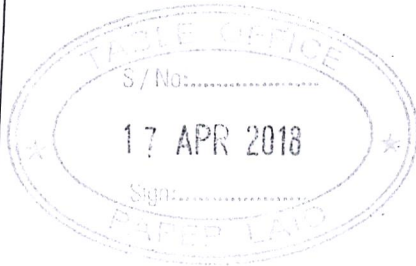


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SNA
17/4/18



PARLIAMENT OF KENYA



Paper laid by
Hon. Rachel Nyamwaya, MP
Chairperson, DC on
Lands
Tuesday 17/4/2018
AP

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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF THE PHYSICAL PLANNING BILL, 2017

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2018

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List of Abbreviations

CPDP	-	County Physical Development Plan
CPPLC	-	County Physical Planning Liaison Committee
CDPP	-	County Director of Physical Planning
CEC	-	County Executive Committee
CG	-	County Government
CS	-	Cabinet Secretary
DG	-	Director General
NPDP	-	National Physical Development Plan
NPPCF	-	National Physical Planning Consultative Forum
NPDLCL	-	National Physical Development Liaison Committee
NEMA	-	National Environmental Management Authority
NLC	-	National Land Committee
KENHA	-	Kenya National Highways Authority
KMF	-	Kenya Marine and fisheries
KCIAA	-	Kenya Civil Aviation Authority
KALRO	-	Kenya Agricultural and Livestock Research Organization
KR	-	Kenya Railways
KFS	-	Kenya Forest Services
KWS	-	Kenya Wildlife Service
RPPDC	-	Regional Physical Planning Development Committee
RPPDP	-	Regional Physical Planning Development Plan
WARMA	-	Water Resource Management Authority

CHAIRPERSON'S FOREWORD

The Physical Planning Bill, 2017 is a Bill which seeks to implement the provisions of the Constitution on land use planning in particular the provisions of Article 66 and paragraph 21 of Part A and paragraph 8 of Part B of the Fourth Schedule to the Constitution. The Physical Planning Bill, 2017 National Assembly Bill No. 34 is a year five constitutional Bill that required to be passed in the fifth year of implementing the Constitution. The Physical Planning Bill, 2015 that had been introduced in the 11th Parliament lapsed and the Bill has therefore been reintroduced in the 12th Parliament.

The Bill seeks to make provision for the planning, use, regulation and development of land by providing the principles, procedures and standards for the preparation and implementation of physical development plans at the national and county levels. Without harmonized plans and standards for physical planning, orderly physical development and land use would be negated. The importance of a legal framework on physical planning cannot therefore be overstated. Towards this end the Bill seeks to repeal and replace the Physical Planning Act No. 6 of 1996.

In deliberating on the Bill, the Committee subjected it to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and indeed did receive various views from key institutions of the physical planning profession including the Kenya Institute of Planners, Town and County Physical Planners Association of Kenya, Architectural Association of Kenya and the Young Planners Association. The Committee also received submissions from, the Council of Governors committee on Urban Development, Planning & Lands and members of the Public including the Residents of Nairobi County.

The Ministry of Lands and Physical Planning and the National Land Commission who will be key implementers of the Bill if passed into law also made very detailed and insightful submissions to the Committee. The thereafter Committee did deliberate on the submissions on each clause of the Bill and made recommendations which will inform the committee stage amendments to the Bill.

The Committee appreciates the support accorded to the Committee in discussing the Bill by the office of the Clerk and also the participation of the Honourable Members of the Committee. This report represents an analysis of the submissions made to the Committee by different stakeholders, summary of the contents of the Bills, analysis of the clauses vis-à-vis the stakeholder submissions, observations and the Committee's proposed amendments to the Bill.



Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands

EXECUTIVE SUMMARY

The Physical Planning Bill, 2017 underwent first Reading on Wednesday 11th October, 2017 and was subsequently committed to the Departmental Committee on Lands for consideration pursuant to the provisions of Standing Order 127.

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on Friday 5th January 2018 inviting the public to submit memoranda on the Bill. By close of business on Friday 12th January 2018, the Committee had received submissions from the National Land Commission, the Architectural Association of Kenya- Town Planners Chapter, the Council of Governors - committee on Urban Development, Planning and Lands, Young Planners Association, Residents of Nairobi County, the Town & County Planners Association of Kenya and the Kenya Institute of Planners. The Committee also received submissions from the Institution of Surveyors of Kenya after the deadline for submission of memoranda.

Further the Committee held meetings with the Chairperson, National Land Commission on Wednesday 8th February 2018, the Chairperson , Architectural Association of Kenya- Town Planners Chapter on Thursday 9th February 2018, the Institute for Social Accountability & Chairperson, Kenya Institute of planners on Thursday 15th February 2018 the Town & County Planners Association of Kenya and the Council of Governors on Tuesday 22nd February, 2018 , Chief Administrative Secretary and the Principal Secretary Ministry of Lands & Physical Planning on Tuesday 27th February 2018. During the meetings the Stakeholders made oral submissions and submitted written memoranda. The submissions mainly focused on the name and title of the Bill, whether the Bill was responsive to the land reform agenda, constituent with the Constitution and existing legislation.

The Committee thereafter proceeded to a retreat on report writing where it analyzed the submissions by the stakeholders and made various observations and recommendations as indicated in this Report.

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
- (vi) study and review all legislation referred to it

1.2 Committee subjects

The Committee is mandated to consider the following subjects:-

- a) Land Policy,
- b) Physical Planning,
- c) Land Transactions,
- d) Survey and Mapping
- e) Land Adjudication
- f) Settlement
- g) Land registration
- h) Land Valuation
- i) Administration of Private, community and Public Land
- j) Land Information and Management System

1.3 Oversight

The Committee oversights:

- i. The Ministry of Lands and Physical Planning ;and
- ii. The National Land Commission

1.4 Committee Membership

Chairperson	The Hon. Dr. Rachael Nyamai, MP
Vice Chairperson	The Hon. Khatib Mwashetani, MP
	The Hon. Jayne Njeri Wanjiru Kihara, MP
	The Hon Joshua Kutuny Serem, MP
	The Hon. Kimani Ngunjiri, MP
	The Hon. Mishi Mboko, MP
	The Hon. Omar Mwinyi, MP
	The Hon. Ali Mbogo, MP
	The Hon. Babu Owino, MP
	The Hon. Caleb Kipkemei Kositany, MP
	The Hon. Catherine Waruguru, MP
	The Hon George Aladwa, MP
	The Hon George Risa Sunkuyia,MP
	The Hon. Jane Wanjuki Njiru,MP
	The Hon. Josphat Gichunge Mwirabua Kabeabea, MP
	The Hon. Owen Yaa Baya, MP
	The Hon. Samuel Kinuthia Gachobe, MP
	The Hon. Simon Nganga Kingara, MP
	The Hon Teddy Mwambire, MP

Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Legal Counsel I	Ms. Jemimah Waigwa
Researcher III	Mr. Joseph Tiyan
Fiscal Analyst III	Ms. Lucy Makara
Audio Officer	Mr. John Mungai
Media Relations Officer	Ms. Winnie Kizziah

1.5 COMMITTEE OBSERVATIONS

Having considered the Bill and the memoranda submitted to the Committee by the public, the Committee observed and made comments as follows-

1. The long title of the Bill is exhaustive as it seeks to implement not only the provisions of Article 66 of the Constitution but also the provisions of paragraph 21 of Part A and paragraph 8 of Part B of the Fourth Schedule to the Constitution among others.
2. The short title namely the “Physical Planning Act” is appropriate as the contents of the Bill indeed make provisions for land use planning.
3. Clause 2 of the Bill is exhaustive save for the need to include the definition of the term electronic media which is being proposed to be included in other clauses of the Bill. The Committee also observed that electronic media is currently the most efficient and cost-effective mode of communication.
4. Despite the fact that the membership of the Consultative Forum provided for in clause 5 is large, the forum is not a planning authority but a forum for consultation on the national physical development plan and as such, the membership has to be broad to include among others county executive committee members of the forty-seven counties. There is however need to amend to specify with clarity on who the representative of the Council of Governors to the Forum is, in this case being the chairperson of the relevant committee of the Council of Governors.
5. There is need to amend clause 8 of the Bill to provide for the following functions of the National Land Commission-
 - (a) monitor and have oversight responsibilities over land use planning throughout the country;
 - (b) prepare reports on the status of land use planning and forward to President and Parliament as provided for in Article 254 of the Constitution.
 - (c) Publish and publicise the state of national land use planning report in accordance with the provisions of Article 35(3) of the Constitution;
 - (d) Encourage use of traditional dispute resolution mechanisms in land use planning; and
 - (e) develop monitoring framework and formulate oversight parameters relating to physical planning.
6. It should be the responsibility of Parliament to approve the national physical development plan noting its importance in terms of acting as the base for the preparation of all other plans including inter-county and county physical planning development plans.

7. There exists no conflict between clause 9(d) with Article 67 of the Constitution as the Cabinet Secretary is responsible for monitoring and overseeing the technical arm at the national level and not land use planning as provided for in the Constitution.
8. There exists no conflict in clause 10 in terms of the roles of the Cabinet Secretary and the National Director of Physical Planning as the Bill makes it clear that the National Director shall serve to advise the Cabinet Secretary and shall also be responsible to the Cabinet Secretary.
9. There is need to delete the reference in clause 11 of the post-graduate qualification and instead substitute with a bachelor's degree which is the case in all qualification requirements of most professions but retain the words related discipline noting until the year 2006, there was no degree being offered in most universities in urban and regional planning.
10. The Committee further observed that there was need to put a term limit for the National Director of three years renewable once.
11. There exists no conflict in terms of the roles of the Cabinet Secretary, the Consultative Forum and the National Director of Physical Planning as the Bill makes it clear that the National Director shall serve to advise the Cabinet Secretary and shall also be responsible to the Cabinet Secretary.
12. Clause 13 of the Bill should be amended to specify that the role of approval of plans lies with the county assemblies and further reword paragraph (c) to avoid the potential conflicts with Article 67 of the Constitution.
13. Clause 15 of the Bill should be amended to specify the qualifications of the County Director of Physical Planning as follows-
 - (a) is a citizen of Kenya;
 - (b) possesses a bachelor degree in urban and regional planning or related discipline from a recognized university;
 - (c) is registered as a physical planner under the Physical Planners' Registration Act, 1996;
 - (d) has at least five years' post-qualification professional experience in physical planning; and
 - (e) is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.
14. There is need to amend the Bill to include the requirement for publication through electronic media in clauses 19(2) and 21(1), insert the words "Secretary" immediately after the word

15. "Cabinet" in clause 21(2) to rectify a typographical error, reword clause 21(2) and (3) of clarity purposes, amend clause 22 to include the requirement for approval by Parliament and delete clause 24(1) as is repeated in sub-clause (2).
16. The requirements for publication participation are adequately catered for in terms of clauses 4 and 19(1)(b) of the Bill.
17. The Bill should be amended to include the requirement that the status reports by the public institutions in terms of clause 24 shall be published and made available in the NLC website.
18. The term regional physical development plans negate the devolution principle as enshrined in the Constitution and hence the term regional development plan should be deleted and substituted with inter-county physical development plans in furtherance of the objects of the Constitution on devolution.
19. There is also need to amend clause 29 of the Bill to align with the role of the County Assemblies to approve plans.
20. Despite the provisions of the County Government Act and the Urban Areas and Cities Act, the Bill clarifies the procedures of preparation, approval, review and modification of county physical development plans.
21. Clause 34(2) of the Bill should be amended to increase the period for displaying the notice for a period of fourteen days to twenty-one days at the offices of the county government.
22. There is need to amend clause 49 of the Bill which provides for the objects of development control to include promotion of public safety and health as an objective of development control.
23. There is need to amend clause 52 to include provisions for developers to notify the public of the proposed development and invite objections.
24. Further, there is need to amend clause 58 to increase the timelines for lapsing of development permission from two years to three years in order to promote investors and give them adequate timing for processing of among other things financing of investments projects.
25. Clause 65(5) should be amended to increase the penalty for non-compliance with the enforcement notice from one-hundred thousand shillings to five hundred thousand shillings to

26. act as a deterrent for non-compliance.
27. Clause 66 of the Bill should be deleted as it has a retrospective effect and would be disadvantageous to developers who might have completed development projects only to be required to re-submit their application afresh.
28. Clause 69(2)(c) of the Bill should be amended to delete the word "regional" in paragraph (c) to align it with the other provisions of the Bill which give reference to inter-county physical planning development plans.
29. Clause 71(1)(c), (d) and (e) should be amended provide for ten years of experience for persons to be nominated under paragraph (c), (d) and (e) to ensure that the persons nominated to the county physical liaison committee are competent and highly experienced on matters relating to physical planning.
30. Clause 71(2) of the Bill should be amended to identify a maximum of five persons who can be co-opted to the liaison Committee to avoid leaving the option of co-opting many persons, which might render the operations of the Committee inefficient.
31. Clause 72 of the Bill should be amended to include an additional role akin to the one provided for the National Physical Planning Liaison Committee in terms of clause 69(1) (a).
32. Clause 73 of the Bill should be amended to provide a term limit of three years renewable once for the members of the County Physical Planning Liaison Committee.
33. Clause 87 of the Bill should be amended due to the potential conflict with Article 185(4) of the Constitution which gives power to the county assemblies to approve plans.
34. There is need to include provisions on delegated powers of the Cabinet Secretary to make regulations that may be necessary for implementation of any matters required in the Bill.
35. The Committee observed that the public had not made submissions on clauses 7, 38, 55, 57, 63, 77, 79, 83, 84, 85 and 86.
36. The Committee agreed with the contents of clauses 7, 38, 55, 57, 63, 77, 79, 83, 84, 85 and 86 without amendments.

1.6 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public the Committee recommends that the Bill be approved and passed by the House subject to the proposed amendments in this Report.

2.0 INTRODUCTION

The Physical Planning Bill, 2017 seeks to give effect to Article 666 (1) of the Constitution by making provision for the planning, use, regulation and development of land. The Bill also seeks to provide for the principles, procedures and standards for preparation and implementation of physical development plans at the national, regional, county, rural and cities levels and further provides for the administration and management of physical planning in Kenya. Towards this end the Bill seeks to repeal and replace the Physical Planning Act No. 6 of 1996.

