gave a very remarkable ruling on the nomination and appointment of persons to serve as Cabinet Secretaries, Principal Secretaries, County Executive Committee Members and County Chief Officers.

The present disconnect in this ministry is not good in its policy formulation in the Kenya land sector to address some of the bottlenecks which have existed since independence on land issues touching public, private and community land ownership in Kenya.

SIGNED IN NAKURU TOWN TODAY 20/05/2020

DANIEL MURUGU -----

SECRETARY

NAKURU COUNTY PUBLIC OPINION CONSULTATIVE INITIATIVE

KENYA BANKERS ASSOCIATION SUBMISSIONS ON LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS 2020

A. Background

The predecessor to the current Draft Land Registration (Electronic Transactions) Regulations 2020 (“the draft regulations”) were the Land Registration (Electronic Land Transactions) Regulations, 2019 (“the 2019 regulations”) which were published on or about June, 2019 by the Cabinet Secretary for the Ministry of Lands and Physical Planning (hereinafter to be referred to as the CS). The 2019 regulations and the whole process of electronic conveyancing was however challenged by the Law Society of Kenya and rejected by Parliament for lack of public participation.

We commend the Ministry for the initiative in engaging stakeholders further for comments and feedback on the draft regulations to address the public participation concern.

B. Introduction

It is important to point out from the onset that the draft regulations as published indicate that they have been prepared by the CS in consultation with the National Land Commission (NLC) by dint of powers conferred by the Land Registration Act, 2012. However, the NLC has protested the draft regulations (among other regulations) and termed them unconstitutional. According to NLC it has neither contemplated nor resolved to propose any regulation or originated any ideas relating to the draft regulations; it has indicated that the public notice calling for comments is misleading. This apparent conflict amongst Government agencies needs to be resolved amicably and urgently to foster the requisite confidence in the process and the mooted Regulations.

C. The Draft Regulations

Various aspects of the draft regulations may need to be re-considered from a perspective of practicability and the Land Registration Act, 2012 (the parent Act). Accordingly, we note the following:-



- 1) **Section 2 of the draft regulations with respect to the definition of an authorized user [defined as a person who has been granted permission to access, query on any information or submit any documents in relation to any transaction under the Regulations] –**

Observation

The definition is an all open definition and it would seem that any person can access and use the platform.

Recommendation

For safety, data protection and accountability purposes there ought to be a provision for main subscribers who are professionals such as lawyers, licensed conveyancers and financial institutions. It might also be necessary to have fairly strict entry requirements to become a subscriber, mainly entailing: professional indemnity and fidelity insurance, licensing by relevant authorities as well as ‘good character’.

Generally, preference ought to be given to qualified professionals within the land sector to handle land transactions. Any unqualified persons should only be granted a read-only access or capability to track applications.

- 2) **Lack of definition of a register**

Observation

The parent Act provides that a register means “the register maintained under section 7 of the Act”. Section 7 of the Act however keeps referring to ‘the register’; further it provides that the CS is to determine the form of ‘register’ to be maintained in each registration unit.

Recommendation

There is a need to expressly state for purposes of electronic conveyancing what a register is and its place or relation to the existing manual registers. In the event there is a discrepancy between the two, the type of register to prevail over the other. This should be done with abundance of caution and with hindsight keeping in mind arguments on type of registers which took centre stage during the national elections court petitions.

3) Definition of electronic signature

Observation

Certain documents require that they be signed. When such documents are in electronic form, it behooves that they be signed electronically by way of an electronic signature.

Section 2 of the Kenya Information and Communications Act (KICA) defines the terms “electronic signature” and “advanced electronic signature” as follows:-

Electronic signature - data in electronic form affixed to or logically associated with other electronic data, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval of the information contained in the data message.

Advanced electronic signature, is an electronic signature, which meets all the following requirements: -

i) It is uniquely linked to the signatory; **ii)** It is capable of identifying the signatory; **iii)** It is created using means that the signatory can maintain under his sole control; and **iv)** It is linked to the data to which it relates in such a manner that any subsequent change to the data is detectable.

Recommendation

From the attributes of the advanced signature, it is evident that the same is more secure and no form of attestation might be needed as opposed to the electronic signature, which is of a simpler version. This would only mean that there is a need to attest an electronic signature to avert a situation where someone might cut off/paste a signature from any source and use it in electronic conveyancing for fraudulent purposes.



4) Definition of a professional

Observation

The draft regulations (**regulation 8**) omit to define who a professional is; they only provide a substantive clause on access by a professional. Who is a professional then? Is a doctor not a professional? Can a clerk or even a banker be regarded as a professional?

Without a definition of who a professional is, any individual might claim to be a professional thus creating an open-to-all access situation.

Recommendation

The draft regulations need to provide for the definition of a professional as well as list the various categories of professionals to be recognized under the regulations.

5) Application and Submission of Documents

Observation

Regulation 9 of the draft regulations provides that an authorized user shall from their user account make an application or submit any instrument or document for registration or recording under the system. As indicated herein an authorized user can be any person who has been granted access.

Recommendation

Ideally and traditionally conveyancing transactions have been handled by advocates as per the Advocates Act. When financial institutions and other clients instruct advocates to handle transactions on their behalf, they do so with a level of comfort and confidence. This is due to the primary fact that Advocates are trained and experience in this trade and further that in case the financial institution or client suffers loss due to negligence of an Advocate, they can sue for negligence. Advocates, on the other hand, have taken out Professional Indemnity covers and thus are able to cushion their clients from any losses. The Draft Regulations should provide for and qualify that only a certain category of given professionals can make and submit applications on behalf of property interest holders.

6) Important land industry players left out in the constitution of the Electronic Appeals Standing Committee

Observation

Regulations 12 provides for termination of a user's access to the electronic conveyancing system whilst **regulation 13** provides for an Electronic Appeals Standing Committee to hear appeals against termination of a user's account. The committee is to comprise a Ministry of Lands representative, NLC representative, Council of Governors' representative and 4 other representatives from the private sector provided that one of them shall be an Information Technology Specialist.

Recommendation

The regulation as drafted omits to create a special provision or slot for land industry players' representatives in the standing committee such as representatives of the Law Society of Kenya, Kenya Bankers Association or even a representative from the Institute of Registered Surveyors.

7) Online Searches

Observation

Regulation 14 provides for electronic searches and categorizes them into two that is, a current status search and a historical search.

It would seem that any person can request for the 2 types of searches without any limitation. Is it possible that details of land proprietors might be accessed by any third party even for speculative purposes without having any due diligence intentions at all? Is there a way we can balance the interest of the larger public to access searches while at the same time protecting property proprietors' information and records from unnecessary access by third parties? Under the Data Protection Act ("DPA"), "property details" are included in the definition of "sensitive personal data" at section 2 of the DPA. Regulation 14 seems to derogate from this protection by another law when it enables access by any third party as noted herein.



Recommendation

The system and the draft regulations should be structured in such a way that anyone not being a recognized professional intending to conduct a search on the system must upload a copy of title to the property that he or she intends to conduct a search on to avoid misuse of the search privilege under the system.

The regulations also ought to provide for finality, conclusiveness, reliability and veracity of the online search. The end user of the search should not have an apparent fear that a search may be based on records that have not been updated; that he might need a physical search to support an online search.

It is also advisable that the regulations and the system should abandon the current standard format of searches procured via e-citizen. They should adopt a new format that lists all previous interests or owners on any given land records.

8) Preparation of Conveyancing Instruments

Observation

Regulation 15 on preparation of instruments and documents provides that a user shall enter the required information in the applicable electronic form, cause the documents to be executed and upload them onto the system.

The regulation is not instructive on documents that are required to be drafted by Advocates as per the Advocates Act (CAP 16 of the Laws of Kenya) such as charge documents which are special, highly technical and specific documents by their nature.

Recommendation

This regulation should be re - checked in contra-distinction to the Advocates Act. There ought to be a clear understanding as regards to documents traditionally and legally required to be drafted by an Advocate who holds a current practicing certificate.

If at all these online instruments by dint of being printed and signed by the two respective parties are going to be regarded as contracts then certain valid contract considerations/elements

should be checked and addressed, such as: offer and acceptance, legal relationship, lawful consideration, capacity of parties and free consent.

For bank charges and other instruments as published and applicable currently, by dint of the draft regulations they can be amended to conform to the draft regulations more so on execution. The current form for bank charges should be amended to include the standard clauses as per the Land Act, 2012 and just like it is currently happening at the companies registry (you can attach your own articles of association or adopt the model ones), the regulation and the system can provide for an option to attach a specially drafted or prepared charge.

9) Appeal arising from a Valuation Report

Observation

Regulation 16 on valuation for stamp duty provides for submission of instruments for valuation and notification of the assessed duty payable. It, however, does not provide for appeals on valuation reports.

We note that it has always been standard procedure as enshrined in the Stamp Duty Act CAP 480 for a property owner to appeal the decision of a valuer to the Chief valuer through the Collector of Stamp Duty. This vital process seems to have been left out in the draft regulations.

Recommendation

The draft regulations should incorporate the process of appealing a valuation report electronically and even a provision for attaching any supporting documents for the appeal.

D. General Issues/Concerns

- (i) **Electronic Conveyancing Security:** There is a need to ensure that owing to the critical and sensitive nature of land transactions, efforts to ensure systems security, intrusion detection and prevention are key to facilitate data integrity and confidence by citizens and other stakeholders.

There is also need to engage stakeholders on the level of security to be embedded in the system. The ministry ought to consider incorporating block chain technology to enhance



the system security and reliability. To manage access to the system, a one-time login code can be considered in the system security topology.

- (ii) **Execution and verification of signatures:** Prior to enactment of the Business Laws (Amendment) Act, 2020, it was mandatory for contracts involving land, such as transfers and charges, to be executed by the parties and the signatures attested in the same breath.

The Land Registration (General) Regulations, 2017 as gazetted still retain a verification certificate to be signed by advocates certifying that a person appeared before an advocate and freely/voluntarily signed a given instrument.

The requirement for attestation and verification of signatures by advocates reduced fraud as an advocate whose signature appeared on an alleged forged instrument could be called upon to clarify whether a person really appeared before them and executed an instrument.

The Act did away with the requirement for witnessing and attestation of signatures by Judges, Magistrates, Notary Public and Advocates

The above safeguard has now been removed and there is a great level of exposure and fraud which might gain a foothold on conveyancing transactions. Is it probable that an old grandfather/mother may be hoodwinked or be unduly influenced to transfer land electronically? Who can give evidence as to the state of mind of the old man/woman in case of future litigation long after the old man/woman is deceased?

E. Issues raised in the Report on Electronic Land Transactions, Registration, Conveyancing and other Related Task force on February 2019³ but not addressed in the Draft Regulations

(i) Migration/ Conversion to one Register under the Land Registration Act, 2012

The Land Registration Act 2012 repealed the: Government Lands Act, Registration of Titles Act, Registered Land Act, Land Titles Act and Indian Transfer of Property Act whose existence required different modes of keeping registers at various registries.

Though the enactment of the Land Registration Act, 2012 was meant to consolidate the above registration regimes by way of a migration process as envisaged under Section 6 of the said Act and the Land Registration (Registration units) Order, 2017, the same has not been actualized. It is critical to fast track the above process since success of the electronic land registration system largely depends on the harmonized register manifest by the migration process.

(ii) Data Input Errors During Digitization

There were concerns that in the manual and paper based system some records, particularly titles, could have been falsified hence the existence of apprehension during scanning of documents at the Lands Registry in preparation of digitization that some of the falsified documents could be validated by being scanned.

Based on this well-founded fear, there is a need for the Ministry of Lands to set up a procedure for property owners to peruse their respective property records to enable them verify and validate the records held by the lands office and in special circumstances, bring any additional documents that they might hold for completeness of data where gaps or discrepancy are noted.

Accordingly, the draft regulations ought to provide for mechanism of correcting erroneously captured data- more specifically, there ought to be a provision on how the Ministry either through the CS or the Chief Land Registrar is to deal with wrong ,fraudulent and multiple entered errors in the given electronic conveyancing platform.

(iii) Court Cases

The Environment and Land Court has too many land dispute cases which has caused apprehension on digitization and automation of the land transactions. As a matter of practice, land disputes in Kenyan Courts need physical documents. The best evidence rule has always been centred on production of original documents. Accordingly, the questions on how to treat electronic signatures will linger and the courts will need to come up with new jurisprudence on this front.



The digitization process needs to capture issues and unresolved cases on a parcel of land and not only the details of the registered proprietor. Lengthy land related litigation will in essence slow down land transactions and hinder transactions on the electronic conveyancing platform.

It is recommended that the electronic search should be able to capture any ongoing litigation. The draft regulation is also silent on how to treat any records, documents or titles that are subject to an ongoing litigation.

(iv) Decentralization and integration of the digital system

During the taskforce public participation meetings, members of the public wondered whether the digitization system would be decentralized and to what extent. It was noted that the electronic conveyancing system needs to be integrated in order to ensure all the players in land transactions are in the system, that is, from the Ministry of Lands, county governments, National Lands Commission as well as the professionals in private practice (Land Surveyors, Valuers, Advocates, Physical Planners, and Architects)

The draft regulations are silent on the architecture of the system and more specifically the role (if any) of some of the players noted above.

(v) Issuance of Titles

During the taskforce meeting with members of the public, the following issues were inquired on but have not been answered or captured in the draft regulations: -

i) Whether the system allows double registration of titles; ii) The minimum and maximum acreage of land allowed under the system; iii) Whether the system will allow for replacement of lost titles; iv) A differentiation between what inherited, purchased or leased property is and information on what constitutes a genuine title to purchased property; v) Whether there would be a database for disputes over land titles; and vi) Whether there will be an option for colour coding titles e.g. according to the land classification [public, private or community land]

F. Conclusion

We note that the draft regulations do not provide for a clear topology or work flow of the system. We further note that the regulations need to incorporate key considerations in relation to statutes dealing with land as well as conveyancing practice. Additionally, having regard to the emotive nature of land in Kenya, the draft regulations have omitted to address the efficacy, reliability and sustainability of electronic conveyancing. It further seems to have a direct rather than a phased implementation.

We look forward to the oral discussions and clarifications on the Regulations during the Wednesday 27th May 2020 Virtual Meeting as we fully support this process to realize the digital transformation of the land transactions.

Dated this 26th Day of May 2020.

Dr. Habil Olaka

Chief Executive Officer

KENYA BANKERS ASSOCIATION

P.O BOX 2737- ESAMBA PRIMARY
SCHOOL.
KISII.
20-05-2020.

THE PRINCIPAL SECRETARY
MINISTRY OF LAND AND PHYSICAL PLANNING
ARDHI HOUSE, 1ST NGONGI AVENUE
P.O BOX 304500-00100
NAIROBI.

DEAR SIR

**REF: COMPLAIN ABOUT LAND NYARIBARI CHACHE/ B/ B/ BOBURIA TITLE
NUMBER 188**

We the undersigned we are the beneficiary of the above said land. As we are the true sons and daughters of the late Marucha Osoro and the late Alice Kemunto Marucha.

1. Ruth Moraa Marucha -1982 *RM*

2. John Osoro Marucha -1986

3. Robin Kwamboka Marucha -1992 *RKB*

4. John Matundura Marucha -1988 *JM*

5. Agnes Kerubo Marucha -1996

6. Tabitha Nyanchama Marucha -1999 *TN*

7. John Obwoye Marucha -2004 *JO* 0769943718

8. Douglas Nyambane Marucha - 2006 *DN*

We were surprised on 28/03/2020 when we saw strange people came and fenced our land led by the area chief Charles Obonyo Moegi -0783387465 of Nyanko Location, Kiogoro Division, Kisii Sub county accompanied by someone we identified as Maziwa who is the chairman of

community policing in Kisii County purporting that the land was sold long ago when we were young said the area chief. But on our side we never heard that kind of information even when our parents were alive. Our father died on 2012 followed by our mother on 2019 both of hunger and poverty related diseases.

We are sure the area chief and the community policing chairman are taking advantage of our late parents to sell our own land. We have since reported the matter to the A.C.C Kiogoro Division (0726966880 Joyce) but the matter has not been settled so far.

We are relinquishing in poverty and hunger and scattered all over to our relatives who are taking care of us just for the sake of education, food and shelter as we have no house nor food at home. Our appeal to you is kindly assist us to recover the land before they make false transaction as the title deed still remains in our grandfather's name.

Any assistance from you will be highly appreciated.

C.C

Land Registrar Kisii County

D.C.C Kisii Central District

Yours faithfully,



0796509848

Robin Kwamboka Marucha



INTERSEX PERSONS SOCIETY OF KENYA

INTERSEX PERSONS SOCIETY OF KENYA (IPSK)

5th Floor, Room 5:3, **Dereshe Towers, Murang'a Road**
P.O Box 38751-00600, Ngara, Nairobi- Kenya.

Email: Info@intersexkenya.org /
intersexsocietyofkenya@gmail.com

Website: www.intersexkenya.org

Tel: +254 723 886233

Our Ref: IPSK/ GEN-05/VOL.1/ 2020

The Principal Secretary
Ministry of Planning and Physical Planning
Ardhi House, 1st Ngong Avenue
P. O. Box 30450-00100
NAIROBI
Email to: elandtransactions@gmail.com

22nd May, 2020

RE: NOTIFICATION OF REGULATORY IMPACT STATEMENT ON THE PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

We write in response to your public notice reference above, calling upon all persons likely to be affected by the proposed Land Transactions (Electronic) Regulations, 2020 to give input.

About Intersex Persons Society Kenya (IPSK);

IPSK is an initiative that started in Nairobi County on November 2016 to provide support, create awareness as well as gather data to establish the identifiable presence of intersex persons in Kenya and their plight towards enhancing enjoyment of human rights in particular their human dignity and elimination of human rights violations. IPSK works to develop tools and information suitable for advocacy, to be used in awareness campaigns towards an open, tolerant, and enabling society of intersex persons and their families.

IPSK is also a member of the Government's Intersex Persons Implementation and coordination committee (IPICC) as well as a member of the defunct taskforce on Intersex persons.

1. The Constitution of Kenya 2010 In Article 260 interpretation section, does not discriminate any person (adult or child) instead, Intersex person are included therein as they qualify as adult individuals or children (individuals under 18 years). This also support Article 27 provision protection from any form of discrimination on grounds set out there in sex and birth being of interest to us as intersex persons.

2. The laws in Kenya that governs land management, ownership and registration such as (The Land Act, 2012) does refer to a person, (e.g. a person this, a person that), this is very good since it allows intersex person to be part of the land transactions processes.
3. This is why we submit generally and observe that the various raft of land regulations that have been proposed by the Government and the relevant taskforce aims at making provisions that will aid the land transaction electronically. This means there will be databases established which will require use of persons particulars in a more specific way that is; aspects of name, sex, attachment of documents among others, which if not comprehensively thought out in system creation then it will further marginalize and promote discrimination against intersex persons in Kenya. This would therefore eat into the gains made by the Government in recognizing the existence of Intersex persons, their plight and measures put in place to address the inequality and human rights violations perpetuated against the Intersex children and adults in Kenya.
4. We wish to refer the team to the findings of the Intersex taskforce¹ established that Intersex persons continue to be marginalized in Kenya due to discrimination perpetuated by laws, policies, rules and regulations, institutional systems and administrative processes and thereby made the following recommendations.
5. Last year, the Government confirmed the existence of intersex persons in Kenya and announced that it recorded 1,524 intersex persons in the 2019 Kenya population census and housing statistics. This goes further to justify our submission below, albeit general that:
 - a) That the regulations should also adopt usage of the phrase person and/ or the individual as provided in the Constitution and the land laws in Kenya.
 - b) That the regulations shall ensure that at the point of operationalizing the systems establishment and databases, the sex tab or menu will provide for male, female, intersex markers as a way of safeguarding the human dignity of Intersex persons. This will ensure inclusivity and reduce marginalization of the Intersex persons.

¹See Intersex taskforce report -Main report recommendations from page 91
< http://www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-see_https://www.knchr.org/Portals/0/INTERSEX%20TASKFORCE%20FREPORT-Abridged%20Version.pdf recommendations from page 43.

- c) Most of the Intersex children look forward to benefit from the Land laws and succession aspect that accrue, to this end, there is need to include the aspect of intersex person's documentation (especially whether there has been name change to avoid marginalization).

For any inquiry please contact the undersigned. Thank you.

Yours Faithfully,

R.M

RYAN M WANGUI

DIRECTOR IPSK

Andrew Mbugua
P.O Box 10287
KIKUYU, KIAMBU

18th May, 2020

The Principal Secretary,
Ministry of Lands & Settlement,
Ardhi House, 1st Ngong Avenue,
P.O Box 30450 - 00100,
NAIROBI

Dear Sir,

Ref: Land Transactions (Electronic) Regulations - Stamp Duty (Valuation) Regulations

On the matter of:

Technological development round the globe has been accredited to the progress of economies in the world and in that regard Kenya has not been left behind in the adoption of technology to get their better share of benefits that come with embracing technology. In that regard Kenya has slowly but surely started embracing technology by adoption of electronic transactions and a good example of this is the introduction of the Stamp Duty (valuation) Regulations 2019 which is aimed at reducing the cost of doing business, increasing efficiency and reducing the time taken in carrying out property.

Stamp Duty on transfer of property is one of the sources of revenue for the government and as such it has mandated the Collector of Stamp Duty (Kenya Revenue Authority) to oversee its collection.

Article 43 (1b) Constitution of Kenya, 2010, states that every person has a right to accessible and adequate housing and to reasonable standards of sanitation. In addition, affordable housing is one of the Big Four Agenda set by the government.

The President assented to the amendment of Section 10A (1) of the Stamp Duty Act, Cap 480 of the Law of Kenya to read as follows:-

The Collector of Stamp Duty shall refer to the Chief Government Valuer or a registered and practicing valuer appointed by the Chief Government Valuer any conveyance or transfer document on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value as at the date of the conveyance or transfer for purposes of ascertaining whether additional stamp duty is required.

Subsequently the Cabinet Secretary for Finance & National Planning has sought to make the Stamp Duty (Valuation) Regulations, 2020 operational, and in line with the spirit of the Constitution of Kenya on Public Participation, has requested the public to give their opinion on the regulations. It is on this ground that I seek to present my contributions on the said regulations as follows:-

a) Section 2: Interpretation:

The following should be taken into consideration and find place under the aforementioned section;

1. Registered and practicing Valuer shall have the meaning as ascribed in the Valuers Act, Cap 532 of the Laws of Kenya.
2. The Collector of Stamp Duty shall have the meaning ascribed to it by the Stamp Duty Act, Cap 480 of the Laws of Kenya.
3. Chief Government Valuer shall have the meaning ascribed in the Valuers Act, Cap 533 of the Laws of Kenya.
4. "Property" has the meaning ascribed to it under Article 260 of the Constitution of Kenya, 2010.
5. Institution of Surveyors of Kenya shall have the meaning ascribed to it by the Valuers Act, Cap 432 of the Laws of Kenya.
6. "True open Market Value" for purposes of Stamp Duty Valuations means the Market Value of an immovable property defined as the estimated amount for which an immovable property should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and wherein the parties had each acted knowledgeably, prudently and without compulsion.

b) Panel of Valuers

To ensure that the spirit of the amendment is adhered to:-

- i) The Chief Government Valuer shall prequalify and maintain a panel of Registered and Practicing valuers who shall be authorized to carryout Valuations for Stamp Duty Purposes.
- ii) The collector of Stamp Duty in consultation with the Chief Government Valuer shall authorize a prescribed registered and practicing Valuer to access the module for purposes of undertaking valuations for Stamp Duty Purposes.
- iii) The Chief Government Valuer shall assign valuation assignments to the various Valuers in the panel of valuers for purposes of carrying out valuations for stamp duty purposes.

c) Section 6:

Insert 6 (b) to include the following:-

A valuation report shall be submitted electronically for purposes of dispensation. It shall be in:-

- i) Electronic Format;
- ii) Signed by the Registered and Practicing Valuer who shall have prepared the Valuation report;
- iii) In such a format as may be authorized by the Collector of Stamp Duty and or the Chief Government Valuer;

d) General Principles

In carrying out valuation for Stamp Duty the Valuer shall consider the following:-

- i) Market Value of the property;
- ii) Date of Valuation which shall be the date of transfer/conveyance;
- iii) Valuation Standards as provided by the International Valuation Standards (IVS), Institution of Surveyors of Kenya and the Valuers Registration Board;

A stamp Duty Valuation Report shall form part of the conveyance/transfer documents or instruments for registration;

The Stamp Duty Valuation report carried out by a registered and practicing Valuer assigned from the panel of Valuers shall be addressed to the Chief Government Valuer on behalf of the Collector of Stamp Duty;

The Stamp Duty Valuation Report shall be signed by the registered and practicing valuer and the Chief Government Valuer as provided by Section 10A (1) of the Stamp Duty Act (Cap 480) of the Laws of Kenya.

Hope that these recommendations will be taken into consideration.

Yours Sincerely

Andrew Mbugua

Dated May 8th 2020

22 May 2020

"by-email"

The Principal Secretary
Ministry of Lands and Physical Planning
Ardhi House, 1st Ngong Avenue
P.O Box 30450-00100
Nairobi
elandtransactions@gmail.com

COMMENTS ON THE PROPOSED ELECTRONIC LAND TRANSACTIONS REGULATIONS 2020

INTRODUCTION

Following the invitation by the Ministry of Land and Physical Planning calling for comments, views and proposals from stakeholders and members of the public on the proposed **Electronic Land Transactions Regulations 2020**, we as **MMS ADVOCATES LLP** submit the following commentary.

We note that the proposed regulations seek to establish a digital National Land Information System (NLIS) which is meant to create and provide an efficient and effective land administration system as well as facilitating easier and speedier processing of land transactions in Kenya.

With that as our basis, below are some of our comments and views for your consideration:

LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS 2020

Clause No.	Current Wording	Proposed Regulation	Rationale/Justification
11 (1) (Suspension of a User's access to the system)	The Chief Land Registrar may immediately suspend a user's access when it comes to his/her notice that the user – a. has contravened the obligations or the terms and conditions of access b. is suspected to have committed any fraud, identity theft or system misuse;	All pending applications in suspended accounts be considered valid and processed just like any other application, so long as they are not fraudulent.	Halting pending applications/transactions in suspended accounts may occasion unfairness on innocent parties who are on the other side of the transaction.

	c. allows an unauthorised/unqualified person to access the system; d. in the case of professionals, is not in good standing; e. is dead; f. is declared insolvent; g. is declared of unsound mind.		
14 (1) (Searches)	A person shall access information in the electronic register by conducting an official search in the system after payment of the prescribed fees.	Charges for conducting an official charge should be reasonably priced Persons conducting searches should upload a copy of the title deed as proof of genuine interest in the land Turn-around timelines regarding search results to be included	This will help cut costs and ensure all persons have access to the system This is to warn off persons who have no interests in the land from making frugal applications and overloading the system This will help in avoiding unnecessary delays when processing search applications and improving the system's effectiveness and efficiency
16 (Valuation for Stamp Duty)	(1) Where applicable, the authorised user shall submit the instrument or document for Valuation in electronic form. (2) Upon submission under of the instrument under sub regulation (1), the user	Inclusion of turn-around timelines of applications for valuation of stamp duty	Avoiding unnecessary delays, provide clarity on timelines in which to expect feedback and improve the system's effectiveness and efficiency

	shall receive an electronic notification indicating the date and time when the request was received. (3) The authorised user shall be notified of the assessed duty payable.		
23 (Rejection of Instruments)	(1) The Instruments shall be scrutinized against entries in the register and to assess their conformity with the provisions of the relevant law. (2) The Registrar may return the instruments or documents to the applicant pointing out the minor errors for correction. (3) Upon making the necessary corrections on the instruments or documents returned under paragraph 2 the user shall lodge the documents under the same tracking number. (4) If the error apparent on the instrument or document is substantially defective, the Registrar shall reject the instrument or document with reasons thereof. (5) The instrument or document rejected under paragraph (4) above shall be lodged afresh as though it were a new transaction upon correction of errors.	Establishment of clear criterion for determining whether an instrument or document is substantially defective	To create uniformity of decisions and avoid arbitrary decisions when determining whether an applicant's documents or instruments are substantially defective

24 (Registration)	(1) Registration shall be completed upon approval of the transaction and making of corresponding entries into the register by the Registrar. (2) Upon approval by the Registrar there shall be an electronically generated notice to the effect that the document has been registered. (3) The date indicated on any registered instrument shall be the date on which the application was received.	Inclusion of timelines on how long the registration process is supposed to take	Avoiding unnecessary delays, provide clarity on timelines in which the registration process will be concluded and to improve the system's effectiveness and efficiency
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SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS, 2020

Clause No.	Current Wording	Proposed Regulation	Rationale/Justification
13 (2) (Receiving and authorization for processing)	The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal.	Inclusion of a provision enabling surveyors to make corrections on the rejected document(s) and re-upload them using the same tracking number	To streamline and hasten the authentication process and avoid both duplicity of applications and overloading the system by making several applications on the same documents.
16 (3) (Authentication)	Upon authentication, the Director shall notify the Surveyor of the authentication of the survey and the fees payable in Form SR13 set out in the First Schedule.	Inclusion of timelines regarding the duration and conclusion of the authentication process	Avoiding unnecessary delays, providing clarity on timelines in which the authentication process will be concluded and to improving the system's effectiveness and efficiency

STAMP DUTY (VALUATION) REGULATIONS, 2020

Clause No.		Current Wording	Proposed Regulation	Rationale/Justification
6 (Electronic lodgment)		(1) A document may be lodged electronically for the purposes of processing, if the document is-- (a) in an electronic format; (b) signed by the authorized user; and (c) in such format as may be authorized by the Chief Government Valuer. (2) A person wishing to undertake a valuation, shall in the prescribed Form 1VA in the Schedule to these Regulations, make an electronic application to the Chief Government Valuer, for consideration.	Inclusion of a fixed period which the consideration process should take	Avoiding unnecessary delays, providing clarity on the exact period which the consideration process will take and to improving the system's effectiveness and efficiency
13 (Objection)	(3)	The Chief Government Valuer may within seven days after receipt of the objection under this Regulation, (a) dismiss the objection, if he or she considers that no adjustment in the valuation is justified; or (b) make the adjustment, if he or she considers that the adjustment in the valuation is justified.	Inclusion of a provision providing an opportunity of appeal to persons aggrieved by the decision of the Chief Government Valuer	To ensure fairness and justice in the decisions made by the Chief Government Valuer and give a chance of appeal to persons aggrieved by decisions of the Chief Government Valuer

LAND (AMENDMENT) REGULATIONS, 2020

Clause No.	Current Wording	Proposed Regulation	Rationale/Justification
2f (Definition of a User)	“user” means a person who has created an online electronic account for access or submission of information by electronic means in the system, and may include a property owner or a professional.	Inclusion of provisions that clarify how the user accounts should actually operate practically, more specifically, where a party to a land transaction is being acted for by professionals, such as advocates, surveyors e.t.c	To provide clarity on how the user accounts should actually operate and streamline the process of using the system
21C (Suspension and Termination of a User's access)	(1) The Director Land Administration may at any time immediately suspend a user's access if the user-- (a) Is suspected to commit any fraud, identity theft or system misuse; (b) contravenes the obligations or the terms and conditions of access; (c) allows an unauthorised/unqualified person to access the system (d) is dead (e) is declared insolvent and the Director Land Administration is duly notified	All pending applications in suspended accounts be considered valid and processed just like any other application, so long as they are not fraudulent Inclusion of timelines on the suspension period	Halting pending applications/transactions in suspended accounts may occasion unfairness on innocent parties who are on the other side of the transaction and cause unnecessary delays To provide clarity on how long the suspension period is supposed to last

(f) is declared of unsound mind and the Director Land

Administration is duly notified

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

Clause No.		Current Wording	Proposed Regulation	Rationale/Justification
3 (Application for Extension of Lease) & 10 (Application for Renewal of Lease)	(4) (5)	An application for extension of lease made under this Rule may be made in electronic form. An application for renewal of lease made under this rule may be made in electronic form.	Inclusion of a provision establishing the procedures of making electronic applications for both extension and renewal of leases	To provide clarity on the procedures of making electronic applications for extension and renewal of leases thereby enabling users to do so
5c and 13(b) (Determination by national government or county government)		5. In order to determine whether to grant or decline to grant an extension under rule (3) and (4), the Cabinet Secretary or the County Executive Committee Member shall consider— c) evidence that the lessee has complied with the terms and conditions of the existing lease to the satisfaction of the lessor; 13. In order to determine whether to grant or not grant renewal, the national government or county government shall require, —	Inclusion of provisions providing the prescribed form in which this proof of compliance should be given	To avoid ambiguity, confusion and provide a standard form in which this proof of compliance can be given

	(b) evidence that the lessee has complied with the terms and conditions of the existing lease to the satisfaction of the lessor.		
LAND (ALLOCATION OF PUBLIC LAND) (AMENDMENT) REGULATIONS, 2020			
Clause No.	Current Wording	Proposed Regulation	Rationale/Justification
8 (Amendment of Rule 36 of L. N. No. 284 of 2017)	(4) Without prejudice to the generality of sub-regulation (3), cadastral plan and cadastral map may be requested in electronic form.	Providing a clear definition and description of what electronic execution is and what it entails	To avoid ambiguity and provide clarity on exactly what electronic execution is and how to effect it.

CONCLUSION

In conclusion, it is important to note that these comments and proposals have been generated from our experience as land practitioners and our interaction with other online platforms and registries, such as the Business Registration Service and the immigration portal. The challenges encountered in such digital registries and processes have been a key informant in formulating these comments.

We trust that you will find this useful.

Yours faithfully
MMS Advocates



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COUNTY ASSEMBLIES FORUM (CAF)

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MEMORANDUM ON THE LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

SUBJECT: CAF Memorandum on the Land Transactions (Electronic) Regulations, 2020

TO: The Taskforce on Regulations for Electronic Land Transactions

THROUGH: Dr. Nicholas Muraguri
Principal Secretary, Ministry of Lands and Physical Planning

FROM: The County Assemblies Forum

DATE: 26th May 2020.

Introduction

The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. CAF is keen on supporting national laws including statutory and Regulatory frameworks that promote service delivery at County level.

CAF appreciates the effort of the ministry of Land and the National Land Commission for developing the legal framework needed in moving from paper backed record keeping system to an electronic record keeping system. In light of this, the Ministry and NLC should take into account the amount of capacity building and training of both the National and County Government's staff. CAF proposals are as follows: -

General Comments

Regulations as stated in section 90 of Physical Planning Act 2019 (PLUPA) have not been developed and should give effect to the electronic regulations.

Devolution is about distributing functions and making them easily accessible at the grassroots level hence any amendments that are to be done in these regulations should focus on enabling all the 47 Counties have access and control in ensuring enhanced service delivery to residents of respective Counties. A few examples like: -

- Powers to approve and allocate public land should NOT be given to the Cabinet Secretary Lands only, this is against the constitution which administers that Public Land is held in custody by The County Government and administered on its behalf by NLC, I therefore wish to say that any allocation of Land should be made after proper and intensive consultation is done with the County Government. We have witnessed a number of problems and challenges in Counties like Lamu and Turkana where allocation of Land for Port and Oil was done without proper consultation with the Counties.
- The powers to approve or deny change of user should NOT be left to the Chief Land Registrar and the County must be fully involved since Physical Planning is fully devolved and Counties have enough capacity to look into the matter.
- The Survey Act has not been reviewed since inception of devolution and hence subdivision and mutations are being done in the Counties without the consent of the County Government, this should be addressed immediately.
- Collection of Revenue through payment of stamp duties and any other sources should ensure that the County Government also give its approval and charges it's fees as these are the main own source revenue.

MAJOR CONCERNS IN THE PROPOSED REGULATIONS;

1. Devolution entails decentralization of governance and service provision however most of the proposed processes in these regulations contradict this purpose.
2. It is embedded in the Constitution of Kenya and counties being the devolved units will be largely affected by these regulations.
3. The proposed amendments are in conflict with the existing Supreme Law and subsequent legislation.
4. We have noted the deletion of County Executive Committee Member with Cabinet Secretary, National Land Commission Chairman with the same Cabinet Secretary. This waters-down the spirit of devolution.
5. The Committee therefore recommends that all laws and regulations be developed, adopted and implemented in a manner that is consistent with the Kenya Constitution.
6. The proposed draft regulations grant development approval rights for projects of strategic national importance and Inter-county projects to the cabinet secretary which contradicts schedule four of the Constitution of Kenya on powers given to counties. Apart from violating the constitution, these projects generate substantial revenue to the counties and allowing it will usurp counties some of their own-revenue generation stream.
7. It is further the feeling of the Committees that if the regulations are enacted as they are, Counties will lose out hugely on revenues that and noting that these are major technical changes aimed at undermining the spirit of devolution.
8. The Electronic system should not be centralised in Nairobi but should be decentralized at the County Levels. No effort has been made to disclose this will be done.
9. Extension and renewal of Leases should be the prerogative of the County Governments and National Land Commission, because they best understand emerging issues on the ground that may inform rejection e.g. new public need or proliferation of squatters.
10. We emphasise that registration of leases for public land must be informed by National Land Commission and County Governments and the transfer of land assets to County governments is long overdue.