2.1 Analysis of the Bill

Part I of the Bill contains the preliminary provisions including key words as defined in the Bill.

Part II outlines what the physical planning institutions are. In particular-

A. National Physical Planning Consultative Forum.

Clause 5 establishes the National Physical Planning Consultative Forum. The Forum consists of the Chairperson of the National Land Commission, the forty-seven county executive committee Members representing each county, Cabinet Secretary for matters relating to physical planning, economic planning, environment and roads and infrastructure among others.

Clause 6 of the Bill further stipulates the functions of the Forum which are to provide a forum for consultation on the national physical development plan, promote effective coordination and integration of physical development planning and sector planning and advise on mobilization of adequate resources for the preparation and implementation of physical development plans.

B. National Land Commission

The Bill also lists the National Land Commission as a physical planning institution. Clause 8 of the Bill lists the functions of NLC which include monitoring and overseeing physical planning in Kenya and the preparation of status reports on the preparation and implementation of physical development plans.

C. Cabinet Secretary, responsible for matters relating to Physical Planning

Clause 9 defines the functions of the Cabinet Secretary which are formulating a national policy on physical planning, issuing in the Gazette policy statements guidelines and circulars on general and specific aspects of physical planning and approval of the physical development plans.

D. National Director of Physical Planning

Clause 12 of the Bill outlines the functions of the National Director of Physical Planning which include advising the government on strategic physical planning matters that impact on the whole country, formulating national physical planning policies and preparation of national development plans.

E. The County Executive Committee Member

Clause 13 of the Bill provides that the County Executive Committee Member is responsible for formulating a county policy on physical planning, approving county physical development plans, monitoring and overseeing the planning function and promoting integration of county physical planning functions.

F. The County Director of Physical Planning

Clause 16 of the Bill outlines the functions of the Director to be-

- (a) Advising the county government on physical planning matters;
- (b) Formulating county physical planning policies;
- (c) Preparation of county physical development plans;
- (d) Preparation of local physical development plans; and
- (e) Recommending to the county government the establishing of planning units as may be necessary among others.

PART III of the Bill makes provision for Physical Development Plans. The Bill categorizes physical development plans as follows-

A. The National Physical Development Plan

The National Physical Development Plan defines strategic policies for the determination of the general direction and trends of physical development and sectoral development in Kenya and provides a framework for the use and development of land.

The Plan is prepared by the Cabinet Secretary and the National Director of Physical Planning. The plan shall cover an implementation period of 20 years and may be reviewed after 10 years if necessary. The plan shall be the basis for environmental conservation and promoting social economic development among others. The national government and county government shall base the preparation of the development plans on the National Physical Development Plan. The plan is approved by the Cabinet.

B. Regional Physical Planning Development Plan

Two or more counties may by mutual agreement formulate a regional physical development plan.

A RPPDP defines the scope of the plan and the geographical area to which the plan relates.

The RPPDP is prepared by the RPPD Committee which consists of the National Director of Physical Planning and the County Executive Committee Member for each county involved.

Clause 29 of the Bill provides that CEC Members shall separately approved the plans and thereafter submit to the National Director of Physical Planning for final approval.

C. County Physical Development Plan

A county physical development plan shall provide an overall physical development framework for the county.

The CEC Member shall submit the plan to the governor who shall cause it to be placed before the county assembly.

D. Local Physical Development Plan

A county government shall prepare a local physical development plan in respect of a city or unclassified urban area. The LPDP shall be for among other things plan for zoning, urban renewal or redevelopment.

E. Special Planning Area

A special area plan contains a written statement highlighting the grounds for the declaration of a special plan area and the challenges the special plan intends to address among others.

A county government may on its own motion or as may be requested by the national government or the NPPCF declare an area as a special planning area if the area has unique development and environment challenges.

Where a county government has declared an area a special planning area the CEC Member may suspend for a period of two years any development in the special planning area until a physical development plan in respect of that area has been approved.

Part IV of the Bill deals with Development Control. Clause 49 outlines the objectives of development control as follows-

1. Ensure orderly physical development.
2. Ensure optimal land use;
3. Ensure proper execution and implementation of approved physical development plans among others.

Planning authorities have the power to prohibit or control the use and development of land and buildings, control or prohibit the subdivision of land and reserve and maintain all land planned for open spaces, parks and urban forests among others.

A person shall not carry out development within the area of a planning authority without a development permission granted by the planning authority.

A planning authority may levy a development fee against an applicant for development permission

Part V contains provisions on enforcement notices and provides that a planning authority shall serve on the owner or occupier of land with an enforcement notice specifying among other things the development alleged to have been undertaken without permission and the measures that should be taken. This part also contains provisions requiring a planning authority in charge of an urban area or a city to require an owner to present a development application for consideration of the planning authority.

Part VI of the Bill establishes the Physical Planning Liaison Committees.; Clause 67 establishes the National Physical Planning Liaison Committee which consists of twelve members including a representative of NLC, DG NEMA, DG Water Resources Management Authority, Chairperson of the National Construction Authority among others. The Committee hears and determines appeals from national planning authorities and advises the Cabinet Secretary on broad physical planning policies, strategies and standards.

This Part also establishes the County Physical Planning Liaison Committee which consists of seven members including a representative of NLC, a registered physical planner, architect, surveyor and two members being one male and one female nominated by the county Chamber of Commerce. The CPPLC hears and determines appeals from planning authorities in the county.

PART VII contains miscellaneous provisions in particular repeal of PP Act, 1996, transitional provisions and consequential amendments.

The Bill also contains four schedules. The First Schedule prescribes procedure for appointment of members of the National Physical Consultative Development Forum, Second Schedule outlines the contents of national, inter-county and county physical development plans, Third Schedule outlines the contents of local physical development plan and the Fourth Schedule outlines the matters which may be dealt under development control.

3.0 SUBMISSIONS AND PUBLIC PARTICIPATION

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on Friday 5th January 2018 inviting the public to submit memoranda on the Bill. By close of business on Friday 12th January 2018 the Committee had received submissions from the National Land Commission, the Architectural Association of Kenya – Town Planners Chapter, the Institute for Social Accountability, the Council of Governors, the Town and County Planners Association of Kenya, Residents of Nairobi, Young Planners Association and the Kenya Institute of Planners. The Committee also received submissions from the Institution of Surveyors of Kenya after the deadline for submission of memoranda.

Further the Committee held meetings with the Chairperson, National Land Commission on Wednesday 8th February 2018, the Chairperson, Architectural Association of Kenya – Town Planners Chapter on Thursday 9th February 2018, the Chairperson, Institute for Social Accountability and the Chairperson, Kenya Institute of planners on Thursday 15th February 2018 the Chairperson, Town & County Planners Association of Kenya and the Council of Governors - committee on Urban Development, Planning and Lands on Tuesday 22nd February, 2018 and the Chief Administrative Secretary & the Principal Secretary, Ministry of Lands & Physical Planning on Tuesday 27th February 2018. The stakeholders made the following written and oral submissions.

3.1 Submissions by the National Land Commission

The National Land Commission presented written submissions to the Committee contained in a memorandum dated 12th January 2018. The Chairperson of the Commission also made oral submissions during a meeting with the Committee held on Wednesday 8th February 2018 as follows:

Constitutional threshold: The Commission was of the view that the Bill contravened the fundamental principles, letter and spirit of the Constitution which included; devolution as provided in Article 6, and 10, public participation and good governance on the following grounds:

- b) The Title “Physical Planning” had no reference in the Constitution. The Constitution provides for "land use" in Articles 60, 66, 67 and 68 and fifth schedule.
- c) The Bill failed to meet the requirements of Article 68(b) of the constitution which required parliament to revise land use laws in accordance with the principles set out in Article 60(1).
- d) The process of preparing the Bill failed to meet the requirements of Articles 10 and 232(1) (d) & (f) of the constitution
- e) By amending section 110(3) of the County Governments Act, 2012, the Bill undermines devolution and flouts Articles 174 (c)(f) and 185(3)(4) of the Constitution.

Consistency with Existing Legislation: The Commission argued that the Bill disregarded and conflicted with the County Governments Act 2012, the Urban Areas and Cities Act 2011, the National Land Commission Act 2012 and the Environment and Land Court Act 2011. Particularly in respect to:

The functions of the National Government/ Executive, the County Governments and the National Land Commission.

The Commission was also of the opinion that the Bill failed to recognize the different types of land use plans prepared under the county Governments Act and the urban areas and cities Act - “*County Spatial Plan*” and “*Integrated Urban Development Plan*” and creates conflicts and duplication.

Responsiveness to Land Reform Agenda: The Commission argued that the Bill was not in line with the land reform agenda as required under Article 60(2) and sessional paper No. 3 of 2009 on National Land policy paragraphs 101-143. The Commission also stated that current and emerging realities required a more responsive and innovative legislation and planning approaches. Further the Commission argued that the Bill did not provide the required framework to move the country from the current dire situation to a more desirable competitive trend.

Progressiveness and Value Addition: The Commission also argued that the Bill was not progressive and did not meet the requirements of the new constitution of Kenya 2010. Further the Bill was not fundamentally different from the current Physical Planning Act that had not been effective. The content and scope was limited to urban areas and does not cover new areas of concern like rural areas, marine, mining, transport planning, environmentally fragile areas and trans-national areas.

The Commission also proposed specific amendments to the Bill as contained in table 1:

Table 1: proposed amendments to the Physical Planning Bill, 2017 by the National Land Commission

Clause	Proposed Amendment	Justification
Long Title	Amend long title to read ‘An Act of Parliament to give effect to Article 66(1) of the Constitution to make provisions for the planning, use, regulation and development of land and for connected purposes’	The reason for legislation should be drawn from the Constitution. The Long Title is at Variance with the Statement of Objects and Reasons.
Short Title:	Rename Bill to Land Use Planning	The term has no reference in the Constitution and the title “Physical Planning Bill” flouts Articles 66(1) and 67(2) (h), 68(b) and the Fifth schedule of

2	Delete paragraph (b) in the definition of a planning authority and substitute with county government.	It contravenes section 104 (1) & (3) of the County Governments Act 2012
8	Functions should be realigned with Article 67(2)(h)	<ul style="list-style-type: none"> • The Bill should observe fidelity to the constitution with regard to the wording and use of terminologies introduction of new terminologies as "physical planning" blurs the intention of the constitution. • The bill should unbundle and elaborate what constitutes monitoring and oversight as anticipated in the constitution, provide a framework for coordination of planning by national government as envisaged in the 4th schedule of the Constitution
9	Delete 9(d) because monitoring and overseeing is a NLC function	Monitoring and oversight is a function given to National Land Commission at Article 67 (2) (h) and section 5 (h) of National Land Commission Act.
10	Delete clause 10. Functions assigned to ND already assigned to CS and NLC. ND can be administratively established hence no need to legislate on it	<ul style="list-style-type: none"> • The functions assigned to the National Director are already assigned to the Cabinet Secretary and the National Land Commission. • The office of the Director can be created administratively in the office of the Cabinet Secretary and therefore not necessary to legislate
11	Delete in light of clause 10	
12	Delete in light of clause 10	
13	Delete 13(b) and (c). Conflicts with 185 and 67 of the Constitution.	Clause 13 (b) Conflicts with County Governments Act 2012 Sec. 109 (1) (c), 110 (3) 111 (6) 112 (2) (a) approval of county plans is the responsibility of County assemblies.
16	Delete clause 16 (c) as in clause 13	
17	Delete physical development plans and replace with land use plans	1. The planning framework established through the plans disregards the integrated framework established under the County Governments Act Section 102-115 and the integrated development

		<p>41 of the Urban Areas and Cities Act 2011. This is likely to create confusion.</p> <ol style="list-style-type: none"> 2. The bill creates contradiction in the names of the plans to be prepared which are not aligned to the plans provided for in County Governments Act 2012 at sections 107(1)(a-c) 110 and 111 (1) 3. The naming of the plans is an attempt to sustain the status quo of the Physical Planning Act Cap 286 which has been ineffective and limited in scope. 4. The plans duplicates and or contradict the plans provided for under sections 107-111 of the County Governments Act 2012 and section 36-42 of the Urban Areas and Cities Act 2011. This creates confusion, duplication and unnecessary additional expenditure for counties.
21	The Cabinet Secretary should be the preparatory authority.	The preparatory authority is unclear. It keeps changing from Cabinet Secretary at Section 21 (1), the Cabinet at Section 21 (2), National Physical Planning Consultative Forum at Section 22 (1)
22	Approval of plan should be by Parliament not the Cabinet	Is not in line with approval procedures for public policies binding the entire nation. The Cabinet endorses the plan and its approval should rest with the Parliament. In furtherance of separation of powers
25	The NDPP should not chair the RJPPC as it contradicts Article 189(2) of the COK and section 23 of the IGRA.	<ul style="list-style-type: none"> • The clause contradicts Inter-governmental Relations Act Section 23. • Pre determining the membership and assigning National Director as chair goes against and undermines the spirit of devolution in Article 189 (2) <p>Cooperating counties should have a freehand to determine how their matters are addressed</p>
29	Delete section and provide that they shall be approved by the county assemblies	Contravenes the spirit of Devolution and takes away the approval powers of County Assemblies provided for under Article 185 (3) and (4) of the Constitution

	scope of a CPDP varies from the scope of the county spatial plan	development plan varies from the scope and framework of the county spatial plan in sec 110 of the County Governments Act 2012
33	Duplicates the provisions of the County Government Act, 2012	Since this has been legislated in the County Governments Act 2012, the procedural aspects should be detailed in regulations accompanying County Governments Act 2012.
44	Need to delete the provisions on preparation and approval procedure for local physical development plan as they are already provided for in section 38-41 of the Urban Cities Act, 2011	Refer Section 38 – 41 of Urban Areas and Cities Act 2011
67	Delete the proposed NPPL Committees.	<ul style="list-style-type: none"> • Clause 68(4) opens the chairmanship of the committee to non-planners; a planning matter should be adjudicated by professional planners. The body that regulates the planning profession should nominate the chair. • Committee bloated and not cost effective and inefficient
87	Delete clause 87 contravenes the provisions of Article 185(4) of the Constitution	<ul style="list-style-type: none"> • The Bill amends Sec 110(3) of the County Governments Act 2012 essentially taking away the approval powers of the county assemblies thereby flouting Article 174(c),(i)and 185 (4), of the Constitution. • Denies the County Assemblies their primary responsibility in development of the counties

	<p>unnecessary since the membership to the forum is pre-determined.</p> <p>The Second Schedule introduces the inter-county physical development plans which are not included in the Bill.</p> <p>The Third Schedule provides for no renewal and redevelopment plans are included in the Bill hence the schedule introduced new types of plan.</p>	<p>to the forum is predetermined.</p> <p>The schedule introduces The Inter-county Physical Development Plans which are not provided for in the body of the Bill.</p> <p>Renewal and redevelopment plans are not mentioned in the body of Bill hence the schedule introduces a new type of plan.</p>
Memorandum of Objects and Reason	<ul style="list-style-type: none"> • Delete "Physical Planning Bill" 2017 and replace with "Land Use Planning Bill" 2017. • All other reference to "physical planning" should be replaced with "land use planning". 	<ul style="list-style-type: none"> • Any amendment to existing legislation must be disclosed • It is also unconstitutional as it contravenes Article 185 (3). • The term "Physical Planning" is not provided for and is not in line with the letter and spirit of the Constitution.