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

Section Recommended being amended	Recommended Amendment	Remarks
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.	Amend to state: - “There shall be established an electronic development control and enforcement system managed by the County Governments for the purpose of handling applications for development permission.”	Development control is a County Government function
Regulation 4 (1) (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,	Amend the following to state: - “(1) The County Directors of Physical and Land Use Planning/CEC shall maintain in the system, an electronic database for the – (i) approved physical and land use plans (note preparation and approval of these plans is a county function) in accordance to provisions of the First and Second Schedules of the Act; (ii) development control (note this is a county function) instruments including handbooks, codes, zoning ordinances, policy statements, guidelines,	This responsibility to be bestowed with the County

guidelines, circulars and manuals; and (iii) Registers of documents submitted by applicants for development permission as provided in Schedule 1.	circulars and manuals; and (iii) Registers of documents submitted by applicants for development permission (County function) as provided in Schedule 1.”	
Regulation 5(1) (1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall—	Amend the following to state:- “(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 – ” ...	Section 57 of the Physical and Land Use Planning Act - Processing of development applications and grant of development permissions are vested with the CEC. A person shall not carry out development within a county without a development permission granted by the respective county executive committee member. 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.)
Regulation 12(1) (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	Amend to state: - “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.”	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.

account.”		
Regulation 15 (2) The application shall be received and downloaded by the authorized planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by—	Amend to state:- “ The application shall be received and downloaded by the authorized county planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by—...”	All developments including projects of strategic national importance or inter-county to be subjected to the fees and charges as prescribed by county finance act.
Regulations 17 (1) “(1) Subject to the provisions of Section 60 of the Act, the authorized planning officer shall transmit an electronic copy of the application to the authorized technical officer of the relevant authorities and agencies to review and comment. (2) The fully circulated application shall be received by the — (1) Director-General for the prescribed projects of national importance for onward approval by the Cabinet Secretary.”	Amend the following to state: - “(1) Subject to the provisions of Section 60 of the Act, the authorized planning officer shall transmit an electronic copy of the application to the authorized technical officer of the relevant authorities and agencies to review and comment. (2) The fully circulated application shall be received by the — (1) 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.”	It is good to note Section 57 of PLUPA which states- “(1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.”

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;”	Amend the clause to state that: - The CEC 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	See section 57 of PLUPA. Section 69 on refers to consideration of the Cabinet secretary of a development permission (meaning a permission that has already been granted by the County Government.) 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.”
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B. DRAFT LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020

Section Recommended being amended	Recommended Amendment	Remarks
Regulation 6 “Cadastral maps shall for purposes of registration under these Regulations, be maintained in electronic form.”	Amend the clause to state: - “Cadastral maps shall for purposes of registration under these Regulations, be maintained by the County Governments in electronic form”	Land survey and mapping is a county function as per Schedule four of the Constitution:
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; (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	No Amendment Add more members representing counties.	Not representative considering 47 No. County Governments

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

Section Recommended being amended	Recommended Amendment	Remarks
Regulation 3 “ Where the County Executive Committee Member approves an application under paragraph (2), the County Executive Committee Member shall inform the Cabinet Secretary to- (a) require the lessee to have the land re-valued in order to determine the land rent and other requisite fees, payable;	Amend to state that: - “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 – (a) require the lessee to have the land re-valued in order to determine the land rent and other requisite fees, payable; (b) require the lessee to have the land re-surveyed and geo-referenced, where applicable;”	Refer to Article 62 (3) of the Constitution of Kenya which reads as follows: “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-- (a) clause (1) (a), (c), (d) or (e); and (b) clause (1) (b), other than land held, used or occupied by a national State organ.”

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

Section Recommended being amended	Recommended Amendment	Remarks
Regulation 34A “A letter of allotment issued under the provisions of this Act and these regulations may be done in electronic form.”	Amend to state: - “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.”	Planning should be the basis of these allocations to ensure order.
Regulation 36(1) and 36(3) “36 (1) The cabinet secretary shall prepare and execute leases emanating from allocation of public land. 36 (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	Amend to state: - Regulation 36 (1) (1) “The National Land Commission shall prepare and execute leases emanating from allocation of public land”. Regulation 36(3) (2) “In order to facilitate the preparation of leases on public 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.”	Refer to Article 62 (3) of the Constitution of Kenya which reads as follows: - “(3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.”

DRAFT-SURVEY-ELECTRONIC-CADASTRE-TRANSACTIONS-REGULATIONS-2020

SECTION RECOMMENDED BEING AMENDED	RECOMMENDED AMENDMENT	REMARKS
Regulation 3(1) 3 (1) The Director shall maintain an Electronic Cadastre which shall be part of the National Land Information System established in accordance with section 6(h) of the Land Act.	Amend the following to: - “The Director of Survey” shall maintain an Electronic Cadastre which shall be part of the National Land Information System established in accordance with section 6(h) of the Land Act.”	-There is lack of clarity of which specific Director is being addressed. -The Amendment provides more clarity
Regulation 9(1) 9. (1) The Director may immediately suspend a user’s access when it comes to his/her notice that the user – (a) has contravened the obligations or the terms and conditions of access; (b) is suspected to have committed any fraud, identity theft or system misuse; (c) allows an unauthorized/unqualified person to access the system;	Amend the following to state that: - “9. (1) The Director may immediately suspend a user’s access when it comes to his/her notice that the user – (a) has contravened the obligations or the terms and conditions of access; (b) is suspected to have committed any fraud, identity theft or system misuse; (c) allows an unauthorized/unqualified person to access the system; (d) is dead; (e) is declared insolvent; (f) is declared of unsound mind.	CAF proposes the removal of subclause (d) because it lacks basis of what amounts to good standing. This clause can be misused to discriminate against professionals who carry land transactions daily as their tool of trade. Alternatively, expound on what amount to good standing with regards to professionals. Is it professionals who are in probation due to professional misconduct or neglect in their various fields or professionals who have been suspended by their regulatory body?

(d) in the case of professionals, is not in good standing; (e) is dead; (f) is declared insolvent; (g) is declared of unsound mind.		
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Thank you.

Yours faithfully,



JUDY ODUMA WANGALWA
CHIEF EXECUTIVE OFFICER

**THE TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO
FACILITATE ELECTRONIC REGISTRATION, CONVEYANCING AND OTHER
LAND TRANSACTIONS IN LINE WITH EXISTING LAND LAWS**

**STAKEHOLDERS COMMENTS ON THE PROPOSED LAND REGISTRATION
(ELECTRONIC TRANSACTIONS) REGULATIONS 2020**

Organization	Regulation	Comment/Proposal	Action
LSK	Interpretation	The Regulations need to substitute the definition of a “Authorized User” as currently defined for purposes of who qualifies as an authorized user under Regulations 2 and 9 to be an Advocate.	The definitions have been reworked and the regulations amended respectively.
KBA		A User on the other hand will be a member of the public who has a User Account and entered into a User Agreement	“user” means a person who has signed up to the System and accepted the terms and conditions;
KBA/ MOLPP		Definition of authorized user is open and it would seem any person can access and use the platform. There ought to be a provision for main subscribers who are professionals such as lawyers, licensed conveyancers and financial institutions.	"authorized user" means a qualified advocate who has been granted permission to access, query any information or submit any application, instrument or document in relation to any transaction under these Regulations on behalf of another person;
		Definition of electronic signatures and adoption of “advance electronic signature” as opposed to “electronic signature” in these regulations.	“Advanced Electronic Signature” has the meaning assigned to it in the Kenya Information and Communication Act;
		Definition of “Court”	

LSK		It is important for any User to sign a User Agreement upfront upon opening a User Account to understand the terms and conditions of use in clear and concise details. Define User Agreement as follows: "User Agreement" means an Agreement between a User and the Registry which permits a User to access services of the Registry electronically. In the UK, a User Agreement provides for certain terms worth noting: Address of services for both parties, terms and conditions of use, services available, what amounts to a material breach, type of electronic signature as well as the manner of affixation, retention and retrieval of documents, system and security requirements and when either party will be deemed to be or not to be liable to the other.	"Court" has the meaning assigned to it in the Act. A User signs into the system by providing their details stipulated under regulation 7 and accepts the terms and conditions stipulated in the third schedule.
NCA		Definition of Register, Cadastral Map and Kenya Revenue Authority	Adopted.
ISK		User under community land act	Incorporated into Regulation 7
CAF	Regulation 6	Amend the clause to state: - "Cadastral maps shall for purposes of registration under these Regulations, be maintained by the County Governments in electronic form" Land survey and mapping is a county function as per	Section 15 of the LRA provides for maintenance of the maps by the office or authority responsible for Survey. Schedule IV of the constitution is clear on what is devolved

			Schedule four of the Constitution.	
		Regulation 7, 8, 9 and 10	Clear definitions of user, authorized user, user account and professional	We have reworked the definitions and the regulations;
Lawyers Hub		Regulation 7	Information should only include name, ID, address, email address, phone number and KRA pin. Other information is not necessary-it is only maintaining too much personal data.	Remove physical address. Passport size photos requirement under land registration (General) Regulations, 2017
ISK			Recognize group as another type of user- The CLA recognizes group which is not necessarily a legal person.	Defined Community as defined under the Community Land Act
KBA/ EARB		Regulation 8	Professional not defined. Various categories of professionals need to be categorized as well. Provide for and qualify only a certain category of given professionals can make and submit applications on behalf of property interest holders. Advocates have taken indemnity covers and can cushion clients.	Professional access restricted to the advocates by dint of section 34 of the Advocates Act.
Lawyers Hub		Regulation 10	Users should only be responsible for security details from their end and not for purposes of any transaction. Security details from storage and use of data should be catered for	Regulation 10(b) amended to read log-in credentials.

		by the government via the Ministry of Lands.	
ISK		Delete Regulation 10 (c) not distribute, sell or combine any information accessed through the system;	Regulation intended to protect copyright material.
Lawyers Hub	Regulation 11	Include duration of time during which user should respond to the grounds for suspension. Shouldn't be less than 14 days.	11 (2)d amended to provide for the period which shall not be more than 14 days
LSK	Regulation 11(3)	In the event the Chief Land Registrar suspends a user account, the notice should be immediately emailed to the user via the email provided at the time of creating the account and SMS through the contact provided. It is our opinion that providing the option to include notice of service via post would defeat the essence of the draft Regulations.	Adopted
MoLPP/LSK/CAF/KBA/Lawyers Hub/ISK	Regulation 13 Electronic Appeals Committee 13(5)	• Constitution should be clear. • How will it be mainstreamed? • Will it operate in Nairobi? Should it be decentralized? • Provide for appeals to ELC court. • Appointment of the committee and parties ought to be independent • Add more members representing counties	Proposal Do away with regulation 13 which provides for electronic Appeal on the following grounds; 1. Composition- ad hoc or standing Committee - Central vs Decentralized Committees 2. Cost Implication 3. Section 86 LRA provides that appeals arising from decisions of the Land Registrar under the act lie with the ELC Court. 4. Appeal process is time consuming.

		- Land industry players such as representatives of LSK, KBA or ISK - Appeals should not be capped at 30 days. 90 days is preferable. Moving to court calls for huge costs thus adequate preparation. - Insert "e" representative from ISK. "f" representative from Academia	Covered
MoLPP/ MMS Advocates/KBA/ LSK/KBA/KENHA	Regulation 14 Searches	Search fee should be deleted as it was waived. Turnaround timelines regarding search results should be included. One applying for a search must upload a copy of title to avoid misuse of search privilege. Regulations should provide for finality, conclusiveness, reliability and veracity of the search. System should adopt a format that lists all previous interests or owners on any given land records. Not clear how government Agencies will access the system	We have retained it since fee is provided by law, it has just been waived. We have reworded the regulation. We have coached it in terms of Section 34 of the Act. As long as all the details in the system are accurate and verified, searches should be instant. The system requires one to upload the title copy. To make a recommendation in the report for a transitional period for verification by owners. Addressed by the two types of searches.

		for searches undertaken for official purposes.	By registering as users in the system.
KBA	Regulation 15	• Electronic Signature should be provided for • Advanced signature is more secure and no form of attestation might be needed	We have provided for the advanced electronic signature
KBA		• Not instructive on documents required to be drafted by the Advocate as per Cap 16 such as charge documents. There should be a clear understanding as requires documents traditionally and legally required to be drafted by an Advocate who holds a current practicing certificate.	Documents/instruments that convey interests in land. Forms provided by the Land Regulations (General), 2017 adopted for use in the system.
KBA		• Form of the Charge - The current form for bank charges should be amended to include the standard clauses as per the Land Act, 2012 and just like it is currently happening at the companies registry (you can attach your own articles of association or adopt the model ones) the regulation and the system can provide for an option to attach a specially drafted or prepared charge.	Recommendation on the adoption of forms for use in the system. This is already covered under Form LRA- 53

KBA		Execution and verification of signatures Business Laws (Amendment) Act did away with the requirement for attestation and verification of signatures by advocates. The requirement reduced fraud as an advocate whose signature appeared on an alleged forged instrument could be called upon to clarify whether a person really appeared before them and executed an instrument. The above safeguard has now been removed and there is a great level of exposure and fraud which might gain a foothold on conveyancing transactions.	This is a result of adoption of electronic signatures. The presumption is the advanced electronic signature shall be uniquely linked to the signatory; It is capable of identifying the signatory; It is created using means that the signatory can maintain under his sole control; and It is linked to the data to which it relates in such a manner that any subsequent change to the data is detectable
LSK	Regulation 15 b	The draft Regulations need to make provision for documents processed and executed electronically under Regulation 15 (b) to be certified by an advocate.	Section 44 of the LRA was amended by the BLAA and introduced execution of an instrument by way of an advanced electronic signature or an electronic signature shall be deemed to be a validly executed document. Section 45 (3) provides for instances where the Registrar can dispense with verification of execution. The BLAA introduced another instance where

		We suggest adoption of a new legal concept of "electronic acknowledgement" which involves the signatory acknowledging to the witness after the event that they have applied their electronic signature to the document, following which the witness signs the document with their own electronic signature to record the signatory's acknowledgement. The electronic acknowledgement will be prepared by advocates acting for both parties.	verification can be dispensed with. It's when an instrument has been electronically processed and executed by the parties consenting to it. A look at other countries, advocates/Practitioners /conveyancers certify documents processed and executed electronically. Recommend that this aspect of certification by an advocate be incorporated into the advanced electronic signatures to be used in the system. In light of the above recommendation we have adopted a new form eLRA 2. The concept is borrowed from New Zealand – Client authority and instruction for an electronic transaction under regulation 15(1) of the regulations. The reason is to mitigate the increased risk of improper dealing or landowner identity fraud.
LSK		The draft Regulations do not make provision for: the type of electronic signature; the manner and format in which the electronic signature shall be affixed; the manner and procedure which facilitates identification of the person affixing the electronic signature and control of the process and procedure to ensure adequate integrity, security and confidentiality of electronic execution and attestation. All electronic signatures have to be	The Taskforce had a stakeholder engagement with the ICT Authority. Regulations under section 83R of the KICA are yet to be developed. They are licensing the National Public Key Infrastructure.

			generated using a signature creation device. Further, the electronic signature should be capable of being validated or authenticated by an electronic certification service provider registered or recognized by the Communications Authority of Kenya.⁷	
LSK		New Regulation	The draft Regulations need to make express provision for the prescribed fees and that all documents submitted electronically shall be in the prescribed land forms set out in the Land Registration (General) Regulations, 2017. To introduce a new Regulation mandating all users to use and adopt the prescribed forms in the land regulations as well as providing clarity on the applicable fees.	Adopted Fees applicable are as provided for under section 108 of the LRA.
MOLPP		Regulation 16	Collector of Stamp Duty Proposed that instruments/documents be submitted to the Chief Government Valuer.	Propose that the issue is handled by the system. Instruments for Valuation will be logged and transmitted to the valuation module.
MOLPP		Regulation 19	Clarify on the effect of instruments	Deleted Regulation 19 (2) and combined 19(1) with Regulation 26 (Manual transactions)
EARB		Regulation 21	Manual instances should be clarified to prevent misuse.	It is safe to provide for access by the Registrar of manual records for

		It is not clear whether a manual and electronic system will run concurrently	reference. We do not know whether all the records have been scanned.
MOLPP/LSK	Regulation 22 Rejection of documents	No rectifying of errors and rebooking under same transaction number. This will create a grey area especially with regards to priority of registration documents. There is need to align the provisions of the draft Regulations Particularly Regulation 23 on rejection of documents with Regulation 35 (1) of the Land Registration (General) Regulations, 2017. Provide for appeals on rejection by the Registrar to the CLR There is need to introduce a new clause under 23 to allow for stay of registration pending the filing of an appeal by a User at the Electronic Appeals Committee. As follows; There shall be a stay of registration 3 and no instrument affecting the interest under review shall be considered for registration over the affected parcel during the fourteen days under paragraph (5)	Adopted Adopted Appeals and stay against rejection of documents provided for. Provided for under Regulation 37 of the Land (General) Regulations. Adopted
Lawyers Hub	Regulation 23(3)	Date of registration should be deemed as the date when registration was completed. This will cater for documents which stall at the lands registry thus defeating periods if the	The proposal offends priority of booking and Regulation retained as it is.

			date of receiving the instrument of registration is the date that appears on the registered instrument	
LSK		Regulation 24 Electronic certificate of title and lease	The word “may” should be substituted with “shall” There needs to be a way in which a user can verify the authenticity of an online generated title document such as certificates of titles and leases. The Ministry of Lands should ensure that electronic certificates of title or leases issued have a unique serial number or security feature that prevents any duplication or tampering with the issued title document.	We have retained the word “may” because we are not sure whether the electronic certificate shall be accepted. Adopted
EARB/NCA/LSK		Regulation 26 Manual Transactions	Clarify instances where electronic transaction cannot be done. The draft Regulations should outline the services under Regulation 26, which can be offered online and those that will be processed manually. This can include: payment of land rent and issuance of the land rent certificate, application for official searches, applications for registration of transfers, charges, discharges, leases, cautions and caveats. Land Control Board consents; spousal consents; County Government consents; management company consents as well as consents for controlled transactions will be obtained in accordance	This provision is a Transitional clause and we have to provide for the 2 instances in the event we still need to provide for manual transactions.

		with the applicable laws and governing documents and uploaded into the system as they are not issued at the Ministry. In the interim, we propose the introduction of a two-year transition period for a manual back up system until all records are not only available but have been verified on the electronic system, and the electronic registry is fully operational.	
EARB MoLPP Lawyers Hub	Regulation 27 Manual Payments	• Clarify instances where electronic payments cannot be done. • Manual payment will create loopholes and loss of government revenue. • Security of electronic fee payment needs to be addressed. • Manual payments provision should be deleted. • Manual payments will encourage corruption. With availability of mobile money and banks, manual payment should not be allowed at all.	Adopted.
ISK	Third Schedule	There are a number of places where the reader is inappropriately addressed to as “you”, “your” etc. This should be changed to 3 rd person referencing.	To be addressed by drafters.

LSK	Third Schedule number 5	The Ministry as the custodian of land records as well as its officers should be responsible for the completeness and reliability of documents processed online as well as confidentiality, integrity and security of the e-system. The Government as the keeper of all land records in Kenya and must accurately mirror all active registrable interests land in both manual and electronic form. So fundamental is this information, that the land laws guarantee compensation to persons provided with wrong or misleading particulars. To amend the disclaimer clause to guarantee the reliability and accuracy of documents processed online and to impose liability on the Ministry and its officers in the event of any loss or damage.	Adopted
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**THE TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO FACILITATE ELECTRONIC REGISTRATION,
CONVEYANCING AND OTHER LAND TRANSACTIONS IN LINE WITH EXISTING LAND LAWS
Survey (Electronic Cadastre Transactions) Regulations, 2020 and Survey (Amendment) Regulations, 2020**

COMMENTS AND RESPONSES

A. Survey (Electronic Cadastre Transactions) Regulations, 2020

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
2	NCA (Memo)	1. We propose the inclusion of the definition of “Electronic”, “Electronic Form”, “Electronic Signature” and “Electronic Appeals Standing Committee” 2. To enhance efficiency in operations for users, we propose an interface of the Authority’s existing system and the electronic cadastre system.	1. To include the missing definitions 2. Authority will be ordinary user initially – possibility of interface in the course of time
	NATURAL JUSTICE (Memo)	“Authorised User” means a person qualified to carry out survey and submit as per the Survey Act. Amend to read: “Authorised User” means a person qualified to carry out and submit a survey as per the Survey Act.	To be corrected
	21/05/2020 KIP/ NMS/ NEMA/ RA/ NCA/ IEK/ KAA Jatani - KURA	1. Land Consolidation Cap 283 has been repealed needs to be captured as such in documentation 2. Surveyors should be defined in the preliminary as Government surveyors and Licensed surveyor	1. To be corrected 2. Surveyor already defined in the Principal Act (Cap.299)

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
2	LSK (Memo)	The draft regulations provide that an authorized user shall be a person qualified to carry out survey and submit as per the Survey Act. The scope of the definition needs to be expanded to include professionals who rely on survey plans as well e.g. Advocates, Architects, Surveyors and Land Valuers. To amend Regulation 2 to include Users as Advocates, Architects, Surveyors and Land Valuers.	Survey Act (Cap.299) recognizes the surveyor as the professional user. All others are users – they do not upload surveys into the system
	LDGI (Memo)	“System” means the National Land Information System developed under Section 6(h).	Has been corrected
3	CAF (Memo)	Make it explicit that this is Section 6(h) of the Land Act Amend the following to: - “The Director of Survey” shall maintain an Electronic Cadastre which shall be part of the National Land Information System established in accordance with section 6(h) of the Land Act.” -There is lack of clarity of which specific Director is being addressed. -The Amendment provides more clarity	‘Director’ already defined in the principal Act (Cap. 299)
3	ALSK (Memo)	Electronic Cadastre (2) The Director of Surveys, may by electronic means on the Electronic Cadastre: (a) issue a notice, certificate, instrument or document which is required to be issued by the Director under the Act; (b) certify a map, plan, form, document or extract of a map required to be certified by the Director under the Act; Quote the sections of the Act the regulations are referring to.	Retain. Allows Director flexibility in execution of duties
3	LDGI (Memo)	2 (d).....	Retain as drafted

		Send notification to the user through short message service, email or online notification. To allow for changes with time, we could avoid specifying the methods of notifying. We could have: <i>Send notification to the user through any electronic means.</i>	

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
4	22-05-2020 ISK/ LSB/ VRB/ EARB Christopher Kinyua	Data submitted to include survey records to accommodate data submitted directly from equipment Data available to surveyors to re-framed to include topographical maps and other data	Already provided for in regulation 4 (1)
4	22-05-2020 ISK/ LSB/ VRB/ EARB/ ALSK Julius Rotich	Regulations should focus on digital submission of survey work-Forms are very analogue.	Digital submission of survey data already provided for in Regulation 4 (1)
4	ALSK (Memo)	Survey Plans and Records 4 (1) The Director shall give direction on the format of data submitted for checking and authentication This is due to various survey software used by Licensed Surveyors	Already provided for in regulation 4(1)
4	NATURAL JUSTICE (Memo)	4(3) The section sets out that survey plans, filed notes and computations shall be submitted electronically For the sake of clarity and consistently, the provision should set out the alternative method(s) that 'Notwithstanding paragraph (1), where transactions cannot be carried out using the Electronic Cadastre, the person seeking to carry out the transaction shall carry out the transaction through such other means as the Director may determine.	The section referred to and the transition clause are sufficient

4	20-05-2020 LSK Peter Mwangi	There is need for Authentication of the person submitting a survey	Addressed in Regulation 4
7	ALSK (Memo)	7(1)(a) delete “who shall be Chairman of the Board” 7(1)(b) delete “or holders of an East African Land Survey Certificate” 7(1)(b)(ii) replace “Transport, Local Government, Forestry and Housing” to reflect all time status like City status, County’s, Housing, Roads, Water, Agriculture 7(1)(b)(iii) replace “One from academia” 7(2) delete and replace with “The Board shall, from time to time, elect one of its members to be Chairman and Deputy Chairman. The chairman shall not be a civil servant.	Requires an amendment of the Survey Act. Beyond the scope of the current taskforce

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
7	20-05-2020 (LSK) Karim Chakera	Access for read only should allow for printing of cadastral map and proposed parcel plan	Change Regulation 7(1) and (2) to allow for printing upon payment of the prescribed fee
7	NATURAL JUSTICE (Memo)	7(1) “A user may electronically access Cadastral maps, cadastral plans or other plans...” Amend to read: “A user may electronically access and download...” Provision for a right to access and download should be provided for, not least because it is subject to a fee.	Change regulation 7(1) and (2) to allow for printing upon payment of the prescribed fee
7		7(3) “The Director may restrict access to specific data in the system as may be deemed necessary in the public interest, as provided for in the Access to Information Act No 3 of 2016.” Amend to read: “The Director may restrict access to specific data in the system as may be deemed necessary in the public interest, as provided for in the Access to Information Act No 3 of 2016. Provided that	Provisions of the Act deemed sufficient

		the reasons for such restriction shall be set out in writing and any person dissatisfied with those reasons may appeal the decision. It is important that any restrictions be communicated in writing and that users have a right of appeal against the decision.	
7	21/05/2020 KIP/ NMS/ NEMA/ RA/ NCA/ IEK/ KAA E.Munene - KeNHA	In survey Regulations are under s.7: Access to information. Will it be possible to access the survey field notes apart from the plans/maps e.g. in a situation where there is need to verify the approved documents used in alienation and survey of land, some of which is road reserve	Addressed in regulation 7 (2)
7	KENHA (Memo)	Access to information. Apart from access only to cadastral maps and plans, access to survey field notes should also be included as they, oftentimes are required e.g. when trying to verify the authority used in illegal alienation of road reserves The Authority requires survey maps, in bulk to facilitate securing of road reserves. Need to have provision of acquisition of survey maps for use in other Government Agencies. The draft regulation is silent on this.	Addressed in regulation 7 (2). Authority will be ordinary user initially – possibility of interface in the course of time
7	22-05-2020 ISK/ LSB/ VRB/ EARB/ ALSK Christopher Kinyua	Data available to surveyors to re-framed to include topographical maps and other data	Addressed in regulation 7 (2)
	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
7	22-05-2020 ISK/ LSB/ VRB/ EARB/ ALSK Julius Rotich	Include Topo -cadastral overlays as part of data e.g. for road networks	Addressed in regulation 7 (2)
7	22-05-2020 ISK/ LSB/ VRB/ EARB/ALS Kipkoech Evans	Access to information. It is important to allow the surveyors to be able to edit what they acquired from the Director. It should be made clear to avoid mischief of pleading for edit Rights.	Allowing edit rights will bring conflict of data within and without the system (Reg. 7)
7	22-05-2020	Rights may be granted for access, which will automatically not allow editing	As stated in the Regulations

	ISK/ LSB/ VRB/ EARB/ALSK Erastus Chege	Surveyor to access more data than just maps	Access to data by a surveyor addressed in regulation 7
	27-05-2020 KBA/ KEPSA/ KPD/CSOs Mwenda Makathimo	Expound on 'read only' access	Change regulation 7(1) and (2) to allow for printing upon payment of the prescribed fee
8	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK M. Muikiria	1. User Obligations 8 (C) - Authorized users are not permitted to copy, exchange, disclose or use the land related information for another purpose. I think this is very restrictive. What is wrong with disclosing to a colleague that I have a such and such plan for example? Or using the same plan for different customers or projects?	Copyright is with the Director. Regulation is to stop third party distribution of information from the system
8	Mike Muthumba (Memo)	Section 8 of the regulations - Define ' <i>Authorised professional</i> ' on Access by Professional (Land surveyors, Lawyers, physical planners, Land administration experts)	Surveyor the professional user. Others are users.
9	ALSK (Memo)	Suspension of a user's access to the System 9(2) The Director shall on making the decision under Paragraph (1) (a), (b), (c) and (d) immediately inform the user of that decision and shall specify in the notification b) the facts which, in the opinion of the <i>Chief Land Registrar</i> , justify each ground of suspension and intention to terminate; and It is not clear why the Chief Land Registrar should be involved; The facts that justify the grounds for suspension and intention to terminate should be from the Director of Surveys and not the Chief Land Registrar. Delete Chief Land Registrar	To be corrected

REGULATI ON	ORGANIZATI ON/ PARTICIPANT	COMMENTS	RESPONSE
9	County Assemblies Forum (Memo)	CAF proposes the removal of regulation 9 sub-clause (d) because it lacks basis of what amounts to good standing. This clause can be misused to discriminate against professionals who carry land transactions daily as their tool of trade. Alternatively, expound on what amount to good standing with regards to professionals. Is it professionals who are in probation due to professional misconduct or neglect in their various fields or professionals who been suspended by their regulatory body?	Leave as it is. Professional bodies require their members to be in good standing
9	NATURAL JUSTICE (Memo)	9(1) The provision sets out the bases on which a user's access may be suspended and these include circumstances where a user " (c) allows an unauthorised/unqualified person to access the system" and where the user " (d) in the case of professionals, is not in good standing". For clarity, (d) should specify the specific professions that shall be caught by this provision. "In the case of the following professions..., is not in good standing with the respective professional bodies." Since any person can set up a user account it is important to define who an unauthorised/unqualified person is. (d) as drafted is too broad and might,- for example be interpreted to mean a medical professional, for example can't access the portal if not in good standing with the Medical Practitioners and Dentist Board.	This would apply to all modules within NLIS. Specify LSB as the professional body for the cadastre module

9	NATURAL JUSTICE (Memo)	9(2) (c) The provision sets out the information to be communicated to a person whose account is suspended and this includes: “(c) the period within which the user shall be required to respond to the notification.” Amend to read: “(c) the period of 10 days from the date of notification within which the user shall be required to respond to the notification.” There is a need for clarity on timelines for to ensure consistency.	Suspension and Termination of users access to be addressed across all modules
9	ALSK (Memo)	Suspension of a user’s access to the System 9(2) The Director shall on making the decision under Paragraph (1) (a), (b), (c) and (d) immediately inform the user of that decision and shall specify in the notification b) the facts which, in the opinion of the <i>Chief Land Registrar</i> , justify each ground of suspension and intention to terminate; and It is not clear why the Chief Land Registrar should be involved; The facts that justify the grounds for suspension and intention to terminate should be from the Director of Surveys and not the Chief Land Registrar. Delete Chief Land Registrar	To be corrected

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
9	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK M. Muikiria	Part II-Electronic cadastre, section 9 paragraph (2)(b), the facts that justify the grounds for suspension and intention to terminate should be from the Director of Surveys and not the Chief Land Registrar.	To be corrected
9	LDGI (Memo)	9 (3) (b).... post, to any postal address specified in the user agreement as the user’s address of service. Since postal boxes have been experiencing diminishing use and may with time cease to be used, allow for this by allowing for physical delivery as well. Make it read: <i>post, or physical delivery, to any postal or physical address specified in the user agreement as the user’s address of service</i>	Retained for now

10	LDGI (Memo)	10 (4)..... The user may file an appeal to the Electronic Appeals Committee, through the Cabinet Secretary, within 14 days of the decision to terminate the user's access. <i>The timeline looks stiff. One imagines a scenario where a user, for some reason, is not able to receive the notice, or is indisposed, and cannot rise to the 14 days.</i> It is suggested that this be expanded to 30 days	Suspension and Termination of users access to be addressed across all modules
11	21/05/2020 KIP/ NMS/ NEMA/ RA/ NCA/ IEK/ KAA Jatani - KURA	Land Surveyors Board to captured as members of appeal against termination of users access by Director of Surveys	To be effected- in the case of surveyors
11	NATURAL JUSTICE (Memo)	11(5) "A user aggrieved by the decision of the Electronic Appeals Standing Committee may appeal to the court within 30 days Amend as follows: “(5)(a)A user aggrieved by the for clarity there is need to specify the specific court to which an appeal will lie.	The issue of appeals committee has been dispensed with and instead issues that would lead to suspension addressed as transactional issues or professional misconduct
11	20-05-2020 LSK Karim Chakera	Sec 11 - Electronic Appeals Committee has no Advocate or Surveyor who has been expressly included	The issue of appeals committee has been dispensed with and instead issues that would lead to suspension addressed as transactional issues or professional misconduct

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
11	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Irene Kyatu - ISK	The committee composition should be specific to include representation from the ISK and the Licensed Surveyors among the four private representatives.	The issue of appeals committee has been dispensed with and instead issues that would lead to suspension addressed as transactional issues or professional misconduct

11	27-05-202027-05-2020 KBA/ KEPsA/ KPDa/CSOs Esther Mwaura Muiru - ILc	Noting that in the proposal, there is opening to appoint committee/s, please ensure that it is crystal clear appointments shall conform to the 2/3 gender rule.	The issue of appeals committee has been dispensed with and instead issues that would lead to suspension addressed as transactional issues or professional misconduct
11	27-05-2020 KBA/ KEPsA/ KPDa/CSOs --- FIDA	address issue of representation in the committee and compliance of the two thirds gender rule and also appeals committee not comprising the very parties against who the decision is appealed against	The issue of appeals committee has been dispensed with and instead issues that would lead to suspension addressed as transactional issues or professional misconduct
11	LDGI (Memo)	11 (2) (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 To avoid the perception that these four will come from the “private sector”, which is currently perceived to be represented by the stakeholder KEPsA, make it more inclusive by having it read that the representatives will come from “ <i>the non-state user community</i> ” or look for any other suitable, inclusive and non-prescriptive phrase to describe where the representatives will come from	The issue of appeals committee has been dispensed with and instead issues that would lead to suspension addressed as transactional issues or professional misconduct
12	LDGI (Memo)	12 (3)..... Upon submission of any survey data by the surveyor, the Director shall send a notification through short message service, email or directly through an online notification to confirm receipt. This could be opened to allow for changes in modes of communication to read: <i>Upon submission of any survey data by the surveyor, the Director shall send a notification through an appropriate electronic notification to confirm receipt.</i>	Retained as is

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
12	MMS ADVOCATES LLP (Memo)	The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal. Inclusion of a provision enabling surveyors to make corrections on the rejected document(s) and re-upload them using the same tracking number	Rejected because retaining the same tracking number will interfere with the order of priority. To be resubmitted with a new tracking number
12 - 16	20-05-2020 LSK Karim Chakera	Sec 12-16 - No time line for procedures have been provided	Difficult to set timelines since the system is still under development
12 - 16	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Eunice Macharia	Provide timelines for updating of cadastral	Difficult to set timelines since the system is still under development
12	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Kipkoech Evans	On submission of information to Director, it should be linked to both ISK and LSB, so that it can have a good record of member's data. Both LSB and ISK play a role here and it's not only LSB	The link to LSB is sufficient as per the Survey Act
12	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Erastus Chege	Land Control Board not in the regulations. How will consent be linked to mutation surveys	Provision for supporting approvals provided for under regulation 12(1) b
12	LSK	There is need for the Ministry to ensure security, integrity and reliability of survey maps, survey plans, forms and documents processed electronically. This includes allowing users to access and download survey data and plans with non-edit rights To make provision for unique serial numbers and security features for identification of reliable online survey plans and maps with non-edit rights.	Expected to be done since the survey records have unique numbers and this is also a system matter
12	LSK	The Regulations are silent on how surveyors shall present their work to the Electronic Cadastre system for approval. There is	

		therefore need for clarification on the type of computational procedures for surveyors There is need for review the process of how surveyors submit their work to ensure that they are using computational procedures that conform to technological advancement.	Existing survey regulations already address this matter
REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
12		Receiving and authorization for processing 13. (1) The Director shall review documents received under Regulation 12 and authorize authentication. - Delete <i>authentication</i> and replace with <i>processing</i>	To replace Authentication with the term processing
12	ALSK (Memo)	(2) The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal.	To replace Authentication with the term processing
12		Add item 12 – Softcopy of observation data-	To be added
12 - 13		13(2) “The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal.” Amend as follows: “ <i>The Director may refuse to authorize the authentication of documents received under Regulation 12 and return the documents through a notice in Form SR4 in the First Schedule setting out the reasons for refusal and the recommended action, For ease of transactions, the communication should set out the steps the user should take to rectify their submission.</i> ”	The reasons for refusal are sufficient
14 - 19		PART IV, V, VI, VII and IX-14, 15, 16, 17 and 19 Ensure there will be security features in all documentations. Need for timelines to access survey documents.	Time lines to be captured in recommendation Include a regulation for security features in all documents
15		Checking of Survey 15 (3) For purposes of submission of checking of survey records, the Director shall–	Already Covered under regulation 12

		establish online links with relevant authorities for ease of information cross-referencing and enable module integration with land use plans, development plans among others Suggestion for a new regulation- in regard to approval documents as per Form SR3	
16	22-05-2020 ISK/ LSB/ VRB/ EARB Kipkoech Evans	I propose we give a Timeline when the director can be able to Respond to Rejection of authentication of e.g. within 7days	To be done - add a sub-regulation 16(5) to provide timelines for authentication and rejection of authentication

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
17	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Eunice Macharia	Surveyors to pay fees upfront.	Payment of checking fees before or after authentication can be handled administratively
17	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Eunice Macharia	Updating of maps to include cadastral plans and RIMs	Updating of cadastral maps and RIMs is implied in Regulation 17
18	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Erastus Chege	The survey regulations state that the DOS shall effect sealing of the cadastral map upon the request of the surveyor. Please note that this is a bit retrogressive because the Business Laws Amendment Act envisages where an electronic signature with security features shall be deemed to bear the seal of the Survey of Kenya	The sealing of the cadastral map is envisaged to be done with an electronic seal of Survey of Kenya (Sec 5 and 32 of the Act)
18	27-05-2020 KBA/ KEPsA/ KPDAs/CSOs Mwenda Makathimo	Sec 18(2) a, Director of Land Administration or Office of the Director of Administration is not supported by any statute	Substitute 'Director' with 'Officer to whom the CS has delegated the Land Administration functions