3.2 Submissions by the Chairperson, Architectural Association of Kenya - Town Planners Chapter

The Committee held a meeting with the Chairperson, Architectural Association of Kenya Town Planners Chapter on Thursday 8th February 2018. During the meeting the Chairperson made the following comments on to the Bill:

- i. That the Bill was defective in law and did not reflect the relevant principles and requirements of the Constitution;
- ii. That the Bill contradicted the County Government Act and the Urban Areas and Cities Act.

It would therefore lead to confusion and discordance in implementation;

- iii. The Bill did not give explicit provisions for all plans including but not limited to the National Spatial Plan, Regional Spatial Plan, Special Planning Area, County Spatial Plan, County Integrated Plan, City or Municipal Plans, County Sectoral Plans as provided for in the Constitution, the County Governments Act and the Urban Areas and Cities Act;
- iv. The Bill proposed changes to other laws without mentioned them in the memorandum and without adequate stakeholders' consultation. For instance the part VIII of the Bill on miscellaneous provisions sought to propose the deletion of words in sections 110(3) and (4) of the County Government Act; and
- v. That the Bill should recognize all professional planning association that included but not limited to the Architectural Association of Kenya – Town Planners Chapter, the Kenya Institute of planners and the Town & County Planners Association of Kenya.

The Association further proposed specific amendments to the Bill as contained in table 2.

Table.2: Architectural Association of Kenya - Town Planners Chapter proposed amendments to the Physical Planning Bill, 2017

Clause	Proposed Amendment	Justification
Short title	Planning and Land Use Regulation Bill 2017 Include an application clause to provide that the provisions of the Act shall apply in the entire territory of Republic	Does not reflect the objects of land use planning as outlined in the constitution of Kenya 2010 (Article 66; Schedule 5-Part V)
Preamble	Insert Preamble. Change it to read 'An Act of Parliament to effect Article 66 and the Fifth Schedule to the Constitution; to provide for planning, regulation of land use and development of land, interests in and rights over property and ensure that investments in property benefit local communities and their economies and for connected purposes.	
2	Marginal note should change from interpretation to definitions	Need for clarity and for the avoidance of doubt in the interpretation of this Act

		legislations requiring plan development at County level and Urban areas as planning units
4	Delete reference to the term “physical planning”.	
Part II Physical Planning Institutions	Amend the title of the part to read Planning Administration	The title does not capture the administration of planning ; The proposed title will capture the various institutions and clearly define their mandate in Planning at the National and County Government(s)
5	The Membership is too broad. The role can equally be played by the proposed NPPLC. Delete the section.	Duplication of roles with the National Liaison Committee , and the forum is too high-level and bureaucratic
6	Delete this section in light of the proposed amendment to clause 5	The forum offers a framework to engage on the national level. The forum offers comments and inputs but has no legal mandate to make planning decisions Has no legal mandate to coordinate and integrate physical development planning and sector planning, no mandate to mobilize resources
8	Amend 8(a) and align it with Article 66 of the Constitution	To align the Bill to the requirements of article 67 of the constitution and the National Land Commission Act
9	Amend to provide as follows- (a) Formulating a national policy on physical planning. (b) Formulating a national land use policy.	The current functions are inadequate and duplicates roles of the Director of Physical Planning (Section 12 (b), (d)) of the PPB

	<p>standards and regulations on planning.</p> <p>(d) Approval of national development plans.</p> <p>(e) Coordinating planning by the counties in line with the Fourth Schedule.</p> <p>(f) In the formulation of policies, plans, guidelines and standards effective public participation is mandatory.</p> <p>(g) In the formulation of policies, plans, guidelines and standards effective public participation is mandatory.</p> <p>(h) Recommends and submits national development plans, policies, guidelines, standards and regulations to the Cabinet for consideration and subsequent submission to Parliament for approval.</p> <p>(i) Cause gazettelement of the approved national development plans and policies.</p> <p>Create the position of the Principal Secretary who shall be responsible for the overall administration of the national planning function, facilitating the national planning process and budget and resource allocation for national planning.</p>	
	<p>New 9B The Principal Secretary shall be responsible for:</p> <p>(a) Overall administration of the National planning function</p> <p>(b) Facilitating the national planning process</p> <p>Budget and resource allocation for national planning</p>	<p>The office of the principal secretary is a key administration function at the national government. (Constitution of Kenya Article 155)</p>
11	<p>Amend (a) to read 'a holder of a postgraduate degree and or a degree in urban and regional planning or both from a recognised university. Use of the words related discipline is vague.</p>	<p>The professional qualification (Urban or regional Planning or both planning should be explicitly mentioned. Related discipline is vague</p>
12	<p>Amend to read as follows-</p> <p>(a) Chief national government advisor on all matters pertaining to national land use</p>	<p>Duplication and conflicting roles between the Cabinet secretary and the Director (6(d), 12(a); 9(a), 12(b);</p>

	<p>(b) Advise the CS on national land use policy.</p> <p>(c) Advise the CS on national guidelines and standards on planning.</p> <p>(d) Responsible for preparation of national land use plans.</p> <p>(e) To recommend land use policy to the National Government and County Governments.</p> <p>(f) To cause the preparation of plans for purposes of implementing a comprehensive programme for the registration of title in land throughout Kenya by the national government.</p> <p>To conduct research related to land use and the use of natural resources and make recommendation to appropriate authorities</p>	
13	Establish the office of a chief officer	<ul style="list-style-type: none"> • Approval of plans is a function of the County Assemblies • monitoring and overseeing the planning is a function of NLC
14	Provide that the CDPP shall be responsible to the CO and CEC	14 (2) is a duplication of functions described in clause 16
15	Insert qualifications of CO	
16	<p>16 (c)Amend the roles of a county director to read as follows-</p> <p>a. advising the county government on County planning matters;</p> <p>b. preparation of county land use spatial plans at County, Sub county, Ward, Village and Urban areas;</p> <p>c. Delegate in writing any of his functions under this Act, either generally or specially to any planning officer in the Sub county, Ward, Village or Urban levels;</p>	

	<p>supervise the services of a registered and practicing physical planner and/or planning firm to prepare county spatial plans and/or land use policies;</p> <p>e. preparation of inter-county development plans;</p> <p>f. undertaking research on matters relating to development planning at the county level</p> <p>g. certification of county plans and recommending to the county executive in charge of planning for adoption</p> <p>Insert a new clause on indemnity of the Director or any planning officer.</p> <p>Insert a new section allowing Director to opt to retain the services of a registered planner.</p>	
	<p>New 16B -The Director or any planning officer appointed above shall not be personally liable to any action or other proceeding for or in respect of any act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under this Act.</p>	
	<p>New 16C In discharging responsibilities under this Act, The Director may retain services of registered and licensed planners and or planning firm.</p> <p>No body corporate shall carry on business as registered planner unless the directors thereof whose occupation involves the preparation of plans in respect of land under this and are registered physical planners.</p>	<p>To introduce efficiency in delivery of planning services; capacity building of the planning private practice (Article and 10 and article 60 of the Constitution)</p>
<p>Part III – Types of Physical Development Plans</p>	<p>More types of plans to be included that will touch on natural Resource utilization, Environmental management, Funds equalization, and fulfillment of the Bills of rights</p> <p>Refer to County Government Act, 2012 Part XI on County Planning</p>	<p>As required by the Constitution article 204 (2)</p>

	Schedule on the Preparation of an Integrated Plan	
17	Rename NPPDP to National Land Use Spatial Plan.	The clause is ambiguous; the functions need to be separated. The title of the plan to be aligned with the constitution
19	Allow for publication through electronic media	Electronic Media is currently the most efficient and cost effective mode of communication. The publishing role to be retained by the National Director of Planning.
20	Contents should include all aspects of land use planning	The contents of the National Land use Spatial Plan should include all aspects affecting land-use planning
21	Insert word "Secretary" in (2).	'The Cabinet' –should be The Cabinet Secretary'. (The Cabinet itself cannot be expected to incorporate stakeholder comments).
25	Rename RPPDP to Regional Land Use Plan. Insert words "advise from NDPP" immediately after necessity	The constitution provides for only two levels of government; regional plans create a third level of government National Land use Spatial Plans and Regional Land use Plans should be approved under intergovernmental arrangement if we are to respect the Constitutional status of both levels of government
	25(1) Two or more Counties may by mutual agreement or out of compelling necessity or from advice from the National Director of Planning on areas requiring intercounty development plans" derived from the National Land use Spatial Plan.	The constitution provides for only two levels of government; regional plans create a third level of government

27	Recognise use of electronic media	Recognize electronic media as it's the most efficient and cost effective mode of communication
28	Recognise use of electronic media	Recognize electronic media as it's the most efficient and cost effective mode of communication
29	Recognize the use of electronic media and changes in the naming of the plan	Recognize the use of electronic media and changes in the naming of the plan and the joint committee in-line with the Constitution of 2010.
32	To align the Title to the County Governments Act Section 107 that refers to the types of plans as follows: a) County Integrated development Plans; b) County Sectoral Plans; c) County Spatial Plans d) Cities and Urban Areas Plans	To align the Title to the County Governments Act Section 107 that refers to the types of plans as follows: a) County Integrated development Plans; b) County Sectoral Plans; c) County Spatial Plans Cities and Urban Areas Plans
33	New 33 B To guide preparation of County Integrated development plans	To fulfil the requirement of County Government Act (CGA, section 108)
	Insert "To guide preparation of County Integrated development plans"	A county spatial plan includes both urban and rural planning
34	Amend to read-At least fourteen days before commencing the preparation of a <u>county spatial plan</u> , the member of the executive committee shall publish a notice in the Gazette and <u>electronic media</u> , with national coverage and the notice shall include the intention to prepare a county spatial plan, the objects of the plan and the matters to be considered in the plan and the address to which any views on the plan may be sent.	Recognize electronic media as the most efficient and cost effective mode of communication. Change the title of the plan to County Spatial Plan

	mode of advertisement	publish an entire plan in the Gazette <ul style="list-style-type: none"> • There are no approval procedures given for this plan and can therefore not be implemented
41	Need to align with the CG Act. The Local Physical Development Plan should therefore read the Integrated Urban Area or City Development Plan.	
49	Add (g) to promote public safety and health	This is in line with provisions of the constitution
50	Add-b)control and approve public and private land, amalgamation, land readjustment, change of user. (c) delete physical development plans and substitute with	Recognize the role Counties play fully in development control
51	Substitute planning authority with county government.	The County Government is mandated to undertake development control , this is in line with the spirit of devolution
53	Refer to registered and licences planners in (1).	This clause explicitly defines work for Registered and Licenced Physical Planners. Clause 53 (1) is a general clause to all the professionals
54	List all agencies in 54(1)-relevant authorities.	The list is on thematic areas and does not mention the relevant agencies and/or departments to be consulted. It also does not recognize the role of other private agencies such as conservation bodies, neighbourhoodassociations

56	Need to refer to what a planning authority is.	The Planning Authority is not properly defined. In the spirit of devolution it is best to explicitly name the office in charge:- the County Director of Physical Planning and the authority as the County Government
57	Need to refer to what a planning authority is. Insert the words “for a prescribed fee” after “that extension”.	
59	Need to refer to what a planning authority is.	
60	Need to refer to what a planning authority is	
61	Need to refer to what a planning authority is	
64	Insert provisions on survey and registration prior to being given development permission as follows- (1) The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with. (2) For the purposes of subsection (1) “Registrar” has the same meaning respectively assigned to it in section 2 of the Government Lands Act (Cap. 280), section 2 of the Registration of Titles Act (Cap. 281), section 3 of the Registered Land Act (Cap. 300) and in relation to land to which part II of Land Titles Act (Cap. 282) applies means the Principal Registrar or any Registrar appointed for the purposes of that part.	This section was in the CAP 286, the intention is to ensure that land survey conforms with planning provisions to ensure the provision of infrastructure services and conformity to zoning regulations
65	Need to refer to what a planning authority is. Increase penalty to Kshs. 500,000	

Part VI	Amend the title of the part to read Planning Tribunals	
67	There is established the National Planning Tribunal	Establishment of a tribunal will make the decisions made legal and binding and admissible in a court of law
68	<p>(a) an advocate of the High Court nominated by the Law Society of Kenya, who shall be the chairperson;</p> <p>(b) Registered planner in Private Practice appointed by the Physical Planners Registration Board;</p> <p>(c) A representative from each of the Planning professional Bodies (Kenya Institute of Planners, Architectural Association of Kenya and Town and County Planners Association of Kenya)</p> <p>(d) A lawyer nominated by the Law Society of Kenya</p> <p>(e) A representative from National Construction Authority</p> <p>(f) A representative from Institution of Engineers of Kenya</p> <p>(g) <u>A representative (who's should be a registered planner and working with the respective institution) from NEMA, WARMA, KENHA, KFS , KWS, Kenya Marine and fisheries, Kenya Civil Aviation Authority, Kenya Agricultural and Livestock Research Organization (KALRO), Kenya Railways; appropriately</u></p> <p>(h) a person nominated by an alliance representing associations in the private sector in Kenya</p> <p>(i) A registered surveyor nominated by the Institution of Surveyors of Kenya</p> <p>a registered architect nominated by the Architectural Association of Kenya</p>	A member of a constitutional commission cannot sit in a tribunal, the commission is independent
69	Delete 69(1)(a)	This is a function of the National Director of Planning
	New 69 (3) Meetings to be held quarterly but they	