18	LDGI (Memo)	18 (1).... the Director of Land Administration that the cadastral map has been updated to facilitate preparation of lease documents Is the “Director of Land Administration” a gazetted or administrative office? Could we open this by referring to the “ <i>authorized office in the Department of Lands</i> ”.	Substitute ‘Director’ with ‘Officer to whom the CS has delegated the Land Administration functions
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REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
19	21/05/2020 KIP/ NMS/ NEMA/ RA/ NCA/ IEK/ KAA	1. Since the mutation form has been amended under the land registration regulation 2017 to incorporate an endorsement by a licenced planner or advocate, how do we link this requirement in the application for development permission? 2. purchase of mutations forms have not been captured in schedule	1. Endorsement on the mutation form by planners and advocates is only for identification purposes and development permission is required before the surveyor can submit the mutation survey 2. Purchase of mutation forms provided for in form SR2
19	27-05-2020 KBA/ KEPSA/ KPPDA/CSOs Emily	Why use ‘may’ in sub-regulation 6 and ‘shall’ in sub-regulation 7 in regards to Parcel Plan. Use one and remove the other	Retain both because they have different functions
21	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Julius Rotich	Provide for gradual implementation of electronic system	Gradual implementation already provided for in Regulation 21
21	21/05/2020 KIP/ NMS/ NEMA/ RA/ NCA/ IEK/ KAA Kenneth Wando KeRRA	Transition clauses should provide for use of both electronic and manual transaction to ensure continuity	Already provided for in Regulation 21

B. Survey (Electronic Cadastre Transactions) Regulations, 2020 - FORMS

FORM No.	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
Missing forms	14-05-2020 MOLPP Paul Ndung'u	Develop a Form for Licensed Surveyor to authorise the release of amended RIM to Land Administration	To develop Forms SR15 and SR16
All forms	14-05-2020 MOLPP Cyrus Muchoki	Proposed forms are too many and need to be reduced by merging some of them	Forms to remain as they mirror the current manual process. The system developers are adopting the same Forms. Retain the forms
All forms	22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Erastus Chege	Correct, there are too many forms. For instance, for one to purchase of a map, they should not be required to fill a form;	In the system one fills a form to make orders for the maps or any data Retain the forms.
All forms	22-05-2020 22-05-2020 ISK/ LSB/ VRB/ EARB/ALSK Julius Rotich	Review forms to capture what is in the market in terms of instrumentation e.g. GPS, Total stations, GNSS	Introduce a regulation to allow the Director to update the form as well as introduce others, as need arises Forms to remain as they mirror the current manual process

FORM No.	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
SR2	ALSK (Memo)	FORM SR2 Column 3 Indicate the LR No. or Parcel No.	To include the details
SR2	ALSK (Memo)	Column 4 Indicate the LR No. or Parcel No.. Does apply in electronic data. Need to develop a shopping CART where buy online on registration. It however requires an electronic database of survey data. As input to shopping CART, we should include LR. Nos, RIM/Topo sheet Nos, Deed plan no. etc Approval/Accounts/Survey records can be addressed within the shopping CART if need be.	CART is a system issue – more of a detail
SR3	LDGI (Memo)	(8) Field Notes: a. Total number of pages; b. Cover page; c. Index to field notes d. Other pages This appears to replicate the current order where manual field books/notes are used. Could we allow for the use of the submission of digital data in which case this would not be necessary?	Introduce a regulation to allow the Director to update the form as well as introduce others, as need arises Forms to remain as they mirror the current manual process
SR3	ALSK (Memo)	FORM SR3 Indicate the LR No. or Parcel No.	To include LR NO. or Parcel No where applicable
SR3		Add item 12 – Softcopy: observation data- FORM SR6	To be added
SR6		<i>The regulations have retained the same forms used in checking without improvement; How do the regulations accommodate use of new technologies.</i> <i>(iii) replace 'of chain' with measuring instrument</i> Insert (ix) with GNSS surveys a. RINEX data submitted, yes-----no..... b. Final coordinates, 3cm in East and North	To be included in the form

		c. Adjusted final base line vectors, 3cm in XYZ, 3cm in residual/Length d. Repeated baseline vectors, 3cm in XYZ, 3cm in residual/Length e. Loop closures, 3cm length or 3cm in XYZ f. RTK picking and placings, 3cm East & North g. Observations record/information h. observation time, height of the antenna, antenna types etc)	
FORM No.	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
SR6	LDGI (Memo)	Survey Records Tracking Number Checker..... (i) Date of completion of field survey..... (ii) Date of calibration of chain..... (iii) Calibration details used by surveyor are correct/incorrect by..... °C.....Kg/30m.* <i>These details are direct extracts from the old system. This section could be revisited to allow for advance in technology. Chains and their calibration are now obsolete. The language could be changed to reflect today's reality.</i>	Introduce a regulation to allow the Director to update the form as well as introduce others, as need arises Forms to remain as they mirror the current manual process

C. Survey (Amendment) Regulations, 2020

REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
6	27-05-202027-05-2020 KBA/ KEPSA/ KPD/CSOs Emily	Provide for an Interface between cadastre module and the LSB	Already provided under proposed amendment to survey Regulation 6 of the 1994 Regulations
24	Mike Muthumba (Memo)	Therefore, this regulation should: 1. Define a proper and acceptable method of Geo-referencing general boundaries in the spirit of operationalizing Section 15(b) as read together with section 107(8) of the Land Registration Act and the Land Act, respectively to ensure compatibility with other documents. 2. Define a proper mapping system that would incorporate both general boundaries and fixed boundaries to ensure there is no gap between the two systems of mapping.	It is expected that flexibility for the Director to specify a Figure of the Earth and map projections will contribute to a solution to this matter, among others
25	22-05-2020 ISK/ LSB/ VRB/ EARB M. Mulikiria	1. Reg. No. 25(4)- Maintenance of measuring Instruments. Whereas it is okay for the Director of Surveys to refuse to authenticate survey carried out with inappropriate/defective measuring equipment, the regulation has not provided what the Director will do with the faulty equipment upon receipt.	Faulty equipment belongs to the Surveyor
25	ALSK (Memo)	Amendment of Regulation 25 of the Survey Regulation, 1994. Reg. No. 25(4)- Maintenance of measuring Instruments.	Already addressed under proposed amendments to the regulation
25	LDGI (Memo)	25 (4): The Director may on receipt of measuring equipment from a licensed surveyor, refuse to authenticate any survey which has been made with inappropriate or defective measuring equipment.	Retained

		The above sub-section is not clear as it blends two concepts, receipt of equipment from a surveyor and authentication of surveys. It is suggested that it reads: <i>The Director may refuse to authenticate any survey which, from information available to him, has been undertaken with an inappropriate or defective equipment</i>	
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REGULATION	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
69	LDGI (Memo)	Field notes to be on special forms. 69. (1) Field notes and field note cover pages shall be made on such forms as the Director may require. Transactions will be electronic and therefore hard copy forms. Include digital field and equipment log files, Computations to be on special forms. 78. (1) Computations shall be made on such forms as the Director may require. Transactions will be electronic and therefore hard copy forms. Include survey software computations and analysis reports.	Already addressed under proposed amendment to the regulation
78	LDGI (Memo)	Computations to be on special forms. 78. (1) Computations shall be made on such forms as the Director may require. Transactions will be electronic and therefore hard copy forms. Include survey software computations and analysis reports.	Already addressed under proposed amendment to the regulation
86	ALSK (Memo)	Amendment of Regulation 86 of the Survey Regulations, 1994 Sub-Regulation 86(1) of the Principal Regulations is deleted and substituted therefore the following new sub-Regulation— (1) The Director may specify such special forms and formats on which plans may be drawn. Sub-Regulation 99(1) of the Principal Regulations reads much the same way as Sub-Regulation 86(1) -	Deed plans will no longer be in use because they are under a repealed law
69, 78, 86	22-05-2020 ISK/ LSB/ VRB/ EARB M. Muikiria	Looked into the proposal and have the following comments; 1 secs 69(2), 78 (2) and 86(2) be deleted. Transactions will be electronic and therefore hard copy forms will not be necessary.	To be addressed during transition from physical to electronic. Regulations to remain

	2. Removal of The fourth schedule is not necessary. Without it what authority will provide approval for subdivision/amalgamation?	The fourth schedule is outdated and has never been updated since the 1970's
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D. COMMENTS ON OTHER RELATED MATTERS

S/ No.	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
1	18-05-2020 Council of Governors (COG)	1. Proposed Survey Regulations Be stayed until Survey Act is amended to recognise the County Government 2. Survey is a devolved function	A recommendation to be made for amendment of the current Survey Act (Cap. 299). Title survey not devolved – role for Counties need to be clarified.
2	22-05-2020 ISK/ LSB/ VRB/ EARB Prof. G Wayumba	1. We just need to have electronic forms, which can be used to carry out all the operations online. We don't need any other physical maps. 2. My understanding of the amendment is that of the RIMs. There is a lot of problems in updating the maps at the moment. It should be done at the Village Committee level so that people in the village know which land is being affected by subdivision or being sold 3. I suggest that the Survey Act should be revised to accommodate 3D cadastre substantively, not what we do now in the sectional properties act. I have not heard any presentation on this at all. We just need to have electronic forms, which can be used to carry out all the operations online. We don't need any other physical maps.	1. Everything will be electronic once the transition from physical to electronic format is effected 2. Map Amendment is one of the system functions. Accuracy of maps to be addressed through Geo-referencing 3. 3D cadastre plans are included in sectional plans and/ or other plans
3	22-05-2020 ISK/ LSB/ VRB/ EARB Prof. Faith Karanja	Given the direction of going electronic in cadastral processes, it would be good to have a standing and competent Cadastral Technical Committee under the Director of Survey to provide the necessary support. This will ensure that any action or decision from the director of survey is soundly	This is the role of the LSB

		supported. This will also avoid the many regulations stating...the Director will...etc.	
4	22-05-2020 ISK/ LSB/ VRB/ EARB V Jesse Kihoro	There are also issues to do with accuracies of existing mutations and or overlapping parcels in area with General Boundaries	Accuracy of maps in General boundary areas to be addressed through Geo-referencing
5	County Assemblies Forum	The Survey Act has not been reviewed since inception of devolution and hence subdivision and mutations are being done in the Counties without the consent of the County Government, this should be addressed immediately.	Amendment of the Survey Act to be a recommendation in the report
S/ No.	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
6		Upon authentication, the Director shall notify the Surveyor of the authentication of the survey and the fees payable in Form SR13 set out in the First Schedule. Inclusion of timelines regarding the duration and conclusion of the authentication process	Difficult to set timelines since the system is still under development
7	18-05-2020 (COG) Eva Sawe	1. Proposed Survey Regulations Be stayed until the Survey Act is amended to recognise the County Government 2. Survey is a devolved function	A recommendation to be made for amendment of the current Survey Act (Cap. 299). However Title survey is not devolved – and the new Act should clarify the role for Counties
8	20-05-2020 LSK Riziki - Malindi	Settlement Fund Trustees land - discharge of charge – there is no body to receive records in Malindi	Discharge of charge is a registration matter. To include a regulation regarding settlement scheme surveys
9	21/05/2020 KIP/ NMS/ NEMA/ RA/ NCA/ IEK/ KAA Erastus Mwangera	All survey work must be done by licensed surveyors both in Government and private sector.	Would require an amendment to the Survey Act which currently defines a Surveyor
10	From mairura omwenga-TCPAK	We have surveyors in both National and County Governments. The regulations are not clear on how operations will run at county/National government levels	A surveyor as defined in the Act can upload and access documents in the system whether employed by national or county government

11	22-05-2020 ISK/ LSB/ VRB/ EARB Eunice Macharia	Many un-updated maps in amendment centres	Map Amendment is one of the system functions. System is expected to address the backlog of un-updated maps
12	22-05-2020 ISK/ LSB/ VRB/ EARB Collins Mwange	Standardization of regulations to ensure interoperability of the different modules-GML,XML. Standardization of regulations to ensure interoperability of the different modules – GML, XML	This is a system issue that can be addressed with time
S/ No.	ORGANIZATION/ PARTICIPANT	COMMENTS	RESPONSE
13	22-05-2020 ISK/ LSB/ VRB/ EARB Julius Rotich	Have timelines for developing new figure of the earth-Review Singapore model of 'one' map System '	Time lines for developing a new figure of the earth is an administrative matter to be determined by the Director
14		Amend Survey Act to make it in line with the Constitution	A recommendation to be made for amendment of the current Survey Act (Cap.299)
15	22-05-2020 ISK/ LSB/ VRB/ EARB Kipkoech Evans	I propose we include Approved Assistant surveyors in the List of Licensed surveyors . The approved assistant can submit the cadastral work online but with a link to the principal who is the Licensed Surveyor. This will help many Young who are Approved and in their process of getting License.	Approved Assistant is not a Surveyor as per the Act
16	RECONCILE	The Electronic Land Transaction, Registration and Conveyancing Regulation. Community Land Law has not been considered in these amendments yet it is a new law which is being implemented and it is important to ensure that the process of awareness creation goes hand in hand with its implementation. It is recommended that the amendments appreciate the Community Land Law to facilitate its implementation.	The provision on community land to suffice for now. But a recommendation for comprehensive regulations on community land be considered
17	27-05-2020 KBA/ KEPSA/ KPSA/CSOs Emily	Checking fees be scrapped in the electronic system	Requires an amendment of the Survey Act. This may not be necessary because checking fees is a source of revenue for the Government

**THE TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO
FACILITATE ELECTRONIC REGISTRATION, CONVEYANCING AND OTHER
LAND TRANSACTIONS IN LINE WITH EXISTING LAND LAWS**

**Matrix of Comments for the Draft Stamp Duty (Valuation of Immovable Property) Regulations 2020
and Stamp Duty (Amendment) Regulations 2020**

Item	Comments	Remarks
Title	Rename the regulation to be more specific in relation to types of valuation envisaged.	This has been considered and the regulation renamed as "The Stamp Duty (Valuation of Immovable Property) Regulations 2020"
Private Valuers	Exclusion of Private Valuers in Stamp Duty Valuation contrary to provisions of section 10A CAP 480	Appointment of private valuers in undertaking Stamp Duty Valuation has now been incorporated in the Regulation.
Definition of Property and Land	Definition of property and land not clear in the regulation	Definition of immovable property has been included in place of land and/or property in conformity with section 10A and the definition is borrowed from Interpretation of General Provisions Act (CAP 2)
Chief Government Valuer	Chief Government Valuer not defined	The Chief Government Valuer has been defined as that office in the public service in charge of the valuation mandate in the National Government
Valuation Standards	Valuation Standards applicable while undertaking Stamp Duty Valuations not provided for nor defined	Valuation Standards including International Valuation Standards have not been provided for under The Valuers Act (CAP 532), neither is there any legislation that domesticates International Valuation Standards (IVS) hence the same cannot be incorporated in the Regulations without reference to the Principal Act
Valuation fees	This has not been provided in regard to services by private valuers	This has been incorporated in the Regulations to provide that valuation fees will be met by the transferee
Valuation Report	Contents of valuation report not exhaustive and not defined	This has been provided for while allowing latitude to

		expand or reduce depending on changes in the valuation environment
Schedule on appointment of valuers	Forms for application for Stamp Duty have not been provided	This is provided in the schedule to the Regulations
Market Value	Definition of market value not clear	Market value defined as true open market value as provided for under section 10A strictly to exclude any other dutiable instruments not subject to valuation by valuers
Stamp Duty Payments and Rates	County Governments should have a say and share of stamp duty payments including determining the rates of stamp duty	Stamp duty is a national tax due to the National Government and the Receiver of Revenue under Public Finance Management Act (PFMA) is Kenya Revenue Authority. County Governments therefore have no role in the levying of stamp duty
	Payment modes/methods should be expanded	Stamp duty payment can be undertaken through electronic money, mobile money or cash deposits
	County Governments should approve payment of stamp duty	This is a National Government tax, County Governments have no role.
Personal Identification Number (PIN)	There is need to include PIN as one of the requirements to be considered by valuers applying for appointment to carry out stamp duty valuations	The requirement for PIN and Tax Compliance Certificate have been included in the Regulations
Validity of Valuation/ Valuation Report	The 12-month validity period of Stamp Duty Valuation Reports is short and should be increased to 24 months or reduced to 6 months	12-month period is deemed reasonable considering the volatility of real estate markets
	Section 12: Validity of Valuation It is captured that valuations are to be valid for 12 months only and yet land acquisitions usually take longer due to various reasons e.g. exchequer funding delays. This will mean the	This validity relates to stamp duty only, it does not cover compulsory acquisition valuations which are governed by the Land Act

		government will spend more money to do fresh valuations	
Revocation of Appointment		Revocation of appointment needs to be made clearer	This has been clarified in the Regulations
Form IV A and 2 VA		Include Estate Agents on the form as well as Advocates	Section 34 of the Advocates Act does not permit estate agents to prepare and undertake conveyancing documents The Estate Agents Act does not provide that Estate Agents undertake conveyancing
Regulation on Electronic Provision		Provide one overriding Regulation on electronic provision	Regulations have borrowed provisions from the Tax Procedures Act
Definitions		Replace the definition of "Authorized User with the following; "Authorized user" means an Appointed Valuer or a person who has been granted permission to access, query on any information or submit any document in relation to a transaction under these Regulations;	Regulations have been changed and Authorized user will no longer be applicable
		"Appointed Valuer" An appointed Valuer means a registered and practicing Valuer appointed by the Chief Government Valuer under Section 10 A of the Stamp Duty Act, Cap. 480.	The definition of Appointed Valuer has been included in the Regulations
		'Chief Government Valuer' means a Registered Valuer as defined in the Valuers Act, Cap 532 and in public service	The definition of Chief Government Valuer has been added in the regulations to mean the office in the public service in charge of the valuation function within the National Government;
		'Collector of Stamp Duty' has the same meaning as defined by the Stamp Duty Act, Cap. 480	Already defined in the Principal Act so no need to define the same in the Regulations