70	There is established a County Planning Tribunal for each County.	Establishment of a tribunal will make the decisions made legal and binding and admissible in a court of law
71	Amend (c) to read- (c) A registered planner, with a minimum 10 years' experience, nominated from each of the planning associations: the Kenya Institute of Planners, Architectural Association of Kenya-Town Planners Chapter and/or Town and County Planners Association of Kenya. Delete CEC in 71(3) and replace with CDPP.	
	71 (3) The County Director of Physical Planning shall provide secretariat services to the committee	
72	Amend to provide The County Planning Tribunal shall meet at least four times in a year but they can have special meetings when need arises	
73	Amend to provide The County Planning Tribunal shall meet at least four times in a year but they can have special meetings when need arises	Additional Special meeting will create room to address issues that may arise from time to time
75	Amend to provide that a person, who contravenes the provisions of this section 75, commits an offence and is liable, on conviction, to a fine not exceeding Fifty thousand shillings. (3) A person contravening section 2 above , will be re-summoned, upon payment of the fine prescribed under section 2 and is liable to a fine not exceeding One Hundred Thousand on default (4) The committee shall make a suitable decision upon contravention of section 3 above	<ul style="list-style-type: none"> • The fine/penalty currently given is insignificant and will only encourage contravention of section 75 (1) • A contravener of subsection 1 above should be given another chance to appear before the tribunal. One chance is inadequate <p>Currently there is no schedule for standardized formats on notices, sermons, awards, orders etc. availed</p>

	REFER TO a Tribunal not Committee	
77		
78	Restate the provisions. Provide for withdrawals of appeals at any time before an appeal is heard and determined	Being the planning mother law, these provisions must be modified and adequately stipulated out under national Planning Tribunals
	New 78 B (1) Do so through a representative or through any form of communication that the Tribunal may permit for the purpose and if required to produce or deliver any document that person shall produce or deliver that document in accordance with the direction of the committee. (2) A person who contravenes the provisions of this section (79) 1, commits an offence and is liable, on conviction, to a fine not exceeding Fifty thousand shillings. (3) A person contravening sub section 2 above , will be re-summoned, upon payment of the fine prescribed under section 2 and is liable to a fine not exceeding One Hundred Thousand on default (4) The committee shall make a suitable decision upon contravention of sub section 3 above	Being the planning mother law, these provisions must be modified and adequately stipulated out under national Planning Tribunals
80	Increase penalty to Kshs. 200,000.	The fine/penalty currently given is insignificant and will only encourage contravention of section 80(1)
87	Delete as it contradicts Art. 185(4)	This is in contradiction with the constitution of Kenya and with the County Governments Act (2012) which puts this mandate under the County assemblies
First Schedule	The First Schedule is unnecessary since the membership to the forum is pre-determined.	The schedule is not anchored in the Act/section it represents

		appointment of members is in contravention with the Act (part II-section 5)
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3.3 Submissions by the Institute for Social Accountability

The Committee held a meeting with the Chairperson, Institute of Social Accountability on Thursday 15th February 2018. During the Meeting the Chairperson made the following comments on the Bill:

- a. The Bill did not provide for an integrated approach in the preparation and implementation of Local Physical Development Plans.
- b. The Bill did not integrate physical planning with land use management and therefore failed to meet the threshold of reform envisaged under the Constitution 2010 and the National Land Policy 2009.
- c. The Bill does not ensure effective public participation in the exercise of development control.
- d. The Bill did not provide for civic education for the empowerment and enlightenment of citizens and continual and systemic engagement of citizens and the county government through sustained civic education of citizens prior to the planning process contrary to the Constitution 2010.
- e. The Bill offended the principles of distinctness by assigning the Cabinet Secretary an implementation role in several instances and thereby re-centralizing planning contrary to the Constitution.

The Institute further proposed specific amendments to the Bill as contained in table 3

Table 3: The Institute for Social Accountability proposed amendments to the Physical Planning Bill, 2017

Clause	Proposed Amendment	Justification
Long Title	Amend long title to read “to provide for the transparent and participatory planning, use, regulation and sustainable development of land in Kenya”.	The long title describes the contents of a Bill. It is an indication of the objectives and intention of the law. It includes the scope and the general purpose for which the law is enacted. Therefore, the long title is very important and must encompass all the matters included in the Bill.

	<p>(a) National association of residents-include meaning of National Association of residents.</p> <p>(b) Publish-the meaning would make it a requirement that publication shall be in at least two daily newspapers with national circulation and in the official website of the Ministry.</p> <p>(c) Stakeholder-the meaning should list the relevant stakeholder including representatives from registered professional bodies.</p> <p>(d) Resident Association-meaning of resident association.</p> <p>(e) County Planning Authority-meaning of County Planning Authority.</p> <p>Public purpose-meaning to include open spaces.</p>	
3	The objects of the Bill are not broad enough and do not cover all the areas connected with integrated development planning. Need to include principles such as public participation in the planning, use, regulation and development of land in Kenya.	The Bill does not incorporate in its objects constitutional principles such as public participation in the planning, use, regulation and development of land in Kenya.
4	Include the values and principles of the National Land Policy, 2009 which include equitable access to land for subsistence, commercial productivity, settlement, gender equity and secure land rights among others.	The Bill mixes up the norms and principles, which has the effect of diluting both which provide crucial basis for effective management and enforcement of land planning and development
5	Need to have broad representation to include representatives of registered civil society, women, youth, informal trade association and engineers.	To ensure inclusive and broad based consultations on physical planning.
9	Functions of CS should be limited to paragraph 21 of the Fourth Schedule to the Constitution	

	Planning overlaps with the functions of the CS for formulating national physical planning policies	
19	The word stakeholder in 19(1)(b) is vague and there is need to list the relevant stakeholders including women, youth etc..	
21	<p>Clause 21 and does not provide adequate feedback mechanisms. The Cabinet Secretary should give reasons for not including comments of the public.</p> <p>The Bill should require the CS to provide evidence for public participation in the formulation and preparation of NPPDP.</p>	This will give respect to public input and minimize applications for reviews provided in sub-section 21(3).
22	Need to provide that the NPPDP should be approved by Parliament	Approval or endorsement of the National Physical Development Plan by Parliament before Cabinet approval and gazettelement will give it legitimacy and wider ownership
24	There should be a requirement that the status reports should be available to the public through publication in the NLC website.	The status reports of the National Physical Planning Development Plan at both levels of government should be published at least on the website so that they are available to the public for scrutiny.
25	Need to include residents of the affected counties in the RPPDPC	This will be tantamount to creating a third level of government that is not provided in the constitution
27	Revise Clause 27 by deleting sub-section (1), and (4) and replace with):-	This will provide for the publishing of the commencement of the

	<p>Committee preparing a Regional Development Plan shall publish a notice of intention to prepare a plan in the gazette and in at least two newspapers with a national circulation, website of counties involved and that of the National Land Commission, electronic media and placement of notices at affected county headquarters.</p> <p>(4) The joint committee shall consult, publish, and hold meeting with stakeholders listed in clause 19 during the preparation of the Regional Physical Development Plan.</p>	process more widely
28	The RPPDPC should give reasons for not including comments of the public.	This will provide adequate feedback mechanisms and minimize unnecessary appeals
32	<p>There is no requirement that the CPDP shall be in harmony with the County Integrated Development plan, county spatial plan, county or municipal plan under.</p> <p>It is not clear what clause 32(4) implies.</p>	
33	The objects should be in harmony with the objects of county planning	This will factor in the objectives of county planning as provided for in the County Government Act
35	The contents of a county physical planning development plan should be specific, attainable, relevant and timely and include budget estimates for effective monitoring..	Without a detailed and comprehensive implementation strategy, that includes funding, required resources and accountability structure the implementation could be jeopardized.
45	The clause does not include the requirement for approval of the plan by the county assembly	
47	The role of the national government is restricted to developing general principles of land planning and coordination of planning by county and hence does not have powers to request the county government to declare an area a	

49	<p>Need to include additional objects of development control as follows-</p> <p>To establish development control standards, processes and procedures that are efficient, transparent and accountable taking into account International Conventions and nations policies relating to sustainable use of land.</p>	<p>Establishment of efficient, transparent and accountable development control standards, processes and procedures should be one of the main objectives in development control to ensure sustainable use of land and the preservation of environmental values</p>
50	Should include power to reclaim grabbed public land	
52	Need to provide that a developer shall notify the public of the proposed development and invite objections	
61	The offence is too lenient for large scale developers and too punitive for small scale developers	<p>The penalty of 61(2) is too lenient. The bill should provide for stiffer penalties including:</p> <p>i. Suspension and revocation of planning permission where offences have been committed</p> <p>ii. Fine amounting to 5% of the value of the transaction or imprisonment for a term not exceeding 20 years or both</p>
62	The provision is unconstitutional in light of Article 35 of the	It is contrary to Article 35 of the Constitution.

68	Need to also provide for representation from women and youth.	
69	Revise to include a provision requiring the National <i>Physical Planning Liaison Committee meetings to notify the public where their meetings are to be held</i>	
71	This should include two representative of residents associations in the area, both a male and a female Include a registered planner with 10 years' experience nominated from each of the professional bodies (KIP and AAK/TCPAK)	
87	Removes the requirements for approval of plans by county assemblies.	

3.4 Submission by residents of Nairobi

The Committee received written submissions signed by Edward Ngunjiri, Christine Akinyi, Constant Cap, Beatrice Eunyujat and Fiona Achieng on behalf of Residents of Nairobi County. The submissions were as contained in table 4.

Table 4: Proposed amendments to the Physical Planning Bill, 2017 by residents of Nairobi

Clause	Proposed amendments	Justification
2	Need to amend the Bill to include the definitions of- (a) Publish; (b) Stakeholder; (c) Residents Association; (d) Development; (e) County planning authority; Public spaces.	
25	The County Director should be included as part of the RPPDPC	
27	Notice of intention to prepare a plan should be published in two local dailies with nationwide circulation, Kenya Gazette, National Lands Ministry and the websites of all the concerned counties.	
28	Publications should be on the websites of all	

29	Publications should be made available for public scrutiny.	
31	The status reports of regional physical development plans should be published in the county websites and copies made available to all ward administrators' office.	
32	The plan should be implemented in cycles of 30-year plan, 10-year plan 5 year plan	
33	Include the objective of the need to protect public spaces for the inclusive use by all.	
35	Need for annex to the plan which should provide evidence of public participation.	
36	There should be a provision requiring feedback on what the CEC has considered and not considered and share with the public. Need to define what a county planning authority is in terms of paragraph (4).	
49	Need to include as an objective Article 43(b) of the Constitution	
51	The fine imposed should be termination of the project.	
52	Need to include the need for consent of the development from the immediate neighbours	
53	The qualified persons should include land owners and residents	
54	Applications should be published in county website on a weekly basis	
56	Registers should be made available for public scrutiny.	

3.5 Submissions by the Kenya Institute of Planners

The Committee held a meeting with the Chairperson Kenya Institute of Planners on Thursday 15th February 2018. During the meeting the Chairperson accompanied by a representative of the Young Planners of Kenya presented the following concerns with respect to the Bill;

- i. The title of the Bill should invoke constitutional references to planning and capture the full extent of the planning function.
- ii. The short title of the Bill should read "*Planning and Development Bill*".
- iii. The preliminaries part of the Bill should include the scope and the jurisdiction of the Act.
- iv. The mandate and responsibilities of the following needed to be clearly defined and outlined to prevent overlaps and conflicts :
 - a. The Cabinet Secretary
 - b. The County Executive Member

- c. The City, Municipal Manager and Town Administrator
 - d. The Director-General of Planning
 - e. The County Director of Planning
 - f. Officers with Delegated Functions and Powers
 - g. Parliament
 - h. County Assemblies
 - i. The National Land Commission
 - j. The Planners Institute
- v. The Institute proposed the establishment of Planning Consultative Forums at the following levels;
- a. Ward and Village Planning Consultative Forums, to represent the lowest levels of engagement of citizens for purposes of urban and rural planning, respectively;
 - b. City, Municipal or Town Planning Consultative Forums, for engagement on city-wide or town-wide planning matters;
 - c. The Sub-county Planning Consultative Forum, for engagement on planning matters affecting a Sub-county;
 - d. The County Planning Consultative Forum, for engagement on County-wide planning matters;
 - e. The Inter-county Planning Consultative Forum, for two or more County Governments collaborating on a planning matter, including on metropolitan areas;
 - f. The Special Areas Planning Consultative Forum, for engagement regarding Special Planning Areas as provided for in Section 37 of this Act
 - g. The National Planning Consultative Forum, for engagement regarding planning matters that impact upon the whole country.
- vi. The Land Use and Development Management Framework section of the Bill should be broadened to include the following;
- a. The Planning Control Regime
 - b. The Establishment of the Planning Permission Determination Panel
 - c. Application and Determination of Planning Permission
 - d. The Establishment of the County Planning Inspectorate
 - e. Enforcement of Planning Control Decisions

The Committee held a meeting with the Council of Governors – Committee on Urban Development, Planning and Lands on Thursday 22nd February 2018. During the Meeting the Chairperson made the following comments on the Bill:

Constitutional threshold :The Council of Governors argued that the Bill contravened provisions of the Constitution of Kenya 2010 including devolution as provided for in article 6 and 10.The process of preparing the Bill also failed to meet the requirements of the constitution under Article 232 (1) (d) (f). Further the process of coming up with the Bill did not specifically involve the County Governments and neither was information of the process of coming up with the Bill made public for the County Governments to access.

The Council of Governors also argued that an attempt by the Bill to amend Section 110 (3) of the County Government Act 2012 undermined devolution and flouted Article 174 (c) and 185 (4) of the Constitution which gives powers to counties to approve plans and policies.