	'Registered and Practising Valuer' means a Valuer as defined by the Valuers Act, Cap 532.	Definition for Registered and Practising Valuers have been included in the Regulations
	"Property" has the meaning ascribed to it under Article 260 of the Constitution of Kenya 2010.	Property has been defined as immovable property
Section 4 (a) (New section) Appointment of Valuers in private practice to conduct Stamp Duty Valuation in accordance with Section 10A of the Stamp Duty Act Cap. 480	Application for Appointment; (1) An applicant seeking appointment to carry out stamp duty valuations shall apply to the Chief Government Valuer in a prescribed form. Appointment (2) The Chief Government Valuer shall, if satisfied that the applicant is a registered Valuer, has a current practicing license, and has provided proof of physical office address appoint the applicant. (3) The Chief Government Valuer shall gazette the appointed valuers by 31st March of every year.	The application for appointment for Valuers in private practice to conduct Stamp Duty Valuation have been included in the Regulations
	(4) Removal and Suspension The Chief Government Valuer shall suspend an appointment made on the following; (1) Where an applicant submits false information. (2) Where the valuer is subject of disciplinary proceedings by the Valuers Registration Board. (3) Where the valuer is involved in fraudulent activities. The Chief Government Valuer shall gazette the removal or suspension of the Valuer	The proposal has been addressed by making reference to Section 15 of the Valuers Act.
Regulation 5	Amend as follows	This is no longer relevant since the Regulations have adopted

	a) Change the title from “User Authorization” to “Valuers Access to the System” b) Replace the provision of ‘The Chief Government Valuer shall authorize an appointed Valuer to access the module for purposes of undertaking an electronic transaction under this regulations’.	the provisions for electronic transactions as prescribed by the Tax Procedures Act based on the advice of the National Treasury
Regulation 6 (1) (b)	Amend the section by replacing “Authorized user” with “Registered and Practicing Valuer”	Instead of Authorized User we have Appointed Valuer which means a Registered and Practicing Valuer
Regulation 6 (2)	Delete this section as the appointment of the Valuer is dealt as above.	This has been done
Regulation 9	Replace the provisions of the section with the following. A valuation report shall contain— (i) Title number/LR number of the subject property (ii) Location of the subject property (iii) Tenure of the property (iv) Names and addresses of the registered owners (v) Details of the property and the developments thereon, if any (vi) Basis of valuation (vii) Valuation methodology used (viii) Professional qualifications of the Valuer (ix) VRB Number of the Valuer (x) ISK Number of the Valuer (xi) Date of Valuation (xii) Signature of the Valuer (xiii) Seal of the Valuer (xiv) Copy of the VRB Certificate (xv) Copy of the current practicing Certificate of the Valuer; (xvi) Any other relevant information that the Valuer is	The contents of the valuation report has been edited to include the following: a) Names and addresses of the registered owners; b) the location of the immovable property; c) the land reference number/title number; d) the tenure of the property; e) the details of the immovable property; f) the valuation methodology; g) the basis of valuation; h) true open market value of the immovable property; i) date of valuation; j) any other relevant information that valuer is likely to come across in the course of inspection of the property; and k) Signature and seal of the valuer.

	likely to come across in the course of inspection of the property.	
Regulation 9 (b) (New section) Principles	In carrying out valuation for Stamp Duty, Valuer shall be consider the following; i) Market Value of the property;	Market value has been defined to mean true market value.
	ii) Date of Valuation which shall be the date of transfer/conveyance	The date of valuation has been defined to mean date of transfer
	iii) Valuation of the standards as provided by the Institution of Surveyors of Kenya	The issue of valuation standards cannot be included because the standards have not been provided for in law
Regulation 9 (c) (New Section) – Reference to Valuation Standards	Insert a section to read as follows; “All valuations shall be carried out in accordance with the Kenya Valuation Standards incorporating the International Valuation Standards”	The issue of valuation standards cannot be included because the standards have not been provided for in law
Regulation 9 (d) (New Section) – Valuation fees	Insert the following sections “The transferee shall bear the costs of the valuation fees on engaging the appointed Valuer.”	This has been provided for in the Regulations
Regulation 11	Replace “land” with “Property”	Land has been replaced with Immovable Property
Schedules	Include the following new forms; Form 3VA - Prescribed Format for Application for Appointment Form 4VA - Prescribed format for application for valuation by a transferee/ or their appointed agent.	The suggestion is to use the word prescribed forms – the forms can be included but Treasury will advice if they can be retained.
General Comment	The proposed regulations are by way of amendment to the existing regulations. The changes are not comprehensive and merely mention action points being done electronically without elaborating how this will be done. b) It is preferable	Action points being done electronically will be taken care by the Tax Procedures Act

		for a new set of comprehensive regulations with clauses on electronic exercises are enacted to replace the existing regulations.	
Regulations 4- 5		We note that the provisions on accessing the Electronic Valuation module under Regulations 4 and 5 are not clear, since they do not specify whether a User will have to obtain a user account to access the module. To amend Regulation 5 and specify whether a User must have a user account to access the Electronic valuation module.	It has been taken care of by the provisions of the Tax Procedures Act
Regulations 6- 12		The draft Regulations should provide timelines to guide the valuation process, on receipt of the applications by the Chief Government Valuer timelines for acknowledgement of receipt, forwarding of the application to a valuer and notification of a user on the valuer's visitation for purposes of the valuation exercise. To provide timelines for the valuation process	Timelines have been provided but also premised upon the payment to appointed valuers by the transferees
Regulation 10		Regulation 10 requires that a valuer on completion of a valuation exercise, shall electronically submit to the Chief Government Valuer the valuation report for approval. There is need to include and engage licensed private valuers in the exercise to reduce any delays experienced in the past.	Provided for in the regulations
Regulation 3		The draft Regulations should expand the scope of application under Regulation 3 to include other documents to which duty is payable such as charges, discharges and share transfer documents.	This regulation restricts itself to section 10A which deals with immovable properties that are subject to valuation

	Further, there is need to specify that the Regulations apply to documents submitted electronically for valuation for stamp duty purposes. To amend Regulation 3 to make provision for charges, discharges and share transfer documents and to also specify that the Regulations apply to documents submitted electronically for valuation for stamp duty purposes. To amend Regulation 9 to make reference to valuation reports prepared with respect to other instruments.	
Section 6 Stamp Duty Act	On a separate note, we note that section 6 of the Stamp Duty Act provides that every instrument shall be duly stamped with the proper duty before the expiration of thirty days after it is first executed. This has been a challenge for most practitioners. We suggest an amendment to this provision of the Act to allow for time to start running from the date the valuation is completed and the amount assessed for payment. New	Recommend amendment of the Stamp Duty Act to cater for the provision
New Regulation	The draft Regulations need to make provision to ensure that mistakes of land valuers during the valuation exercise are not be revisited upon the registered owners as has been the case in the past. To introduce a new Regulation on the liability of land valuers during the valuation exercise.	The draft regulations have provided for a dispute resolution mechanism for valuations submitted to the Chief Government Valuer through objection proceedings under clauses 9-12

Stamp Duty (Amendment) Regulations, 2020	We note that the Regulations do not set out in detail the process of e-stamping. Based on the Hong Kong system, we note that an effective estamping system will need to take into consideration a number of factors: • Harmonization of the processes and steps that need to be under taken before an instrument is deemed as 'duly stamped.' This will therefore entail harmonization of the process of valuation, assessment, payment and finally the generation of the electronic stamp certificate. • The system provides for how all the relevant information regarding the instrument and the parties that will be relied upon in generating the stamp certificate is to be keyed for purposes of generating the stamp certificate. • For one to generate an electronic certificate, one must be an authorized user (advocates) and have a user account. The system should not be accessible to members of the public. • To create a "Stamp Certificate Enquiry" section or tab in the system to allow Users to verify the authenticity of the stamp certificate. It is important that the electronic stamp certificate has unique security features not capable of being tampered with, to help Users verify the authenticity and reliability of the certificate. • Provision for rectification or cancellation of a stamp duty certificate in the event of a	Following engagement with National Treasury, it was advised that these aspects can be best handled administratively through user manuals because of the system dynamism.
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	mistake or error and how this will be done.	
	It is also important that the draft Regulations include a provision that, an instrument that is electronically stamped is considered as a duly stamped document.	
	We further suggest that the definitions of the following terms be included in the interpretation section of the Regulations in order to provide clarity on the electronic stamping system: a. Definition of “e-stamp” - this would clarify on what amounts to an electronic stamp. b. Definition of “duly stamped” - to include an instrument electronically stamped. c. Definition of “stamp certificate” - to include a certificate in electronic form. d. Definition of “e-stamping system” - this is a system that will enable users to make applications for an assessment of stamp duty, and the generate the stamp certificate.	
Objection	Section 13 on Objection A person aggrieved by a valuation report made under the Act, may within seven days from the date of preparation of that report, electronically lodge an objection in Form 2VA in the schedule to these Regulations How do we deal with Project Affected Persons that are not ICT literate to electronically submit their acceptance / rejection of letters of award digitally?	Objections relate to stamp duty valuations alone, the Land Act has different mechanisms for appealing compensation awards

**THE TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO
FACILITATE ELECTRONIC REGISTRATION, CONVEYANCING AND OTHER
LAND TRANSACTIONS IN LINE WITH EXISTING LAND LAWS**

**MATRIX OF COMMENTS FOR THE LAND (EXTENSION AND RENEWAL OF
LEASES) AMENDMENT RULES, 2020; AND, THE LAND (ALLOCATION OF
PUBLIC LAND) AMENDMENT REGULATIONS, 2020.**

VIEWS RECEIVED FROM THE PUBLIC ON LAND ADMINISTRATION		
Item	Issues/Comments/Concerns	Response and Way forward
A	Extension and Renewal of Leases/Allocation of Public Land/Issue of Leases and Licenses	
1.	There is a tendency to have all the processes under land administration to be conducted by the cabinet Secretary	The Cabinet Secretary does not take over land processes save for those compelled by amendment of Section 23(2) and 28 of the Land Act respectively mandating the CS to issue leases and licenses, and collection of rent.
2.	Section 13 of the Land Act about management of public land gives the National Land Commission mandate to manage public land and that should be respected. The NLC should be allowed to manage public land on behalf of County governments.	Section 13 of the Land Act mandates the NLC to make rules in respect of extension and renewal of leases and to notify lessees five years prior to expiry of leases Proposal to give notification in respect of expiry of leases by the CS in place of NLC shall be dropped in view of Section 13(1) of the Land Act.
3.	Regulation 36 on allocation of public land- the cabinet secretary should not be the one to issue leases but the NLC. Moreover, Article 63 of the Constitution states that the NLC shall manage public land on behalf of the county government	Section 23(2) of the Land Act mandates the CS to issue leases and licenses including those arising from allocation of land
4.	The taskforce should read the Transitional authority Report 2016 to see how distribution of functions between the national government and the county government was done	The functions have been clarified courtesy of the Statute Law (Miscellaneous Amendments) Act, 2018 amending the Land Act and specifically section 23(2) of the Land Act.
5.	What is the role of the cabinet secretary when it comes to the extension of leases?	To receive an application for extension and consider whether to extend or not in respect to parcels where the national government is the lessor. CEC member to do likewise where the county government is the lessor. Hitherto, applications were being made to the NLC in both cases

6.	Many changes stem from amendment of section 23(2). Was the Supreme Court advisory opinion considered before the amendment was made? You need to reconsider constitutionality of amendment of section 23(2)	Statute Law (Miscellaneous Amendments) Act, 2018 amending the Land Act and specifically section 23(2) came after the Supreme Court Advisory Opinion and the same takes precedent.
7.	Payments on allocation of public land should either go to the CS or to the county revenue fund	To accordingly amend to have any money arising from allocation of land to be due to CS and county revenue fund depending who is lessor of the land.
8.	The national or county governments are given 90 days to consider applications for extension or renewal-what happens at the lapse of 90 days they have not taken any action?	The national or county governments are compelled to consider applications for renewal within 90 days
9.	In extension and renewal of leases, the role of the NLC is replaced by the CS-regulations cannot amend substantive Law, or was the law amended?	Only changes informed by amendment of section 23(2) of the Land Act have been proposed
10	Where is the role of public in public land inventory and allocation of public land	Various agencies as prescribed by the regulations are representative of the public
11	What is the rationale of behind removing functions previously vested in the NLC to the CS	Amendment of the Land Act (sec. 23(2))
12	Matters public land fall under the constitutional mandate of the NLC-this is underscored by the Supreme Court Advisory Opinion	Proposed amendments do not affect management of public land save for issue of leases
13	Allocating land through public auction perpetuates inequalities where a villager may not stand a chance to win a bid.	There are many forms of allocating land including forms accommodating the poor
14	In renewal, the NLC is expected to forward application for renewal to either the national or county government within seven days-this is a peripheral role played by the NLC as opposed to a lead role it is expected to play in renewal of leases	Proposals for amendment has not affected the Rules in this respect
15	The participation of NLC in extension of land has been overthrown by the CS and yet the lease is heading toward expiry and hence public land	A lease still in term is private land hence within the domain of the CS mandate
16	The issuance of licenses by the CS without involvement of the NLC will amount to illegal allocation of public land by the CS since public land may be allocated by exploiting this window	This is provided by statute (section 23(2) of the Land Act hence our options limited.
17	Powers to approve and allocate public land should NOT be given to the Cabinet	Allocation of land has not been affected by proposals for amendments save for issuance

	Secretary Lands only, this is against the constitution which administers that Public Land is held in custody by The County Government and administered on its behalf by NLC, I therefore wish to say that any allocation of Land should be made after proper and intensive consultation is done with the County Government. We have witnessed a number of problems and challenges in Counties like Lamu and Turkana where allocation of Land for Port and Oil was done without proper consultation with the Counties.	of leases. Isolated cases if ever happened are not a reflection of the regulations
18	Extension and renewal of Leases should be the prerogative of the County Governments and National Land Commission, because they best understand emerging issues on the ground that may inform rejection e.g. new public need or proliferation of squatters.	The law sets out the role played by the county government and NLC in respect of extension and renewal
19	Inclusion of a provision establishing the procedures of making electronic applications for both extension and renewal of leases	Both processes provided for
20	Inclusion of provisions providing the prescribed form in which the national or county government is satisfied that the lessee has complied with the conditions of the lease before the same is renewed-prescribed form in which proof of compliance should be given [(5(c) and 13(b) extension and renewal]	Consideration in this case is an internal process within the national or county government and therefore don't need a prescribed form.
21	Allow for allocation of public land by way of online auction	There many ways of allocating land and the same will progressively develop towards automation
22	Allow for a full end to end electronic process in allocation of public land. Exceptions should be clearly stipulated	The land processes will gradually be conducted electronically in a phased manner
23	Electronic processes should be made mandatory as opposed to optional in Land Regulations-hence, replace the word 'may' with 'shall' in Regulations7(5), 11(7), 12(7), 13(7), 14((3A), 15(2A), 16(2A), 16(7), 17 (2)(A), 17(7A), 18 b(7), 18(2), 21(3 &4)	Electronic processes shall be solely prescribed when the whole land sector is covered by the system
24	Allow for applications for extension of lease by a lessee either directly or through	The regulations/rules are not prescriptive on this. The same to be considered

	representation by an authorized agent on their behalf.	
25	Include the term 'estate agent' and 'estate registration board' in the regulations for purpose of clarity	The terms can be included if they are referred to in the body of the regulations/rules
26	It is recommended that rather than adding the words 'including electronic form' the definition of 'data base' in regulation 3 (Land regulations) while in regulation 4 the word 'inventory' be defined to include physical and electronic form.	To be considered
27	NLC has, by the Constitution and statutes, a lead role in the preparatory steps towards registering a title. These include: allocation of land; alienation of public land; disposing of public land; format of lease; setting up terms of leases and licenses; finalizing on the contract of lease up to the point of execution; coordinating change and extension of user; setting up the rules regarding renewal of leases before expiry; and coordinating subdivision whereas the Ministry of Land is the special entity with authority to register, issue and guarantee land title."	Save to the redefining of the process of conversion of land from public to private to culminate at the issuance of an allotment letter by the NLC, by section 2 of the Land Act "alienation of public land" and hence private land, all other functions as spelt out in the constitution and statute have not been interfered with. It is on the premise of section 2 of the Land Act that the CS issues leases on land that has progressed from allocation or alienation.
28	The recent amendment to Section 23 (2) conflicts with the Constitution, the Land Acts, the current LRA and LA Regulations and judicial precedents. The LSK would like to draw your attention to the following:- This amendment constitutes an error on the face of the record. It refers to leases over private land while the deleted section dealt with leases over public land. It introduces private leases in a section dealing with leases over public land. • The amendment also created ambiguity and is clearly defective: it purports to grant the Cabinet Secretary power to grant leases over private land or property, which would be unconstitutional and an unwarranted interference with private interest, a preserve of the registered proprietors. It is unclear in what circumstances the Cabinet Secretary would issue leases or licences over "land held by any person under leasehold tenure" under article 64 (b) of the Constitution. Such an intervention would be an illegal and unconstitutional enterprise.	Section 2 "alienation of public land" clearly marks where public land translates to private land (by way of issuance of a letter of allotment) and this does not in any way conflict with the constitution. Public land in respect of which a letter of allotment has issued becomes private land hence section 23(2) reference to that land as private land

29	The Task Force should review the current section 23 (2) and determine whether it is legally coherent and in the right place.	The mandate of the taskforce is to come up with regulations to entrench electronic transactions. The same cannot extend to review of the Land act.
30	The Task Force should also have regard to Article 62 (1) (c) of the Constitution which deals with grants powers to the NLC to deal with "land transferred to the State by way of sale, reversion or surrender". Most leases over public land are preceded by a legal incidence of surrender or reversion to the State.	Land which reverts to the state is public land and within the control of the county government. Allocation of such land is not any different since it is public. Allocation will terminate at issuance of a letter of allotment to give way to the CS issuing leases in terms of section 23(2) of the Land Act.
31	It is the recommendation of the LSK that the amendment in 2018, (Act 18 of 2018) Section 23 (2) of the LA is incurably defective to the extent that it purports to grant the Cabinet Secretary power to issue leases over private land. It is also incurably defective if it intended to grant the Cabinet Secretary power to issue leases over public land as this is the preserve of the NLC as per the Constitution and as conclusively determined by the Supreme Court in the advisory opinion.	Section 2 "alienation of public land" clearly defines at what point allocation process ends and it is from thereon the CS takes over by issuing leases, be it in respect to leasehold or freehold tenure or community land. Section 23(2) is rightly in place
32	These Regulation deals with the power to grant licences over public land. Section 20 of the LA gives the Commission power to grant licences over public land. (ii) It is therefore not clear why there is a proposal to take this power from the Commission to the Cabinet Secretary.	Power to issue licences being granted by section 23(2) of the Land Act, the same takes precedent as opposed to section 20 of the land Act.
33	Conversion of freehold and leasehold Tenures owned by non-citizens is the function of the NLC	Save for issuance of leases and licences as above, the rest of the processes are handled by the NLC
B County Government As Opposed To National Government		
34	Land processes at the county government should be processed through a system developed by the county government.	The same to be considered
35	Do counties have the infrastructure and will?	The Counties can answer this question
36	The counties should have been consulted much earlier, not at the tail end of the process	Consultation is being done at the right time since this are zero drafts
37	We (the COG)request for a validation meeting before you do your final drafts	That can be considered
38	The existence of the Land Control Boards under the Land Control Act does not recognise the role to be played by counties in land control function as far as private and agricultural land is concerned.	The Land Control Act is an old Act that needs to be repealed to provide for a balanced control mechanism in respect to agricultural land. Until such a time, the regulations will recognise the existing control mechanism
C Other Issues		