Consistency with the existing legislation: The Council also contended that the Bill conflicted with the County Governments Act 2012 and the Urban Areas and Cities Act 2011 (amended in 2015) by introducing other plan typologies that added a lot of confusion to the county mandate to plan and approve the plans. An introduction of the County Physical Development Plan and the Local Physical Development plans only serves to create conflict and confusion with the County Spatial Plans and the integrated development plans provided for in the County Governments Act 2012 and the Urban Areas and Cities Act 2011 (amended in 2015) respectively.

The Council of Governors further made comments on the Bill as contained in table 5

Table 5: Council of Governors comments on the Physical Planning Bill, 2017

Clause	Proposed amendment	Justification
2	“County Director of Physical Planning” shall be the director for the time being in charge of all matters physical planning which shall be an office in the county public service	The phrase is used in the Bill but has not been defined.
	“County Executive Committee Member” shall be the County Executive Committee Member in charge of Physical Planning	The phrase is used in the Bill but has not been defined.
	Means carrying out any works on land or making any material change in the use or density of any structures on the land or subdivision of any land	This brings more clarity on the definition of the term to avoid abuse.
	The definition of the licensing authority to be provided	The phrase is used in the Bill but has not

	Delete the word urban council in the definition of the local physical development plan	Urban Councils no longer exist
	<p>“Public Purpose”</p> <p>Delete sub section (f) on settlement of squatters, the poor and landless, and the internally displaced persons</p>	The inclusion of “settlement of squatters, the poor and landless, and the internally displaced persons” may be interpreted as allowing people to invade other people’s land in the name of public purpose.
4	The clause should be removed from the Bill as the Bill should only reflect matters to do with physical planning which are already provided for in the Constitution.	
6	Delete the provision as the functions are akin to the functions of NLC set out in Article 67(2).	
8	Align the functions of NLC to the provisions of article 62 (2) (h) of the constitution.	The proposed bill should observe fidelity to the constitution.
9	Amend 9 (a) to include in consultation with county governments.	Article 6 (2) requires the two levels to conduct their mutual relations on the basis of consultation and cooperation.
	Amend clause 9 (e) to read coordinating between the National and County Levels of Planning	
10-12	Delete clauses 11 (d) to read has at least 15 years post qualification professional experience in physical planning	
13	Delete (b) as approval of county plans is the mandate of the county assembly and not CEC.	Approval of development plans is the function of the county assemblies

		Section 110 (3) It further contradicts Article 185 (3 and 4) of the constitution of Kenya 2010
17	The Bill fails to align the plans with the County Governments Act, 2012 in particular section 107 and 111	Physical development plans are not different in terms of content with the spatial plans and therefore introducing new terminologies creates confusion on the already developed National Spatial Plan and County Spatial Plans.
19	Amend to make the preparatory authority to be the cabinet secretary	The preparatory authority keeps on changing from the cabinet secretary to director creating confusion. For instance section 19 subsection 1 makes reference to the National Director while subsection 2 makes reference to the cabinet secretary.
22 (3)	Approval should be done by parliament	This is not in line with the approvals of public policies.
25	The Bill does not uphold the spirit of devolution in Article 189	It contradicts section 23 of the intergovernmental relations act 2012 and further undermines the spirit of devolution

	Approval of the regional physical development plans should be made by the respective county assemblies of the participating counties	The section of the bill takes away the approval powers of county assemblies provided for under article 185 (3) and (4) of the constitution and CGA 2012 Section 110 (3).
29	The National Director of Physical Planning does not need to approved an agreement among counties as they contravene the spirit of devolution.	
32	Amend to provide that once in every 10 years, a county government shall prepare a county spatial plan for that county	The description of the county spatial plan is similar to the one for the county physical development plan.
49	Amend 49 (d) to read to protect and conserve the environment and enhance health and public safety.	Health and public safety are critical and need to be anchored in the law.
65 (5)	Amend the fine from Ksh.100,000 to Ksh. 500,000	To ensure consistency in the bill
71	Amend clause 71 (1) (c) (d) and (e) to read (c) a registered physical planner nominated by the physical planners registration board from within the county and appointed by the county executive committee member (d) a registered architect nominated by the Board of Registration of Architects and Quantity Surveyors from within the county and appointed by the county executive committee member e) a registered surveyor nominated by the Land Surveyors Board from within the county and appointed by the county executive committee member Add (g) to read a registered engineer nominated by the Engineers Board of Kenya from within the county and appointed by the county executive committee member	

		<p>sec 110 (3) of the county government act 2012 taking away the approval powers of the county assemblies and therefore flouting article 174 ©,(1) and 185 (4) of the constitution</p>
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3.6 Submissions by the Town and County Planners Association of Kenya

The Committee held a meeting with the Chairperson Town and County Planners Association of Kenya on Thursday 22nd February 2018. During the Meeting the Chairperson made the following comments on the Bill:

The name and title: The Association argued that the title and name of the Bill was not contemplated and provided for in Constitution Article 66 and the Fifth Schedule on regulation of land use and property. The Association proposed that where “Physical planning” appeared in the Bill the same be replaced with “land use planning”.

Inconsistent with the Constitution: The Association further argued that clause 87 of the Bill contravened and was inconsistent with the Constitution Article 185(4) the clause also sought to amend sections 110(3) and 110(4) of the County Governments Act without disclosing the same in the Objects and Memoranda of the Bill -Section 87 of the Bill is in conflict with the Constitution Article 185 (4). Further the key stakeholders/county assemblies had not been consulted at all on the matter.

Bloated National Institutions and Offices: The Association also stated that the Bill created many bloated-member size institutions and offices at national level with duplicated and competing functions and contravened the Inter-Governmental Relations Act. Further Land use planning and county planning were functions fully devolved to the county governments and therefore there should be only be one or two national institutions to formulate policy and general guidelines, coordinate and oversee planning by the counties- Constitution 4th Schedule, part 1 paragraph 8.

Addressing all “land elements”: The association also argued that the Bill failed to address all “land elements” as defined in Article 260 of the Constitution. Therefore the Bill failed to address vast regions of the country and key economic sectors – waters, marine resources, forests, parks and wildlife, biodiversity, rocks, minerals, petroleum oil etc.

Omission of rural area planning and regulation: The Bill failed to include rural, agriculture, livestock, wildlife parks and reserves, mining land use planning and development control. This implied that about 90% of the country area and 75% of Kenya population remains unplanned and uncontrolled. The omission of rural area planning and regulation contravenes Articles 39, 40, 42, 43, 60, 68 and 69 of the Constitution.

Property regulation: The Bill failed to cover Property regulation as required in the Constitution Article 66, 260 and the Fifth Schedule on regulation of Land Use and Property.

Limited scope The Association stated that the scope of Bill was limited, internally inconsistent, contradictory, mixed-up and had too many errors of flow and content and cannot be implemented. Further clause 5 of the Bill and the First Schedule are openly contradictory. The Bill had no provision for registration of service providers; training institutions; role of the public/private sectors; and rationalisation of staff presently in national/county governments.

The Association recommended that the Bill be withdrawn from Parliament/National Assembly and forwarded to the Attorney General and the Law Reform Commission for review and with fully participation of stakeholders.

The Association however proposed specific amendment to the Bill as contained in table 6.

Table 6: Town and County Planers Association of Kenya proposed amendments to the Physical Planning Bill, 2017

Clause	Proposed Amendment	Justification
Long title	Amend to read: A Bill for AN ACT of Parliament to give effect to Article 66 of the Constitution and make provision for the state to regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning and ensure investments in properties benefit local communities and their economies. This is in order to capture accurately the provisions of the Constitution.	
Short title	Delete “Physical Planning Act” and replace with “Land Use Planning and Property Regulation Act”	The term “Land use” is in line with the Constitution- Articles 2(3), 2(4), 60, 66, 67, 68, 260, Fourth Schedule Part 1/21 and Fifth Schedule (Regulation of land use and property). -The term “Physical planning” is not at all provided for or recognized at all in the

		-The term "Physical planning" is intentionally causing confusion and not in line with the letter and spirit of the Constitution in Articles 60,66, 67, 68, 4 th Schedule 1/21 and 5 th Schedule.
2	<p>Many key terms on land use and property regulation are not provided in current Bill.</p> <p>-Many other terms are provided but not expressed accurately and comprehensively in current Bill hence there is need to redefine several terms as indicated in the Memorandum including building height, county among others</p>	<p>Many key terms on land use and property regulation are not provided in current Bill,</p> <p>-Many other terms are provided but not expressed accurately and comprehensively in current Bill</p>
3	Delete "Physical Planning Act" and replace with "Land Use Planning and Property Regulation Act".	To be revise and focused on Regulation of land use and Property as required by Articles 60, 66, 67, 68 and the 5 th Schedule of the Constitution
5	Delete entire provision as the membership is too bloated	<p>The establishment of the Forum contravenes Article 6, 189(2) as read together with Intergovernmental Relations Act Sections 8(j), 8(l), 13(1) and 13(2) and generally sections 3-23;</p> <p>-This forum is too bloated (over 60 members) and no special knowledge on land use and property development and no capacity to deliver efficiently and effectively and a drain on public resources;</p>
6	Delete the section in light of proposed amendment to 5	Functions of the Forum is a duplication of functions of other existing institutions and offices (The Cabinet/Principal Secretary/Land; SC National Treasury; NLC; the Summit and Committees under Intergovernmental Relations Act; National Director;

	<p>appears in the section and replace with “land use planning”.</p> <p>Provide the functions of NLC as follows-</p> <p>a-To monitor and oversee land use planning in Kenya</p> <p>b-Prepare status reports on the preparation and implementation of land use plans in Kenya</p> <p>c-develop monitoring framework and formulate oversight parameters relating to land use planning;</p>	<p>assigned are outside the constitutional provisions of NLC as in Article 67 and in National Land Commission Act; and thus Bill causes conflict with the Constitution and NLC Act;</p>
9	<p>- Delete “physical planning” and replace with” land use”</p> <p>Delete “Approval of national plan” and replace with” Approval by the Summit/Committee and Parliament as provided under Article 95(2) of Constitution and Intergovernmental Relations Act.</p>	<p>The functions of CS) and Director are duplicated; (Section 9a is duplicate of Section 12b; also section 9e and 12d)</p> <p>-Functions of CS and Director be merged as functions of CS;</p> <p>-As an item of great public interest, the national land use policy and plan be submitted to the Summit/committee and approved by Parliament(NA/Senate)</p>
10	<p>Delete “physical planning” and replace with “land use planning”</p> <p>-Delete 12(b) and 12(d) as duplicated in 9(a) and 9(e)</p>	<p>Director of Physical Planning should remain advisory and administrative office under CS.</p>
11	<p>Delete “post graduate degree” and replace with “professional undergraduate degree in urban and Regional planning or equivalent”.</p>	<p>This is a professional and technical appointment and must possess correct qualifications</p>
12	<p>-Delete (a)</p> <p>-Delete (b)</p> <p>-Delete (d)</p>	<p>12(a) is duplication of 6(d)</p> <p>-12(b) is duplication of 9(a)</p> <p>-12(d) is duplication of 9(e)</p>
13	<p>-Delete any reference to “Physical planning” and replace with “Land use planning”.</p>	<p>To conform to Articles 60, 66, 67, 68 of the Constitution</p>
14	<p>-Delete reference to “Physical Planning” and replace with “Land Use Planning”.</p>	<p>To conform to Articles 60, 66, 67, 68 of the Constitution</p>
15	<p>-Professional Degree in urban and Regional Planning or equivalent</p>	<p>Same as Section 11 above</p>
16 (c)	<p>Delete reference to “Physical planning” and replace with “land use planning”</p>	<p>Same as above</p>
17	<p>Delete term “Physical development plan” and replace with “land use plan”.</p>	<p>The Constitution does not provide for preparation of</p>

		but” land use” or “ land use plan”
18	Delete “Physical Planning” and replace with” Land use planning”.	As above
19	Delete “Physical Planning” and replace with” Land use planning”.	As explained above
20	-Delete “Physical Planning” and replace with “Land use planning”.	As explained above
21	Delete “may not” -Delete “apply to “Cabinet Secretary” and replace with “apply to the “Summit” and if not satisfied appeal to “National Land Use Tribunal” and if not satisfied appeal to “Land and Environment Court	To conform with Articles 1 and 10, Chapter 6 and Chapter 13 of the Constitution -The CS cannot be a judge in own case
22	21(1) delete PPC forum -21(3) delete PPC forum and cabinet approval and replace with approval by the Summit and Parliament 21(4). Delete two newspapers of national circulation	-PPC Forum has no Constitutional mandate or capacity -Cabinet cannot approve a national plan that affects both national and county Governments. This contrary to Article 1,6,10,189 and 95 and Intergovernmental Relations Act -Publication of National Plan in 2 National dailies is too expensive and not tenable
24	Delete reference to “Physical development plan” and replace with National “Land use” development plan.	Constitution Articles 60, 66, 67, 68 only recognize land use and not physical planning
25	25(2)Delete “Regional Joint Physical Planning Committee” and replace with “Inter-County Land Use Planning Joint Committee” - 25(3a)Delete “National Director of Physical Planning” and replace with “joint County Chair” -25(50) Delete “national Director of Physical Planning” and replace with “joint county secretariat”	To be in line with Articles 6 and 189 of the Constitution and Section 23 of Inter-governmental Relations Act -The Constitution recognizes only 2 –level of government - National and county governments and does not provide for regional level government- Article 1(4), 6(2) and 189(1/2) - National Director of Physical Planning cannot be chairman and secretary for county committee as this contravenes Article 6 and 189 of the

26	Delete "Regional Physical Development Plan" and replace with "inter-county land use plan" -Delete "regional physical development plan" wherever it appears in section and replace with "land use plan".	Constitution Article 189(2) provides for joint county plan; -Constitution does not provide for regional level government plan
27	-Delete "Regional Physical development plan" and replace with "inter-county land use plan"	As explained above
29	- Delete "approval by CEC, National Director" and approval by "Cabinet Secretary" and replace with approval by "respective county assemblies" - Delete publication of plan in 2 national dailies	Inter-County Plan be submitted and approved by respective county assemblies as provided in Article 185(4), 189, 1(4), 6(2), of the Constitution
32	Delete entire section as it is in conflict with section 110 of the County Governments Act.	The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
40	Delete entire section as it conflicts with the County Governments Act	Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan.
42	Delete entire section as it conflicts with the County Governments Act	Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?
43	Delete entire section.	Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban

44	Delete entire section.	Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan.
45	Delete entire section.	-Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42)
46	Delete entire section	As explained above
47	47(1)Delete ..." on its own motion or as requested by the national government or NPPC Forum" ... and replace with, "County government, after adequate public participation and consultation with NLC" 47(2). Delete "suspend for a period of not more than two year" and replace with "give appropriate guideline on development in the area after adequate public participation, hearing and consultation with national government and NLC	To conform with Article 40 of Constitution -Bill has failed to conform to Senate Standing Order No 124 on Limitation of Fundamental Rights and Freedom and also National Assembly S/O on the same
52	-Delete" planning authority" and replace with "County Government"	The bill causes confusion (Section52).
53	-Delete "relevant qualified and registered professional" and replace with qualified and registered town planner, architect, engineer, QS, and EIA expert, or contractor.	This section of Bill cannot be implemented as it is not clear and not specific on the registered professional
54	Delete " Development permission" and replace with " Development Application" -Delete "planning authority" and replace with "county government"	This is the professional practice -This is in line with Article 186 and 4 th Schedule Part 2/8 of Constitution
56	Delete planning authority and replace with County Government	This is the professional practice -This is in line with Article 186 and 4 th Schedule Part 2/8 of Constitution
65	Delete "planning authority" and replace with "County government".	
67	- Delete establishment of National Physical	

	-Replace with Land Use Tribunal	
68	<p>Delete entire Committee</p> <p>- Replace with Land Use Tribunal under Article 67 and 252(3) of the Constitution</p> <p>-Tribunal to have 8 members</p> <ol style="list-style-type: none"> 1. Advocate of High Court as Chair and nominated by LSK 2. One person nominated by the National Land Commission 3. One person nominated by Kenya Institute of Planners 4. One person nominate by Town and County Planners Association of Kenya 5. One person nominated by Architectural Association of Kenya 6. One person nominated by Engineers Institution of Kenya 7. One person nominated by Institution of Surveyors of Kenya 8. A representative of Attorney General 	<p>Membership composition is too large (15 members per governmental structure), not sustainable/ discriminatory.</p> <p>-Membership structure contravenes Article 10 (national values), 60 (principles of land policy), 232 (values and principles of public land).</p> <p>-Heavily loaded with Cabinet Secretary influence and appointees</p> <p>-Committee will not be independent as many complaints will be against decisions by the State/CS or count Government</p>
69	Delete entire section.	<ul style="list-style-type: none"> - Functions duplication of function of national forum, national - Functions/forces of Liaison committee not clear- Advisory dispute resolution.
70	<ul style="list-style-type: none"> - Delete establishment of County Physical Planning Liaison Committee - Replace with Land Use Tribunal 	
71	Same as section 67	<p>This is supposed to be an appeal tribunal/dispute resolution.</p> <p>-Membership and functions of the committee are in conflict</p>
72	Same as section 67	
73	Same as section 67	
74	- Rules as provided under relevant legislation on Tribunals	
75	- Rules as provided under relevant legislation on Tribunals	
76	Rules as provided under relevant legislation on Tribunals	

	legislation on Tribunals	
81	- Rules as provided under relevant legislation on Tribunals	
82	- Rules as provided under relevant legislation on Tribunals	
87	Delete as it contradicts Art. 185(4)	
Schedules	<p>-Delete all items listed as 1,2,3,4, 5, Part A, Part B and Part C and the contents therein;</p> <p>-Replace with items listed below:</p> <p>-CONTENTS OF URBAN LAND USE PLAN</p> <ol style="list-style-type: none"> 1. Introduction 2. Methodology 3. Legal and Policy Issues 4. Natural Physical and Climatic Features 5. Population and Demography 6. Housing 7. Education Sector 8. Community and Social Services 9. Commerce and Retail Activities 10. Manufacturing and Industry 11. Mining Sector 12. Green and Open Spaces 13. Agriculture and Livestock; 14. Water Supply and Waste Water Drainage 15. Solid Waste Management 16. Communication Sector 17. Energy Sector 18. Transport Sector 19. Development Projects and Options 20. Implementation Schedule <p>Reference</p> <p>Appendix</p> <p>Fourth Schedule-Delete and replace with: MATTERS WHICH MAY BE DEALT WITH</p>	

- Delete “Planning Authority” wherever it occurs in the text and replace with “County Government

3.7 Submissions by the Young Planners Association of Kenya

The Committee received written submissions containing proposed amendments to the Bill from the Young Planners Association of Kenya dated 11th January 2018 as per table 7.

Table 7: The Young Planners Association of Kenya proposed amendments to the Physical Planning Bill, 2017

Clause	Proposed amendments	Justification
Long title	Insert the words ‘pursuant to Article 66(1) of the Constitution.	Aligns the Bill to the Constitution
2	<p>Include the definitions of land as used in Article 260 of the Constitution.</p> <p>Define the following terms- Development to imply material change in the use of buildings or land.</p> <p>Licensed Physical Planners to mean a person who is holding a certificate as a registered and licensed physical planner.</p>	
11	<p>Insert a new provision (b) to read possess an undergraduate degree in urban and regional planning.</p> <p>Insert a new provision after (d) to read ‘a corporate member of a recognised professional body in good standing.</p>	
15	<p>Amend section 15 to provide for the qualification of the county director of physical planning to be as follows-</p> <ul style="list-style-type: none"> (a) Is a citizen of Kenya; (b) Possesses an undergraduate degree in urban and regional planning or related discipline from a recognised university; (c) Possesses a postgraduate degree in urban and regional planning or related discipline from a recognised university (d) Is registered as a physical planner under 	

	<p>1996.</p> <p>(e) Has at least five years post qualification.</p> <p>(f) A corporate member of a recognised professional body in good standing.</p> <p>(g) Professional experience in physical planning and is not otherwise disqualified under the provisions of chapter six of the Constitution or any other written law.</p>	
53	Replace “professionals” with “licenced physical planner”.	It brings clarity
	Insert a new section (c to read Failure by the county to give a written response with regard to development permission, the applicant shall notify the Director in charge in writing, copied to the Governor. Failure to receive response within 10 days thereafter, the application will be deemed approved’	It provides for decision making and communication

3.8 Submissions by the Institution of Surveyors of Kenya

The Committee received written submissions from the Institution of Surveyors of Kenya. The Institution stated that there was need for an analysis of the financial implication of the Bill to determine its effect on the wage bill and that the Bill should seek to cushion private developers against the exorbitant fees levied by county governments in the guise of development applications. The Institution also proposed specific amendments as contained in table 8

Table 8: Proposed amendments to the Physical Planning Bill, 2017 the Institution of Surveyors of Kenya

Clause	Proposed Amendment	Justification
2	The definition exclude temporary and movable structures	To avoid bottlenecks in the construction of small temporary structures
3	The Bill should restricted to policy and oversight role with regard to planning matters Amend 3 (e) to provide a mechanism for dispute resolution related to physical planning	The proposal to control and regulate land is a preserve of boards of municipals and cities as stipulated under section of the Urban Areas and Cities Act, 2011 Overlaps with the Arbitration Act
29	Amend to provide that the National Director for Physical Planning should submit the plans to the Cabinet Secretary for final approval	The Cabinet Secretary is the approving authority
43	Insert “published after ‘any’” in 43 (1) b	
54	Amend 54 (2) by “inserting copy of the application for development permission from the planning authority, the relevant authorities or agencies shall submit their comments to the planning authority. When comments are not received within the stipulated period, the planning authority shall deem there are no adverse comments. ”	To avoid undue delay and bureaucracy and promote ease of doing business
58	Remove the limit	It will deter development
59	Change the duration from five years to ten years to align it with the planning cycle	A five year period is too short for major developments and may be impractical
66	Delete the clause	It has a retrogressive effect

3.9 Submissions by the Cabinet Secretary Ministry of Lands and Physical Planning

The Committee held a meeting with the Chief Administrative Secretary and the Principal Secretary, Ministry of Lands and Physical Planning on Tuesday 27th February 2018. During the meeting the Committee was informed that the promulgation of the new constitution has called for recasting of the

Physical Planning Act, CAP 286 to appropriately respond to the current setup and demands. Therefore the Bill intended to provide more responsive and innovative planning approaches to address the current and emerging developmental issues.

Involvement of relevant stakeholders in the formulation of the Bill

The Ministry of and Planning asserted that relevant stakeholders were involved during the formulation of the Bill. The stakeholders involved included the Kenya Law Reform Commission, professional bodies such as the Architectural Association of Kenya and the Kenya Institute of Planners, experts in the Built environment sector, Local Authorities and later the Counties, the Transition Authority, the National Land Commission among others

The title of the Bill

The Ministry argued that the title of the Bill “The Physical Planning Bill” doesn’t contravene the constitution as alleged by some stakeholders. Further the planning legislation of majority of countries in the Commonwealth tended to use derivatives of Physical Planning which included Town and Country Planning, Planning and Development and Urban & Rural Planning, Only Tanzania had adopted the term land use planning. The Constitution, particularly Article 68, doesn’t prescribe a title for a bill on Physical or Land use planning as alleged by various stakeholders.

The constitutionality of the Bill

The constitutionality of the Bill was determined and confirmed by all the relevant agencies such as the State Law Office, Kenya Law Reform and Commission on the Implementation of the Constitution. The Ministry asserted that the Bill meets the constitutional threshold and that there was no risk of breaching the Constitution. Therefore the Bill needed to be enacted to rationalize and harmonize the function of physical planning.

The Ministry also argued that physical planning was a concurrent function between the national government and the county governments as provided in the part 1 section 1 of the fourth schedule to the Constitution. Further Article 186 (3) of the Constitution assigns residual functions which are not assigned by the Constitution or national legislation to a county, to the original level of government that existed before the creation of the county governments. This meant that such functions were vested in the national government.

Consistence with existing legislation

The Ministry stated that the County Government Act, 2012 and Urban Areas and Cities Act 2011 do not deal with physical planning matters and should not be aligned to the Bill. Therefore Bill was not contradictory to the two Acts. The was intended to be the principle legislation to harmonize and create a common physical planning framework and uniformity and policies across the nation as required by Article 191 (3) (a) and (b) of the Constitution to avoid parallel application of the law.

Support for devolution

The Ministry stated that the institutional framework proposed in the Bill supported devolution by assigning duties and responsibilities in the plan preparation, review, approval and implementation to county governments. Clauses 33 to 62 outlined the role of county governments that included development control and enforcement and preparation and approval of county physical and local physical development plans.

Regional planning Vis a Vis Inter -County Planning

The Ministry recommended that the term “regional planning” be used instead of “inter county planning” to cover aspects of physical planning that involved more than one county. since regional planning entailed planning for a homogeneous area transcending more than one county and included planning for metropolitan areas, drainage basins, national transport corridors, conservation areas and wildlife migratory corridors. Therefore the Bill would guide the preparation of physical development plans at the two levels of physical planning without creating two parallel regimes of physical planning.

Progressiveness and value addition

The Ministry argued that the clause 33 of the Bill provided a framework to guide rural development and settlement, enhance environmental protection and conservation and provide a basis for infrastructure and service delivery. Therefore the Bill was progressive and was not limited to urban areas but covered new areas of concern like rural development, marine, mining, transport planning, environmental fragile areas and trans- nation al areas.

4.0 CONSIDERATION OF THE BILL

The Committee deliberated on the Bill as follows:

Clause 3	Proposed amendment
Clause 4	Agreed to
Clause 5	Proposed amendment
Clauses 6 to 8	Agreed to
Clause 9	Agreed to
Clauses 10 to 13	Proposed amendments
Clause 14	Agreed to
Clauses 15 to 16	Proposed amendments
Clause 17	Agreed to
Clauses 18 to 32	Proposed amendments
Clause 33	Agreed to
Clause 34	Proposed amendment
Clause 35	Agreed to
Clauses 36 to 38	Proposed amendments
Clauses 39 to 43	Agreed to

Clauses 46 to 48	Agreed to
Clause 49	Proposed amendment
Clauses 50 to 51	Agreed to
Clauses 52 to 53	Proposed amendments
Clause 54	Agreed to
Clause 55	Proposed amendment
Clauses 56 to 57	Agreed to
Clause 58	Proposed amendment
Clauses 59 to 62	Agreed to
Clauses 63	Proposed amendment
Clause 64	Agreed to
Clauses 65 to 66	Proposed amendments
Clauses 67 to 68	Agreed to
Clauses 69	Proposed amendment
Clause 70	Agreed to
Clauses 71 to 73	Proposed amendments
Clauses 74 to 86	Agreed to
Clauses 87	Proposed amendment
First Schedule	Proposed amendment
Second Schedule	Proposed amendment
Short title	Agreed to
Long Title	Agreed to

5.0 GENERAL OBSERVATIONS

The Committee made the following observations and comments on the Bill:

1. The long title of the Bill is exhaustive as it seeks to implement not only the provisions of Article 66 of the Constitution but also the provisions of paragraph 21 of Part A and paragraph 8 of Part B of the Fourth Schedule to the Constitution among others.
2. The short title namely the “Physical Planning Act” is appropriate as the contents of the Bill indeed make provisions for land use planning.
3. Clause 2 of the Bill is exhaustive save for there is need to include the definition of the term electronic media which is being proposed to be included in other clauses of the Bill. The Committee also observed that electronic media is currently the most efficient and cost-effective mode of communication.
4. Despite the fact that the membership of the Consultative Forum is large, the forum is not a planning authority but a forum for consultation on the national physical development plan and as such, the membership has to be broad to include among others county executive committee members of the forty-seven counties.

5. There is however need to amend clause 5 to specify with clarity on who the representative of the Council of Governors to the Forum is, in this case being the chairperson of the relevant committee of the Council of Governors.
6. There is need to amend clause 8 of the Bill to provide for the following functions of the National Land Commission-
 - (f) monitor and have oversight responsibilities over land use planning throughout the country;
 - (g) prepare reports on the status of land use planning and forward to President and Parliament as provided for in Article 254 of the Constitution.
 - (h) Publish and publicise the state of national land use planning report in accordance with the provisions of Article 35(3) of the Constitution;
 - (i) Encourage use of traditional dispute resolution mechanisms in land use planning; and
 - (j) develop monitoring framework and formulate oversight parameters relating to physical planning.
7. It should be the responsibility of Parliament to approve the national physical development plan noting its importance in terms of acting as the base for the preparation of all other plans including inter-county and county physical planning development plans.
8. There exists no conflict between clause 9(d) with Article 67 of the Constitution as the Cabinet Secretary is responsible for monitoring and overseeing the **technical arm at the national level** and not land use planning as provided for in the Constitution.
9. There exists no conflict in clause 10 in terms of the roles of the Cabinet Secretary and the National Director of Physical Planning as the Bill makes it clear that the National Director shall serve to advise the Cabinet Secretary and shall also be responsible to the Cabinet Secretary.
10. There is need to delete the reference in clause 11 of the post-graduate qualification and instead substitute with a bachelor's degree which is the case in all qualification requirements of most professions but retain the words related discipline noting until the year 2006, there was no degree being offered in most universities in urban and regional planning.
11. The Committee further observed that there was need to put a term limit for the National Director of three years renewable once.
12. There exists no conflict in terms of the roles of the Cabinet Secretary, the Consultative Forum and the National Director of Physical Planning as the Bill makes it clear that the National

Director shall serve to advise the Cabinet Secretary and shall also be responsible to the Cabinet Secretary.

13. Clause 13 of the Bill should be amended to specify that the role of approval of plans lies with the county assemblies and further reword paragraph (c) to avoid the potential conflicts with Article 67 of the Constitution.
14. Clause 15 of the Bill should be amended to specify the qualifications of the County Director of Physical Planning as follows-
 - (f) is a citizen of Kenya;
 - (g) possesses a bachelor degree in urban and regional planning or related discipline from a recognized university;
 - (h) is registered as a physical planner under the Physical Planners' Registration Act, 1996;
 - (i) has at least five years' post-qualification professional experience in physical planning; and
 - (j) is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.
15. There is need to amend the Bill to include the requirement for publication through electronic media in clauses 19(2) and 21(1), insert the words "Secretary" immediately after the word "Cabinet" in clause 21(2) to rectify a typographical error, reword clause 21(2) and (3) of clarity purposes, amend clause 22 to include the requirement for approval by Parliament and delete clause 24(1) as is repeated in sub-clause (2).
16. The requirements for publication participation are adequately catered for in terms of clauses 4 and 19(1)(b) of the Bill.
17. The Bill should be amended to include the requirement that the status reports by the public institutions in terms of clause 24 shall be published and made available in the NLC website.
18. The term regional physical development plans negate the devolution principle as enshrined in the Constitution and hence the term regional development plan should be deleted and substituted with inter-county physical development plans in furtherance of the objects of the Constitution on devolution.
19. There is also need to amend clause 29 of the Bill to align with the role of the County Assemblies to approve plans.
20. Despite the provisions of the County Government Act and the Urban Areas and Cities Act, the

21. Bill clarifies the procedures of preparation, approval, review and modification of county physical development plans.
22. Clause 34(2) of the Bill should be amended to increase the period for displaying the notice for a period of fourteen days to twenty-one days at the offices of the county government.
23. There is need to amend clause 49 of the Bill which provides for the objects of development control to include promotion of public safety and health as an objective of development control.
24. There is need to amend clause 52 to include provisions for developers to notify the public of the proposed development and invite objections.
25. Further, there is need to amend clause 58 to increase the timelines for lapsing of development permission from two years to three years in order to promote investors and give them adequate timing for processing of among other things financing of investments projects.
26. Clause 65(5) should be amended to increase the penalty for non-compliance with the enforcement notice from one-hundred thousand shillings to five hundred thousand shillings to act as a deterrent for non-compliance.
27. Clause 66 of the Bill should be deleted as it has a retrospective effect and would be disadvantageous to developers who might have completed development projects only to be required to re-submit their application afresh.
28. Clause 69(2)(c) of the Bill should be amended to delete the word "regional" in paragraph (c) to align it with the other provisions of the Bill which give reference to inter-county physical planning development plans.
29. Clause 71(1)(c), (d) and (e) should be amended provide for ten years of experience for persons to be nominated under paragraph (c), (d) and (e) to ensure that the persons nominated to the county physical liaison committee are competent and highly experienced on matters relating to physical planning.
30. Clause 71(2) of the Bill should be amended to identify a maximum of five persons who can be co-opted to the liaison Committee to avoid leaving the option of co-opting many persons

which might render the operations of the Committee inefficient.

31. Clause 72 of the Bill should be amended to include an additional role akin to the one provided for the National Physical Planning Liaison Committee in terms of clause 69(1)(a).
32. Clause 73 of the Bill should be amended to provide a term limit of three years renewable once for the members of the County Physical Planning Liaison Committee.
33. Clause 87 of the Bill should be amended due to the potential conflict with Article 185(4) of the Constitution which gives power to the county assemblies to approve plans.
34. There is need to include provisions on delegated powers of the Cabinet Secretary to make regulations that may be necessary for implementation of any matters required in the Bill.
35. The Committee observed that the public had not made submissions on clauses 7, 38, 55, 57, 63, 77, 79, 83, 84, 85 and 86.
36. The Committee agreed with the contents of clauses 7, 38, 55, 57, 63, 77, 79, 83, 84, 85 and 86 without amendments.

6.0 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public the Committee recommends the Bill be approved and passed by the House subject to the proposed amendments in this Report.

7.0 PROPOSED AMENDMENTS

The Committee made the following proposed amendments to the Bill—

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting the words “regional physical development plan” in the definition of the term regional physical development plan and substituting therefor the words “Inter-County physical development plan”.
- (b) by inserting the following new definition in its alphabetical sequence—
“electronic media” means any electronic medium including television or radio, that may be used to transmit information.”

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the physical development plan between two or more counties should be referred to as Inter-County physical development plan and not regional physical development plan. Further, the amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication.

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting the word “regional” appearing in paragraph (a).

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’.

CLAUSE 5

THAT clause 5 of the Bill be amended—

(a) in sub-clause (2) by deleting paragraph (c) and substituting therefor the following new paragraph —

(c) the Chairperson of the relevant committee of the Council of Governors;

(b) in sub-clause (3) —

- (i) by deleting the expression “(2), (k), (l), (m) and (n)” and substituting therefor the expression “(2), (k), (l), (m), (n), (o) and (p)”
- (ii) by inserting the words “in accordance with the provisions of the First Schedule” immediately after the words “members of the Forum”.

Justification

The amendment seeks to create clarity on who the representative of the Council of Governors is at the Consultative Forum by specifying that it is the Chairperson of the relevant committee of the Council of Governors. The amendment also seeks to give reference to the First Schedule which prescribes the procedure for appointing members of the Consultative Forum.

CLAUSE 8

THAT clause 8 of the Bill be amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) monitor and have oversight responsibilities over land use planning throughout the country.
- (b) by deleting paragraph (b) and substituting therefor the following new paragraph—
- (b) prepare reports on the status of land use planning and forward to the President and Parliament as provided for in Article 254 of the Constitution.
- (c) by inserting the following new paragraphs immediately after paragraph (c) —
 - “(d)publish and publicise the state of national land use planning report in accordance with the provisions of Article 35(3) of the Constitution.
 - (e)encourage the use of traditional dispute resolution mechanisms in land use planning.

Justification

The amendment seeks to align the functions of the National Land Commission as provided for in clause 8 of the Bill with Article 67 of the Constitution.

CLAUSE 10

THAT clause 10 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following sub-clause—
 - (1) There shall be appointed by the Public Service Commission, a National Director of Physical Planning.
- (b) inserting the following new sub-clause immediately after sub-clause (2) —
 - “(2A) The National Director of Physical Planning shall hold office for a term of three years, renewable once.”

Justification

The amendment seeks to create a term limit of three years, renewable once for the National Director of Physical Planning in order to promote efficiency. The amendment also provides that a National Director of Physical Planning shall be competitively appointed by the Public Service Commission.

CLAUSE 11

THAT clause 11 of the Bill be amended by deleting the words “postgraduate degree” appearing in paragraph (b) and substituting therefor the words “bachelor’s degree”.

Justification

The amendment seeks to delete reference to a post-graduate degree as a qualification for appointment as a National Director of Physical Planning and replace with a bachelor’s degree which is the case in all the qualification requirements of most professions coupled with certain number of years of experience, in this case being ten years post-qualification professional experience.

CLAUSE 12

THAT clause 12 of the Bill be amended by deleting the word “regional” appearing in paragraph (d) and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 13

THAT clause 13 of the Bill be amended—

(a) by deleting paragraph (b);

(b) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c)monitoring and overseeing the technical arm at the county level in the performance of their functions.”

Justification

The amendment seeks to specify that the role of approval of plans lies with the county assemblies and further reword paragraph (c) to avoid the potential conflicts with Article 67 of the Constitution which provides that the role of NLC is monitoring and overseeing land use planning throughout the country.

The amendment specifies that the role of the County Executive Member is monitoring and overseeing **the technical arm** at the county level in the performance of their functions.

CLAUSE 15

THAT the Bill be amended by deleting clause 15 and substituting therefor the following new clause—

Qualifications of the County Director of Physical Planning. 15.(1) A person is qualified for appointment as the County Director of Physical Planning if that person—

- (a) is a citizen of Kenya;
- (b) possesses a Bachelor's degree in urban and regional planning or related discipline from a recognized university;
- (c) is registered as a physical planner under the Physical Planners' Registration Act, 1996;
- (d) has at least five years' post-qualification professional experience in physical planning; and

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is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.

Justification

The amendment seeks to provide for the qualifications for appointment of the County Director of Physical Planning which are not defined and provided for in the Bill.

CLAUSE 16

THAT clause 16 of the Bill be amended by deleting the word "regional" appearing in paragraph (e) and substituting therefor the word "Inter-County".

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term 'regional' and substitute with Inter-County.

CLAUSE 18

THAT clause 18 of the Bill be amended by deleting the word "regional" appearing in paragraph (f) and substituting therefor the word "inter-county".

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term 'regional' and substitute with Inter-County.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (2) by deleting the words “publish a notice in the Gazette and in at least two newspapers of national circulation” and substitute therefor “publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media”.

Justification

The amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication.

CLAUSE 21

THAT clause 21 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “publish a notice in the Gazette and in at least two newspapers of national circulation” and substituting therefor the words “publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media”.

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Cabinet Secretary shall consider the comments made about the National Physical Development Plan and may incorporate the comments in the plan.”

(c) in sub-clause (3) by deleting the words “Any person” and substituting therefor the words “A person”.

Justification

The amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication. Further, the amendment seeks to correct typographical errors.

CLAUSE 22

THAT clause 22 of the Bill be amended—

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

(3A) Upon approval by the Cabinet, the Cabinet Secretary shall submit the plan to Parliament for consideration and approval.

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

“(4) Upon approval by Parliament, the Cabinet Secretary, shall publish the approved plan in the *Gazette*, in at least two newspapers of national circulation and through electronic media within fourteen days of the approval of the National Physical Development Plan”.

Justification

The amendment seeks to provide for approval of the National Physical Development Plan by Parliament noting the importance of the plan in terms of forming the basis upon which physical planning shall be undertaken in the country. The amendment further seeks to provide for publication of the plan through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication.

CLAUSE 23

THAT clause 23 of the Bill be amended by deleting the word “regional” appearing in sub-clause (1) and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 24

THAT clause 24 of the Bill be amended—

(a) by deleting sub-clause (1);

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

(2A) The status reports submitted under this section, shall published by the National Land Commission on its website for information.

Justification

The amendment seeks to delete sub-clause (1) which is inadvertently repeated and further promote the provisions of Article 35 of the Constitution on access to information by providing that status reports submitted by public institutions must be published by the National Land Commission on its website for information.

CLAUSE 25

THAT clause 25 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “a regional” and substituting therefor the words “an inter-county”;

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) In the preparation of the Inter-County physical development plan, the counties shall form an Inter-County Physical Planning Committee.

(c) in sub-clause (3) by deleting the word “regional” and substituting therefor the word “Inter-County” wherever it appears;

- (d) in sub-clause (4) by deleting the word “regional” and substituting therefor the word “Inter-County”;
- (e) in the marginal note by deleting the word “regional” and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 26

THAT clause 26 of the Bill be amended—

- (a) by renumbering the existing clause as sub-clause (1);
- (b) in the opening statement by deleting the words “a Regional” and substituting therefor the words “An Inter-County”.
- (c) in the marginal note by deleting the word “regional” and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 27

THAT clause 27 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—
“(1) The Inter-County Physical Planning Joint Committee preparing an Inter-County Physical Development Plan shall publish a notice of intention to prepare a plan in the gazette, in at least two newspapers with a national circulation and through electronic media.
- (b) in sub-clause (2) by deleting the word “Regional” and substituting therefor the word “Inter-County”.
- (c) in sub-clause (3) by deleting the word “regional” and substituting therefor the word “Inter-County”;
- (d) in sub-clause (4) by deleting the word “regional” and substituting therefor the word “inter-county”;
- (e) in the marginal note by deleting the word “regional” and substituting therefor the words “the Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term 'regional' and substitute with Inter-County.

CLAUSE 28

THAT clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “Within thirty days of the completion of a Regional Physical Development Plan, the Regional” and substituting therefor the words “Within thirty days of the completion of an inter-County Physical Development Plan, the Inter-County”;
- (b) in sub-clause (2) by deleting the word “Regional” and substituting therefor the word “Inter-County”;
- (c) in sub-clause (3) by deleting the word “Regional” and substituting therefor the word “Inter-County”;
- (d) in the marginal note by deleting the word “a Regional” and substituting therefor the words “an Inter-County”

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term 'regional' and substitute with Inter-County.