39	The regulations do not cover on how the information and status of land rent captured by the ministry of Lands is going to be shared with KRA	The ministry is an appointed agent of the Ministry of finance as far as collection of land rent is concerned and the same is sufficiently covered by the Finance Act
40	Make sure all transactions are all traceable	That is the essence of the system
41	The adhoc independent appeals committee should not be chaired by the NLC in case of extension and renewal of leases	Proposals herein have not affected this arrangement. Our focus for now is electronic land transactions
42	Notification of the lessees within 5 years prior to expiry of their leases-it should not be within but before 5 years-change the word 'within' and replace it with the word 'before'	The proposal is couched in line with the Act. Besides, the focus is on the electronic land transactions
43	It should be change or extension of use and not 'user'	To amend accordingly
44	If land has vested on the public agencies, why should again the NLC be the one oversee management?	Because this is a temporary vesting and it does not change the categorization of the land from public land
45	Users who are regular or professionals to be allowed access throughout the year by making annual subscriptions as opposed to other users.	To be considered
46	Allow estate agents to make applications for extension and renewal of leases on behalf of owners.	The scope of professionals within the land sector to be considered
47	A corporate user should be allowed to have more than one account	Proposal to be considered
48	Align these regulations to the existing law to avoid pitfalls in the future.	Advise is taken on board
49	Where is the public participation in both the inventory of public land and transactions affecting public land?	The interests of the public are well taken care of in all land processes. Moreover, our focus is electronic land transactions
50	Can we include public participation in substantial transactions?	The public is well represented under section 9 of the Land Act where allocation is made with the approval of Parliament
51	Director land administration is assigned roles by the regulations and yet the office has not been created by statute	Concern to be taken on board
52	There is need to consolidate various similar clauses appearing in all regulations	Advise/observation to be considered
53	Community land has been left out in this process	The same is included in Land registration and survey modules
54	The powers to approve or deny change of use should NOT be left to the Chief Land Registrar and the County must be fully involved since Physical Planning is fully	The Chief Land registrar has no role in change of use save at the point of registration

	devolved and Counties have enough capacity to look into the matter.	
55	Prescribed forms should be availed in an electronic format	That is one of the proposals made
56	NCA is proposing an interface between its system and the National Land Information System	To be considered which agencies can have an interface
57	Does the electronic process accommodate the technologically challenged Kenyans?? Maybe some hybrid process can be put in place to ensure that the process is not exclusionary to a section of service deserving Kenyans.	
58	Having everything go through the Cabinet Secretary (payments) risks creating a bottleneck and a drastically slow process even where it is electronic. With so many land registration authorities, it seems odd to have it all be vested with one person. There is a higher chance of rights violations where one person is responsible	To be more specific through which office payments are made taking into account PFM Act
59	It is proposed that the Land Registration (Electronic Transactions) Regulations, 2020 should highlight all applications that are explicit supposed to be in electronic form and those that are to be physical/manual form or those that applies both as opposed to apply the phrase 'in electronic form' in Regulation 3, 4, 5, 6, 7 (a), (e), 8, 11 (c), 12 (c), 13 (b), 14, 15 (i), (iii), (iv), (viii), 16, 17 (i), (iii), (iv), (vii), 18.	To consider
60	While the amendments are appreciating the electronic transition it beats logic that the Land Regulations are being amended yet the Community Land Regulations and its Act are not being amended to include the terminology 'electronic form' among other provisions as proposed.	To consider
D	Electronic Appeals Committee	
61	Constituting the electronic Appeals committee should be done in consultation with COG. The Ministry should have 3 and county government 3 members and members from the private sector can be reduced.	Constitution of the appeals committee will be considered

62	The electronic appeals committee to be set up at every county level	To be considered
63	An advocate or surveyor or a representative of the Estate Agents Registration Board does not feature in the constitution of the appeals committee.	To be considered
64	Appeals arising from the decisions of the electronic appeals committee should be filed at the environment and land court, and not to any court-you should be specific which court.	To be considered
65	In suspension, the system administrator should not be the one to suspend the user but the committee	Suspension should be immediate and should be done by none other than the system administrator
66	There should be gender representation in the appeals committees	To be considered
67	Appeals committee is not representative enough-important institutions with stakes in land like KWS have been left out and yet the Ministry has 3 positions	To be considered
68	All pending applications in suspended accounts be considered valid and processed just like any other application, so long as they are not fraudulent	Proposal to be considered
69	Inclusion of timelines on the suspension period	To be considered

**THE TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO FACILITATE ELECTRONIC REGISTRATION,
CONVEYANCING AND OTHER LAND TRANSACTIONS IN LINE WITH EXISTING LAND LAWS**

SUMMARY OF COMMENTS ON DRAFT ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT REGULATIONS, 2020

GENERAL COMMENTS				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments
1.			This e-regulations can best be done when the overall regulations are finalized to be the foundation for the e-transaction	The regulations fit into the National Land Information System established under Sec. 6(h) of the Land Act, 2012. They focus on the transactional planning processes that inform the registration process
2.			Institutional framework needs to recognize all the actors that are assigned responsibilities in various statutes.	The role of every actor needs to be clarified before they are included in the Regulations
3.	KIP		NLC have not been incorporated in the development control process but only appear at the appeals stage.	NLC don't have a direct connection with development control other than when land is surrendered and which then needs to be registered under NLC NLC status reports need to capture the all public land emanating from land subdivisions
4.			Major actors such as the Urban Boards, relevant agencies, etc. have also not been incorporated into the processes that should have been made into a "one-stop-shop" for development applications.	The role of every actor needs to be clarified before they are included
5.			The system must respect the powers and functions of County Governments outlined in the Constitution of Kenya. The regulations require a clear separation of the system to show independence of the Counties.	Due consideration has been made to adhere to the stipulated functions

6.			The scope of the system is unclear (so many users). It is also unclear how much a user can see after log-in into the system. What synchronizes all the lands sector transactions electronically?	Development control has many stakeholders hence the number of users	
7.			There is a lot of duplication of effort by government agencies, private sector and nongovernmental organization. An example is the Building Regulations (Code) and the PLUPA regulations	Separation of the roles is beyond the scope of the current regulations	
8.			authorized agent should be a registered professional: provide a checklist as well	The role of every actor needs to be clarified before they are included	
9.	AAK		Build capacity of County Governments to undertake effective development control and enforce the proposed online system for development approval.	This is ok. However the establishment of the system is independent of the capacity building. The implementation phase should include capacity building	
10.			Definition (New) Landscape Architect and Urban Designer. There is need to recognize these two key professionals that are currently not regulated by a registration Board but play a key role in development approval and implementation process.	The question of their professional base needs to be clarified	
11.	TCPAK		From Parts IV and V and the Third Schedule of the Act, County governments have express mandate over Development Control and Enforcement. Section 69(4) of the Act is in total conflict with the rest of Part IV and V and the Third Schedule of the Act and the Constitution and does not at all give the Cabinet Secretary mandate of over receiving, processing and granting development permission.	Article 186 provides that any role not directly assigned by the Constitution or legislation is a (residual) function of the national government	
12.			Electronic systems are run on clearly defined and specific instructions, route and chain command. General and wholly processes in these draft regulations will not do.	The provisions are clear and aligned to the provision of PLUPA and other supporting laws	
13.			For the process to be clear, transparent and accountable, it is proposed that the submission process be clearly separated for National Government and County governments, and by specific profession.	The submission can only be made to the offices established in law, in this case the national and county governments	
14.	ISK		The regulations make the physical planner a compliance checker for transactions beyond their competence. This compromises ease of doing business. The role of overseer is administrative and should be open to professionals in the built environment	Worth considering to promote inclusivity and accountability	

15.			The compliance certificate to be issued on development should be eliminated for subdivision because the Director of survey is competent authority to check compliance.			Compliance is at two levels: the one pacific to the conformance condition by a specific professional and the overall which is collective confirmation by all concerned actors. Without the former, the latter cannot be realised.	
16.			Devolution entails decentralization of governance and service provision however most of the proposed processes in these regulations contradict this purpose.			The drafting is cognisant of the spirit of devolution, hence the submission, circulation and approval of ordinary applications by counties	
17.			The proposed draft regulations grant development approval rights for projects of strategic national importance and Inter-county projects to the cabinet secretary, which contradicts schedule four of the Constitution of Kenya on powers given to counties. Apart from violating the constitution, these projects generate substantial revenue to the counties and allowing it will usurp counties some of their own-revenue generation stream.			There should be coordinated and harmonized process of handling these projects. This can only be by the national outfit in line with Article 191	
18.			The Committees feels that if the Regulations are enacted as they are, Counties will lose out hugely on revenues that and noting that these are major technical changes aimed at undermining the spirit of devolution.			Every level of government has clear roles in development control – section 120 of PLUPA	
19.			The Electronic system should not be centralised in Nairobi but should be decentralized at the County Levels. No effort has been made to disclose how this will be done.			There is the national “backbone” onto which the county sub-modules will be integrated one they are independently established	
20.			Authorized user Accounts – We propose that these be categorized to take care of the various interests and categories of users.			This is in order	
21.			Role of Professional Bodies – with the professionals being heavy users of the systems, the role of the professional registration bodies should be examined to ensure that those who register as professionals are registered with the bodies and are in good standing.			The provision of good standing is already captured. Maybe we need a clause on how this will be confirmed with the professional body	
22.			To enhance efficiency in operations for users, it will be useful to consolidate systems into a one-stop access to all government agencies registering projects and/or issuing construction permits			NCA has a running system that deal with post approval and the concern here is on pre-approval	

			which include National Construction Authority (NCA) and National Environment Management Authority (NEMA) among others		
23.			There is need for legal reforms i.e. a stable and responsive legal framework to ensure the adoption of digitization.	Will be handled through the report	
24.			Deliberate efforts will need to be made to ensure integrity and confidentiality of personal data throughout the land management cycle.	To be looked at by systems developers	
25.			There is need for government to promote ICT literacy among the public to ensure good acceptance on land electronic systems.	Will be handled through the report	
26.			Both National and County Government employ qualified professionals within the various units involved in the processes	Will be handled through the report	
27.	EBK		Function of the National and County governments are aligned to the constitution and the rights of the various users of the system are protected	For consideration by system developers	
28.	LSK		Our comments generally on electronic requirements apply to all the e-Regulations. Where e-signatures are used there is need to have a third party certifier to ring-fence the exercise from frauds and identity theft.	To be considered along the other modules	
29.			To enhance service delivery, licensed professionals from the private sector, who have signed agreements with the regulator and given sufficient indemnities, should be allowed to perform tasks inspections and certifications otherwise performed by civil servants.	To be considered	
30.			Cost of ICT Infrastructure and Transition Period. We note that the digitization process may be tasking due to the high cost of developing the necessary ICT infrastructure, the time to be taken in uploading large records, which may occasion delays in the short-term. For this reason, we propose a two-year transition period to allow the current physical system to support the new digital process until the same is fully operational.	Transition timelines to be considered	
31.			Electronic Appeals Committee The composition of the Electronic Appeals Committee as provided under Regulation 12 should include an Advocate for purposes of ensuring due process in hearing and determination of disputes. Page 30 of 32 It would also be useful to have nominees from licensed professionals rather than from the private sector.	This matter being handled by another committee. To consider their recommendations	

REGULATION 1: APPLICATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
32.	Natural Justice	1(2)(i)	The drafting of Regulation 1(2) (i) is not clear: As drafted it may be read to mean that the draft regulations also apply to applications for development permissions for projects of inter-county or strategic national importance; or that the CS may make regulations for projects of an inter-county or of strategic national Importance. The draft regulations should apply even to projects of strategic national importance. This may be better set out as follows: “(2) (i) The Regulations shall also apply to applications for development permission for projects of...”; and (ii) Where deemed necessary, the CS may through a notice in the gazette make alternate regulations applicable to development of permission for projects of inter-county or strategic national importance and such regulations will take precedence over this regulation.”	This need to be clarified as suggested by a certain stakeholder	
				Should be considered for incorporation	

REGULATION 2: INTERPRETATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
33.	KIP	2(ii)	These regulations have introduced professionals who are not licensed by the professional registration bodies listed under Section 2 (ii).	We need to be clear how urban designers and landscape architects are covered in law as their input in the process is important	
34.	ISK		Insert “Licensed Surveyors” and “Land Surveyors Board”	To be considered	
35.	TCPAK		Landscape architect and Urban designer are not licensed under existing law and therefore this cannot do so through regulations	We need to be clear how urban designers and landscape architects are covered in law as their input in the process is important	
36.	NCA		We propose the inclusion of the definition of Electronic Appeals Standing Committee.	To be considered	

37.	LSK		Regulation 1(2) (ii) grants a power to the Cabinet Secretary that ought to be derived from the substantive Act.	To be considered	
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REGULATION 3: SYSTEM ESTABLISHMENT

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
38.	KIP		Under regulation 3, is there a broad-based regulation for establishment of the NLS before regulating the sub-component of “e-application module” for a cohesive system	Issue not clear to seek clarification from KIP	
39.		3.1	3 (1) this module will be composed of two sub-components: i. National module ii. County module	To be considered	
40.	TCPAK		As the basic building block, establish electronic development control and Enforcement System in each of the 47 counties and the same integrated to the National Land Information System	This needs to be clarified in light of the capacity by counties to establish such systems. Maybe we have a clause that the system shall be phased, just like the registration module	
41.	CoG		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.	This is debatable based on the capacity of 47 counties to establish such systems, and within what time frame	
42.	EBK	3(1)	The term “consultant” limits to professionals mandated to submit documents on behalf of registered owner of land. This might be limiting where the land ownership is complex or the professional is not directly engaged by the landowner and may be dealing with a beneficial owner of property.	Role of each professional clearly spelt out	

REGULATION 4: DATABASE AND OPERATION TOOLS

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
43.	CoG	4(1)	“(1) The County Directors of Physical and Land Use Planning shall maintain in the system, an electronic database for the –	The system requires coordination for uniformity in line with Art. 191	

44.			This module should have a segment for NLC. The NLC will maintain in the system monitoring frameworks and oversight parameters as provided for in section 9(c) of the principal act. 1. Section 9 of the principal act reinforces the monitoring and oversight role of the commission. 2. Section 33 of the principal act requires approved physical and land use plans to be submitted to Director general and NLC 3. Section 35 of the principal act provides that progress reports on implementation of various categories of plans shall be submitted to NLC and the Cabinet secretary. 4. Development control is an element of plan implementation.	To be considered for incorporation	
	KIP				
45.			What role does the Director General have in keeping registers of documents of all development applications submitted in Kenya? This is not in line with schedule 4 of the Constitution of Kenya. County Governments, the foundation functionaries of development Control and enforcement are totally missed out. Include: In each County, the County Executive Committee Member shall maintain an electronic database system for the – - Approved physical and land use development plans -- - Development control instruments	DG should maintain a register for strategic and inter-county projects	
46.	TCPAK			This is part of administrative database that should be accessible for decision making	
47.		4(2)(a)	If the information is classifiable as public information then there should be no restriction of access to the public on the basis of the use for which the information is sought.	Worth considering	
48.	Natural Justice		Access should only be limited on the reasonable grounds set out in Section 6 of the Access to Information Act. These grounds should be applied on a case by case basis. Furthermore, a mechanism should be put in place to challenge such restrictions or at the very least an obligation to provide reasons for the restriction, which can be appealed.		
49.		4(2)(iii)	Delete "...for research purposes"		
50.	CAF		Amend the following to state: - “(1) The County Directors of Physical and Land Use Planning/CEC shall maintain in the system, an electronic database for the – (i) approved physical and land use plans (note preparation and approval of these plans is a county function) in	The provision should be two pronged, for strategic projects and ordinary projects	

			accordance to provisions of the First and Second Schedules of the Act; (ii) development control (note this is a county function) instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals; and (iii) Registers of documents submitted by applicants for development permission (County function) as provided in Schedule 1."	
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REGULATION 5: REQUIREMENTS FOR HANDLING APPLICATIONS FOR DEVELOPMENT PERMISSION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
51.	CoG	5(1)	"(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 – Rename the section 5 heading to read: "Framework for handling development applications"	To be considered	
52.			The entire regulations are ambiguous that the Director General is the superintending authority on all development applications. There are no other national government system users other than the Director General.	To be considered	
53.				The DG is a coordinating office not superintendent parsee	
54.					
55.	KIP	5(1)	Re-write Section 5 (1) to read: "In respect to development applications made to national government for purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall....."	To be discussed with the DG	
56.			Re-write Section 5 (1) to read: "In respect to development applications made to county government, the County Director of Planning shall....."		
57.			The role of NLC in overseeing applications is missing throughout the Regulations.	To be considered	
58.			A separate section can be written outlining the system operators of the national and county government systems.	To be considered	
59.	AAK	5 (2) (ii)	There have been instances of unqualified professionals vetting applications at Counties. As well as professionals examining	Consider giving a sample structure of planning unit with recommended	

			applications which they lack capacity to examine for instance a physical planner examining and approving a structural engineering drawing.		personnel, their qualification and role for counties to adopt. AAK will be happy if given more time to send a draft framework for this. How does this fit in the system or regulations, won't it be overprescribing?	
60.		5 (2) (iii)	Need to integrate KENHA, KURA, KeRRA database at the Director General Level to avail information to be maintained at the database.		The authorities can only submit their specific data through the DG, the overall administrator of the module These have been captured under Legal Notice 156. Maybe we need a clause on how such submissions can be done	
61.	NCA		Following the amendments to the National Construction Authority Act No. 41 of 2011 vide the Business Laws (Amendment) Act 2020, the enforcement of the Building Code has been anchored to the National Construction Authority. Hence, to enhance efficiency in operations for users in regards to development control, we propose an interface of the Authority's existing system and the electronic development control and enforcement system once it is established for ease of information cross-referencing.		This need to be looked at in addition to other linkages	
62.	EBK	5(2)	The authorised technical officers provided should be further specified. At least one should be a professional civil engineers in view of the fact that adequate and effective civil works systems comprising of roads, water, sewerage and sanitation, structural buildings are heavily dependent on proper physical planning		To be handled in the report	
63.	TCPAK	5(1)	The Director General/CS is not provided for in the Third Schedule of the Act and has no authority over development control and		They are not provided for but they have a stake	
64.		5(1)(iii)	5(1)(iii) is indeed in total conflict with the Third Schedule of the Act		This is not correct	
65.	ISK	5(1)	Insert "data sharing" after Geo-referencing		To be considered	

REGULATION 6: SIGNING UP FOR USER ACCOUNT				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments Recommendation
66.	ISK	6(2)	Insert "via email "after "user account"	To be considered
67.	NCA	6(1) (iii)	Add "electronic signature" under the sub rule as part of the information to be provided by the user. Electronic signature that can be authenticated and for verification.	We don't have regulations on electronic signature and we can omit this for now

REGULATION 7: USER OBLIGATIONS				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments Recommendation
68.	NJ	7(v)	"not copy, exchange, disclose or use the land related information accessed from the system for any irregular and unlawful purpose, including personal profit or interference with any transactions under these Regulations"	To be considered

REGULATION 8: PUBLIC ACCESS				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments Recommendation
69.	KIP	8	Is this part of the national LIS? Can a professional access across all other modules (land searches etc.) is it a one-stop shop that once the system accredits you, it is possible to access across the entire NLIS? Can you directly access it on e-citizen? How does this system link to the NEMA approval system? And other licensing bodies e.g. WARMA, NCA	Need to reconsider linkage of the system to systems of relevant authorities. However, this can only be in mid-term or long term due to capacity

REGULATION 10: SUSPENSION OF A USER'S ACCESS TO THE SYSTEM				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments
70.		10(1)	There should be a "show cause" letter before suspension.	Suspension is immediate given the gravity of some offences
71.			Maximum timelines for suspension should be stipulated. Suspending authority should indicate in writing the reasons for suspension.	Worth considering
72.	KIP	10(2)	As written the Director General and County Director can use their powers to unfairly target professionals for suspension. There is no safeguard against misuse of section 10(1) (2).	The appeal process provides safeguard
73.			The Director General and County Director should not have unilateral suspension powers as they lack technical capacity to detect electronic fraud.	Fraud is only one of the offences listed
74.	NJ	10(1)(b)	There should be reasonable grounds for suspension and these reasons should be communicated to the authorised user and "authorised officer"	to be considered
			The provision for situations where a Director-General or County Director may suspend a user's access to their account and includes a situation where the person is "suspected to have committed any fraud, identity theft or system misuse"	
			Amend to read "reasonably suspected"	
75.		10(2)(c)	Amend the section to read: "...specify in the notification	to be considered
76.			In the interest consistency between cases, there should be a set statutory time frame of at least 7 - 14 days.	to be considered
			(c) that a response shall be required within 7/14 days from the date of the receipt of the notice."	
77.	AAK	New clause suggested	Professional bodies such as AAK are better placed to offer information on professional members with determined cases of misconduct. This will be essential in protecting the public interests and drawing on existing capacities offered by professional associations/bodies.	This was debated at length during drafting of the section. It was felt professional standing should be left to the professional bodies
78.	EBK		Need to define "good standing" and the role of professional bodies and the licensing bodies	to be considered

REGULATION 11: TERMINATION OF A USER'S ACCESS TO THE SYSTEM				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments Recommendation
79.	KIP		There is no county appeals process. This does not respect devolution.	Appeals process is in respect to access to the system as a whole
80.			If NLC has had no role in the system up to this point, why have they suddenly appeared at Appeals? How can they arbitrate matters they are unaware of?	Need to consider the role of NLC all through
81.		11(4)	What is the connection between this committee with the liaison committee?	No connection at all

REGULATION 12: APPEALS AGAINST THE DECISION TO TERMINATE A USER'S ACCESS TO THE SYSTEM				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments Recommendation
82.	CAF	12(1)	Amend to state: - "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."	Liaison committees are not structured to hear appeals on system administration
83.	KIP	12(2)	Provides for four member from the private sector One of the representatives from the private sector should be a practicing planner nominated by the Kenya Institute of Planners	Composition of the appeals committee to be reviewed but in light of Mwongozo
84.	NJ	12(5)	There is a need to specify the specific court for clarity. "...may appeal to the Environment and Land Court within 30 days from the date of such decision."	Need to interrogate whether ELC is best placed to hear issues on system administration
85.	CoG		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.	
86.	TCPAK	12(2)	The membership of the Electronic Appeals Standing Committee does not reflect real user and equity needs.	

			Ministry has three representatives and 47 Counties (core users) have only one representative.		
			- We propose that representatives be – 1/Ministry; 3/COG/counties		
			- That appeals committee be set up in each county		

REGULATION 13: PREPARATION OF APPLICATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
87.	KIP	13 (3)	This opens up the avenue for whims of authorizing/planning authority to apply their opinions. The fact that only a licensed professional should submit applications for development permission should be sufficient enough basis for the professional to have clarity as to the policy interpretations and implications on any development application. The section includes the documents which should support development permissions including: "Publication Notification (where applicable) in accordance to section 58(7)(8)" There is need to specify the circumstances where public notification is not required.	Submissions even currently are done by Registered Planners	
88.	NJ	14(3)(v)		To be considered and made a recommendation in the report	
89.				To be considered and made a recommendation in the report	
90.					
91.	AAK				

REGULATION 14: SUBMISSION OF APPLICATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
92.	NCA	14(9)	Inclusion of verification of electronic signature according to the process for verification of electronic signature based on 6(1) (iii). - consent from land control board be one of the attachments for applications involving subdivision of agriculture land and change of user so this section should include "written consent from land control board (where applicable)"	To be considered	
93.	KIP	14(3) (3)		To be considered	

			-The regulations could provide for ESIA certificate as one of the documents to be submitted. This should be done in advance to reduce unnecessary red tape. Third schedule of the principal act: 4). Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment. 3). If any development application requires subdivision or change of user of any agricultural land, the county government shall require the applicant to obtain consent from the relevant Board The two-step ESIA process (separated from planning approval processes) has been causing unnecessary...		
94.	TCPAK	14(1)(i)	All development planning applications (list/name them ...) shall be submitted electronically to ... office/office/Department?...) and shall include the following documents Planning Architectural Engineering Survey	Applications come in as a package	

REGULATION 15: RECEIVING AND INVOICING DEVELOPMENT APPLICATION FEES

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
95.	CAF	15(2)	All developments including projects of strategic national importance or inter-county to be subjected to the fees and charges as prescribed by County Finance Act. Amend to state:- “ The application shall be received and downloaded by the authorized county planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by-...”	To be reviewed in light of position of each planning authority on the various categories of developments The tariffs and pricing policy shall be the reference document	
96.	NJ	15(4)	Amend to “an application shall not be duly submitted until...”	To be considered	

97.	TCPAK		This should be amended for consistency with section 14(6) For efficiency and accountability, the process must be clear and specific on the process for each type of profession-application – development plans, architectural design, engineering design, and land survey	This is not applicable	
98.	CoG	15(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 that fall in the classification of strategic national importance or intercounty;	The point of receiving and invoicing projects on national importance to be discussed with DG	

REGULATION 16: REGISTRATION OF DEVELOPMENT APPLICATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
99.	NCA		In regards to Register of Compliance and Occupational Certificates issued. We propose the development of registers and procedure for access to the register.	Assuming this is supposed to be certificate of compliance, can we have procedure for the same? My take is, once all conditions for approval are fulfilled, it is automatic the certificate will be issued	

REGULATION 17: CIRCULATION AND REVIEWING OF APPLICATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
100.	NCA	17(2)	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."	Need to be relooked in light of the roles of the planning authorities	
101.	KIP	17 2(ii)	There should be time limit for circulation from application to approval. The system should have its own internal checks e.g. a control room that should be aware if officials intentionally slows down the system	There is need for categorization of projects in terms of risks and magnitude	

			It is necessary to clarify what happens if an application relates to the jurisdiction of a municipality		
102.	AAK	17 (2) (ii) (a)	Enter as an item in the prescribed agenda; Refer to prescribed register as per the PLUPA S.62 to be in compliance with the PLUPA law	To be considered	
103.			Consider a sub-clause on inspection of the register by the public. In as much as we want to ensure the public has access to information it has to be given in an accountable manner to protect also the privacy of applicants.	To be considered	
104.		17 (2)	Introduce a class of 'low risk' projects that can be vetted by the Planning Unit and recommended for approval without going through the circulation process outside the County. Such projects could be: boundary walls, single dwelling units that don't exceed one floor, extension of bungalows, alterations of existing buildings, among others that can be spelt out in a schedule.	To be considered	
105.	CoG	17(2)	(2)The fully circulated application shall be received by the – (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: ”	There is need for quality assurance and appropriate procedures	

REGULATION 18: PREPARATION OF AGENDA AND RESOLUTIONS OF DEVELOPMENT VALIDATION COMMITTEE					
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
106.	TCPAK	18	In law, this committee is not provided for. It is indeed political baggage from old order of COUNCILLOR Committees. From experience nation-wide these committee lead to serious approval delays, are not transparent, nobody is accountable and add no value. What level of input and scrutiny does this committee add, for example, to detailed architectural, engineering design work? We propose that these committee be deleted and let professionals handle professional applications and consult as they know best.	The committee will ensure circulations are getting quality assurance	
107.	AAK	18	Technical Development Validation Committee; Prefer to remain with existing terminology “Technical Committee”.	The word validation is important	

				Recommend this to be a Sub-Committee of the County Physical and Land-Use Planning Consultative Forum as established in S. 14 of PLUPA. and riding on the mandate of the Forum as per S.15 (b) promote effective coordination and integration of physical and land-use development and sectors planning as well as S.16 (2) and (3) that gives the Forum the mandate to regulate its procedures and establish subcommittees.		
108.	KIP			Include stakeholders in the committee – At the very least Professionals through their Associations. AAK members are the front end-users of the platform particularly. Utility providers like KPLC For effective public participation and transparency of the system. Give it legal mandate by pegging it to PLUPA. This also allows for co-opting of other relevant members as deemed necessary and Water Companies. Others like NEMA and WARMA This committee should be renamed “Development Technical “Evaluation” Committee not “validation”.	The name should have a true reflection of the work to be done	
109.		18 (1)		The development technical committee should include all agencies outlined in sect 60 of PLUPA -Include county Director of agriculture as well as those listed in section 60 of the principal act -Include NLC representative at the county level Other agencies including; - county, city and municipal boards. Members of the Development Technical Validation Committee shall – (i) hold scheduled meetings set out on an annual basis; We propose one meeting every month.	To be considered in line with the role of each entity – to be discussed with the drafters	
110.		18(2)		We propose that the County Municipal Engineer or their designate must be a licensed professional engineer	Debatable it is dependent on applications received at any given time	
111.	EBK				Qualifications of the officer is beyond the mandate of the regulations	

REGULATION 19: DEVELOPMENT TECHNICAL VALIDATION COMMITTEE

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
112.	CAF	19(1)	Amend the clause to state that: -		

				“The CEC 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”		
113.	TCPAK	19(1)		To be deleted as is irregular and against the law as explained earlier.	disregard	
114.		19(2)		Be updated to reflect 17 and 18 above for each professional line	disregard	
115.		19(3)		Be update to accommodate the different professional line offices/departments as explained in 17/18	disregard	
116.	KIP	19(1)		Provide a segment for NLC to be in the technical committee that reviews applications prescribed as projects of strategic national importance. (this may require that the regulations for the principal act details this)	To be discussed	
117.		19(2)		the decision to approve or disapprove to be communicated by the CS and NLC to receive this decision	To be discussed	
118.	CoG	19(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	Already covered	

REGULATION 20: DECISION MAKING AND COMMUNICATION

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
119.	KIP	20(1)	This section needs to be clear on who appoints the sub consultants. Can the registered owner also receive a copy of the approval so that they can recruit an appropriate consultant for the next stage of implementation	To be considered	

REGULATION 21: Preparation of Conformance Conditions Applications

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
120.					

121.				
122.				
123.				
124.				

REGULATION 22: RECEIVING AND PROCESSING OF CONFORMANCE CONDITIONS APPLICATIONS

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
125.	KIP		The regulations should clarify to whom the decision will be communicated to. We propose that this decision be communicated to the applicant (consultant) with a copy to the registered owner or developer. As well,	To be considered	

REGULATION 24: NOTIFICATIONS OF INSPECTIONS

No	Stakeholder	Regulation/Section	Issue/Question	Team Comments	Recommendation
126.	NCA	24(1)	Development can only progress after 7 days yet inspection takes place within 24 hours. The time should be reduced to 3 days.	Worth considering though need to think about the practicability of the proposed timeline	
127.	KIP	24(2)	The registered owner of a property carrying out the development shall not proceed with the development unless issued with a copy of the inspection report and interim certificate authorizing progress.	To be considered	
128.	NJ	24(1)	Given the likely demand, perhaps this should be amended to 72 hours which seems feasible. If the 24 hours is to be maintained, are departments adequately staffed to meet the timelines?	To be considered	
129.	EBK		Introduce a new clause to provide that authorized officer of the relevant authority shall offer all reasonable support and facilitate the access to project site by any legal established body mandated with inspection of works and professional services for ensuring appropriate standards and relevant health and safety aspects are observed	To be considered	

REGULATION 25: SITE INSPECTION PROCEDURE				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments
130.			The final inspection timelines are missing e.g. when inspection is to be conducted after receiving notification form property owner and when the report should be submitted to the County Director. We propose that the final inspection should be conducted 48 hours after notification and the final inspection report to be submitted within 7 days.	To be considered
131.	NCA		In regards to the notification procedure for final inspection, we propose that a notification template should be developed on the same.	Worth considering
132.			We have noted that the Occupational certificate is missing. We propose development of Occupational Certificate template.	Worth considering, while thinking of who should provide the information
133.			In regards to Register of Enforcement Notices issued, we propose that there should be a copy communication to the National Construction Authority.	Worth considering
134.			There should be a copy communication of Compliance and Occupational Certificates and Enforcement notices to other relevant authorities and agencies such as National Construction Authority	Worth considering
135.	KIP		Can the system have an interface with licensing authorities for quick confirmation A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building, or in respect of any premises or land, for which development permission has not been granted by the relevant county executive committee member	Worth considering

OTHERS				
No	Stakeholder	Regulation/Section	Issue/Question	Team Comments
136.		6(g)	Signing up User Account - No need to include details of next of kin - passport size photo to be optional	To compare notes with the team working on the common issues relating to system users
137.		10	Suspension of user's account Fair hearing before suspension of user's account	Suspension is immediate, pending determination of suspected violations while termination is consequential.
138.		14 (3) (iii)	Submission of application - Requirement of a geo-referenced cadastral map might not be achievable making application difficult - Government to allow for google map generated pin location maps to ease doing of business	-
139.	Maina Onguso	17	Circulation and Reviewing of application Timelines for circulation should be defined to avoid speculation and misuse	Timelines are provided in general regulations of PLUPA
140.		18	Development Technical Validation Committee - Members to include representatives of professional bodies - Members of the committee should take an oath of office - Members should be entitled to a sitting allowance - Minutes to be recorded and attendance list be dully signed	Membership should be determined in line with Mwongozo Policy and membership should not exceed 9 How the committee shall conduct its business shall be determined administratively
141.		19	Decision Making and Communication of strategic projects - Define the timelines for making the decision - Timeline to be 7days	To be discussed with the DG
142.		20	Preparation of Conformance Conditions Applications: Provide for county technical officer to share application upon written instructions from the developer/owner	To be considered
143.			General comments: The system to be accessible on phone via an app.	These can be part of the report

			- o E-payment to be linked into the system to reduce human interaction - o Reduce the need to present blue prints - o Reduce human interaction		
144.		2	Electronic appeals committee o Define the committee	“ electronic appeals committee ” means a committee constituted under regulation 11 to hear appeals against the termination of a user’s account – Consultation during establishment of the committee to be between the CS and CECM not NLC – Insert the words “ or the county executive committee member ” immediately after the word “secretary”, in regulation – Include a representative of Ministry in charge of ICT – Reduce no. of representative from the Ministry and private sector – Secretariat be comprised of rep of CECM & NLC	
145.	DG-PLUP	10(4)	Appeals to electronic appeals committees - o Edit the regulation - o Need to provide a submission form for appeals - o Decentralize the committee	–	
146.		11	Appeals against decision to terminate user account - o Refine membership of the committee - o Refine timeline for making decision - o The court with jurisdiction to hear appeals of aggrieved persons	– Provide a submission form – The Electronic Appeals Standing Committee shall hear and determine any matter referred to it within fourteen days and notify the user of its decision within 7 days of making a determination – Appeals to court be directed to ELC which has jurisdiction on physical and land use matters	–
147.		18(4)(e)	Development Technical Validation Committee	To be corrected	–

			Typographical error - Insert a comma after the word “county” in regulation 18(4)(c)			
148.		23	- Submission form for structural drawings by engineers - Other licensed professionals such as engineers, who are part of validation committee need to be provided with forms for submission of their work	To be considered	-	
149.			Signing of the form - Form EPLUPA003 (Certificate of Compliance) The form should be signed by County Director - County Director should sign Form on behalf of the CECM who is the planning authority	To be considered		
150.	MoLPP Staff	2	Interpretation - Refine the list of definitions with an aim to reduce the number - Add surveyor in the list of users as they interact directly with the system	To be considered	-	
151.		4	Database and Operation Tools - Check the mandates granted to systems administrators in line with their functions in PLUPA - Provision regulation 4(1) does not resonate with reg. 5(2) - Establishment of the system which is currently vested with the DG should be expanded to the County Director for efficiency and decentralization of functions	To be considered	-	
152.		5	Requirements for handling applications for development permission (scope of the system) The scope of the system should be to provide an avenue for undertaking the procedural provisions of the general regulations under Sec.90 of PLUPA electronically	To be considered		
153.		12 & 13	Appeals against the decision to terminate a user's access to the system & Submission of application - Relook the mandates of the various role players (CS & CECMs) in line with their functions in PLUPA including that of establishing the committees - Proposed committees cannot be established under the regulations but under the Act	Regulations for strategic and inter-county projects provided for in the improved version of the draft	-	

			- Separate regulations of r strategic and inter-county projects as well as for projects around strategic installations - Confine the roles of the planning authorities under PLUPA - The planning authorities as established in PLUPA should be assigned roles as provided in the Act - The establishment of the proposed committees should have proper footing in the Act			
154.		14	- Submission of applications - The prescription of line spacing of documents accompanying applications is overstretching the requirements, making some provisions hard to achieve		To be considered	
155.	KRA & ICTA	2	- Authorized Officers - Advocates are not captured as part of authorized officers while they have a direct link to planning module for compliance of documents for submission			
156.		5	- Handling applications for development permission - Some tasks should be left to the counties and licensed planners to help deal with capacity issues		To be considered	
157.		12	- Appeals Process - The appeals process under PLUPA makes reference to Liaison Committees. The appeal process under the regulations and that stipulated in the Act are not streamlined		Reference is made to Part V of PLUPA for clarification of the mandate of the Liaison committees	
158.		17 & 18	The role of Resident Association during circulation should be considered as they are very vocal		The input of the associations is considered during public participation	
159.		Part III	Clarify the timelines of various aspects of development control		Timelines are provided for in section 58 of PLUPA	

STAKEHOLDER		
1	Kenya Institute Planners	KIP
2	Architectural Association of Kenya	AAK

3	Town and Country Planners Association of Kenya	TCPAK
4	National Construction Authority	NCA
5	Institution of Surveyors of Kenya	ISK
6	County Assemblies Forum	CAF
7	Natural Justice	NJ
8	Estates Agents Registration Board	EARB
9	Association of Land Surveyors of Kenya	ALSK
10	Council of Governors	CoG
11	Engineers Board of Kenya	EBK