CLAUSE 29

THAT clause 29 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—
 - (1) The County Executive Committee members of all counties participating in the Inter-County physical development plan shall separately submit the plans to the respective County Assemblies for approval and thereafter submit the same to the National Director of Physical Planning for processing and certification.
- (b) in sub-clause (2) —
 - (i) by deleting the word “a Regional” appearing immediately after the words “completion of a” and substituting therefor the word “ an Inter-County”
 - (ii) by deleting the word “the Regional” appearing immediately after the words “and publish” and substituting therefor the words “ the Inter-County”;

- (c) in sub-clause (3) by deleting the word “Regional” and substituting therefor the word “Inter-County” wherever it appears;
- (d) in sub-clause (4) by deleting the word “regional” and substituting therefor the word “inter-county” ;
- (e) in the marginal note by deleting the word “Regional” and substituting therefor the words “an Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County. Further, the amendment also recognizes the role of county assemblies in approving plans in terms of Article 185(4) of the Constitution and section 87 of the County Governments Act, 2012.

CLAUSE 30

THAT clause 30 of the Bill be amended—

- (a) in sub-clause (1) by deleting the “Regional” and substituting therefor the word “Inter-County” wherever it appears;
- (b) in sub-clause (2) —
 - (i) by deleting the word “a Regional” appearing immediately after the words “Plan and” and substituting therefor the word “an Inter-County”;
 - (ii) by deleting the word “Regional” appearing immediately after the words “the relevant” and substituting therefor the word “Inter-County”;
- (c) in the marginal note by deleting the word “Regional” and substituting therefor the words “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 31

THAT clause 31 of the Bill be amended—

- (a) by deleting the words “a Regional Physical Development Plan shall submit a report on the implementation of the Regional” and substituting therefor the words “an Inter-County Physical Development Plan shall submit a report on the implementation of the Inter-County”;

(b) in the marginal note by deleting the word “Regional” and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 32

THAT clause 32 of the Bill be amended in sub-clause (2) by deleting the word “Regional” and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 34

THAT clause 34 of the Bill be amended in sub-clause (2) by deleting the words “fourteen days” and substituting therefor the words “twenty-one days”.

Justification

The amendment seeks to increase the period for displaying the notice for a period of fourteen days to twenty-one days at the offices of the county government to allow for broad public participation in the preparation of a county physical planning development plan.

CLAUSE 36

THAT clause 36 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “publish a notice in the Gazette and in at least two newspapers of national circulation” and substitute therefor the words “publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media”;
- (b) in sub-clause (2) by deleting the words “or may not”;
- (c) in sub-clause (4) by deleting the words “Any person” and substituting therefor the words “A person”.

Justification

The amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with

national circulation. Electronic media is an efficient and inexpensive mode of communication. Further, the amendment seeks to correct typographical and grammatical errors to create clarity.

CLAUSE 37

THAT clause 37 of the Bill be amended by inserting the words “for approval”.

Justification

The amendment seeks to recognize the role of county assemblies in approving plans in terms of Article 185(4) of the Constitution and section 87 of the County Governments Act, 2012.

CLAUSE 38

THAT clause 38 of the Bill be amended—

- (a) in sub-clause (2) by deleting the words “publish a notice in the Gazette and in at least two newspapers of national circulation” and substituting therefor the words “publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media”;

- (b) in sub-clause (3) by deleting the words “Inter-County Physical Development Plan and any existing regional development plan” and substituting therefor the words “and Inter-County Physical Development Plan”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County. Further, the amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication.

INSERTION OF A NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 39—

Contents of the **39A.** In addition to the provisions of sections 20, 26 and 35, the National, Inter- National, Inter-County and the County Physical Development Plans County and County shall provide for the matters specified in the Second Schedule.

Physical
Development
Plans.

Justification

The amendment is necessary to create a legal basis for the Schedules as used in the Bill

CLAUSE 44

THAT clause 44 of the Bill be amended in sub-clause (1) by deleting the words “publish a notice in the Gazette and in at least two newspapers of national circulation” and substituting therefor the words “publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media”;

Justification

The amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication.

CLAUSE 45

THAT clause 45 of the Bill be amended in sub-clause (1) by deleting the words “publish a notice in the Gazette and in at least two newspapers of national circulation” and substituting therefor the words “publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media”;

Justification

The amendment seeks to provide for publication of notices by the planning authorities through electronic media in addition to publication in the Gazette and the local dailies newspapers with national circulation. Electronic media is an efficient and inexpensive mode of communication.

CLAUSE 49

THAT clause 49 of the Bill be amended by—

- (a) renumbering the existing clause as sub-clause (1);
- (b) inserting the following new paragraph immediately after (d) —
“(da) to promote public safety and health”.
- (c) by inserting the following new sub-clause immediately after sub-clause (1) —
“(2) In addition to the provisions of sub-section (1), development control may also relate to the matters specified in the Fourth Schedule.”

Justification

The amendment is necessary as it seeks to expand the objects of development control to include promotion of public safety and health and further give reference to the Schedule which outlines the matters that may also relate to development control.

CLAUSE 52

THAT clause 52 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (6) —

“(7) A person applying for development permission shall also notify the public of the development project being proposed to be undertaken in a certain area in such a manner as the Cabinet Secretary shall prescribe.

“(8) The notification referred to under sub-section (7), shall invite the members of the public to submit any objections on the proposed development project to the relevant planning authorities for consideration.

Justification

The amendment recognizes the need for developers to involve the public prior to undertaking a development project as projects may impact positively or negatively on the areas to which they are proposed to be developed. In this regard, the amendment creates a requirement for a person applying for development permission to notify the public of the development project being proposed to be undertaken in a certain area through such a manner as the Cabinet Secretary shall prescribe. Further, the amendment provides that the notification shall invite the members of the public to submit any objections on the proposed development project to the relevant planning authorities for consideration.

CLAUSE 53

THAT clause 53 of the Bill be amended by deleting the words “and validly registered” appearing in sub-clause (1) and substituting therefor the words “and licensed”.

Justification

The amendment seeks to remove a typo-graphical error and further align the clause with the requirements of the Physical Planning Registration Act, 1996 which gives reference to registered and licensed persons and not registered and validly registered persons.

CLAUSE 55

THAT clause 55 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c) —

“(ca) shall take into consideration the comments made by the members of the public on the application for development permission made by the person seeking to undertake development in a certain area”.

Justification

The amendment seeks to create a requirement that a planning authority shall in considering an application for development permission take into consideration the comments/objections made by the members of the public on a proposed development project to be undertaken in a certain area.

This amendment will allow for consultation and public involvement in decision making relating to development and physical planning.

CLAUSE 58

THAT clause 58 of the Bill be amended in sub-clause (1) by deleting the words “two years” and substituting therefor the words “three years”.

Justification

The amendment seeks to increase the timelines for lapsing of development permission from two years to three years in order to promote investors and give them adequate time for processing of among other things financing of investments projects.

CLAUSE 65

THAT clause 65 of the Bill be amended in sub-clause (5) by deleting the words “one hundred thousand shillings” and substituting therefor the words “five hundred thousand shillings”.

Justification

The amendment seeks to increase the penalty for non-compliance with the enforcement notice issued where a developer has commenced development on any land without development permission from one-hundred thousand shillings to five hundred thousand shillings to act as a deterrent for non-compliance.

CLAUSE 66

THAT clause 66 of the Bill be deleted.

Justification

Clause 66 of the Bill has retrospective effect and would be disadvantageous to developers who might have completed development projects only to be required to re-submit their application afresh once the new Act comes into force.

CLAUSE 69

THAT clause 69 of the Bill be amended in sub-clause (2) by deleting the word “regional” appearing in paragraph (c) and substituting therefor the word “Inter-County”.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

CLAUSE 71

THAT clause 71 of the Bill be amended—

(a) in sub-clause (1) —

- (i) by inserting the words “with seven years’ post-qualification experience” immediately after the words “physical planner” in paragraph (c);
- (ii) by inserting the words “with seven years’ post-qualification experience” immediately after the words “registered architect” in paragraph (d);
- (iii) by inserting the words “with seven years’ post-qualification experience” immediately after the words “registered surveyor” in paragraph (e).

(b) in sub-clause (2) by inserting the words “up to a maximum of five persons” immediately after the words “may co-opt experts”.

Justification

The amendment seeks to create a qualification requirement for ten years of experience for persons to be nominated to be members of the County Physical Planning Liaison Committee to ensure that the persons nominated to the county physical liaison committee are competent and highly experienced on matters relating to physical planning. Further, the amendments seek to provide that a maximum of five persons can be co-opted to the liaison Committee to avoid leaving the option of co-opting many persons which might render the operations of the Committee inefficient.

CLAUSE 72

THAT clause 72 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) —

“(c) advise the County Executive Committee Member on broad physical planning policies, strategies and standards.”

Justification

The amendment seeks to include an additional role akin to the one provided for the National Physical Planning Liaison Committee in terms of clause 69(1)(a). The County Physical Planning Liaison Committee shall therefore also advise the County Executive Committee Member on broad physical planning policies, strategies and standards in addition to hearing and determining complaints submitted to the planning authority in the county.

CLAUSE 73

THAT clause 73 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) —

“(2A) The members of the County Physical Planning Liaison Committee appointed under sub-section (1)(a), (c), (d), (e) and (f) shall serve for a term not exceeding three years, renewable once.”

Justification

The amendment seeks to provide a term limit of three years, renewable once for the members of the County Physical Planning Liaison Committee. The Bill as it is does not prescribe term limits for the members of the County Physical Planning Liaison Committee which might allow members to serve for prolonged periods of time leading to inefficiency.

CLAUSE 87

THAT the Bill be amended by deleting clause 87.

Justification

The amendment seeks to recognize the role of county assemblies in approving plans in terms of Article 185(4) of the Constitution and section 87 of the County Governments Act, 2012.

FIRST SCHEDULE

THAT the First Schedule to the Bill be amended by deleting the words “or the Governor, as the case shall be” in paragraph 1.

Justification

The amendment seeks to remove reference to the term Governor as the role of declaring vacancies in the Consultative Forum lies with the Cabinet Secretary and not the Governor.

SECOND SCHEDULE

THAT the Second Schedule to the Bill be amended—

- (a) in paragraph 2(1) by deleting the word “regional” and substituting therefor the word “Inter-County”.
- (b) in paragraph 9(1) by deleting the word “regional” and substituting therefor the word “Inter-County” wherever it appears.

Justification

The amendment seeks to uphold the provisions of Articles 6 and 176 of the Constitution which recognizes counties as the administrative units. In this regard, the amendment seeks to delete reference to the term ‘regional’ and substitute with Inter-County.

INSERTION OF A NEW PART

THAT the Bill be amended by inserting the following new Part immediately after Part VI

PART VIA-PROVISIONS ON DELEGATED POWERS

Regulations. **83A.** (1) The Cabinet Secretary, may make regulations generally for giving effect to this Act, and for prescribing anything required to be prescribed by or under this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for—

- (a) the forms to be used and fees to be charged under this Act;
- (b) the norms, guidelines and standards for delivery of physical planning services across the country;
- (c) guidelines for operations of Inter-County Physical Planning

Committees.

- (d) procedures for the conduct of Physical Planning Liaison Committees.
- (e) procedure and process of handling applications for development permission;
- (f) any other matter generally required to give effect to the provisions of this Act.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

No. 23 of 2013.

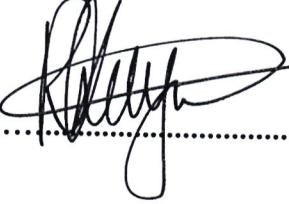
Cap 2.

(4) The principles and standards applicable to the delegated power referred to under this Act are those found in—

- (i) the Statutory Instruments Act, 2013;
- (ii) the Interpretation and General Provisions Act,
- (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

Justification

The Bill as it is does not have provisions for making regulations. In this regard, the amendment seeks to include provisions on delegated powers of the Cabinet Secretary to make regulations that may be necessary for implementation of any matters required in the Bill.

Signed..........Date.....14/4/2012.....

The Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands



NATIONAL ASSEMBLY

CLERK'S CHAMBERS

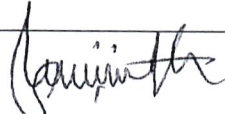

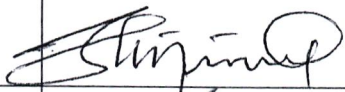


DEPARTMENTAL COMMITTEE ON LANDS

Adoption list of the Report on the Physical Planning Bill, 2017

Tuesday 27th March, 2018

NO	NAME	SIGNATURE
1.	The Hon. Dr. Rachael Nyamai, MP - Chairperson	
2.	The Hon. Khatib Mwashetani, MP - Vice Chairperson	
3.	The Hon. Jayne Wanjiru Kihara, MP	
4.	The Hon Joshua Kutuny Serem, MP	
5.	The Hon. Kimani Ngunjiri, MP	
6.	The Hon. Mishi Mboko, MP	
7.	The Hon. Omar Mwinyi Shimbwa, MP	
8.	The Hon. Ali Mbogo, MP	
9.	The Hon. Babu Owino, MP	
10.	The Hon. Caleb Kipkemei Kositany, MP	
11.	The Hon. Catherine Waruguru, MP	



12.	The Hon George Aladwa, MP	
13.	The Hon George Risa Sunkuyia, MP	
14.	The Hon. Jane Wanjuki Njiru, MP	
15.	The Hon. Josphat Gichunge Kabeabea, MP	
16.	The Hon. Owen Yaa Baya, MP	
17.	The Hon. Samuel Kinuthia Gachobe, MP	
18.	The Hon. Simon Nganga Kingara, MP	
19.	The Hon Teddy Mwambire, MP	



**MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON TUESDAY 27TH MARCH 2018, AT THE CPA ROOM PARLIAMENT
BUILDING AT 10.00 A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Jane Wanjuki Njiru, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Simon Nganga Kingara, M.P
11. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - Vice Chairperson
2. Hon. Babu Owino, M.P
3. Hon. George Aladwa, M.P
4. Hon. Owen Yaa Baya, M.P
5. Hon. Josphat Gichunge Kabeabea, M.P
6. Hon. Catherine Waruguru, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Omar Mwinyi Shimbwa, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Ms. Jemimah Waigwa - Legal Counsel I
3. Ms. Peris Kaburi - Serjeant At Arms
4. Mr. John Mungai - Audio Officer

MIN. DCL/091/2018: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten o'clock and prayers were said. The Chairperson informed that the Council of Governors, which was expected to meet with the committee on the consideration of the Land Value Index Laws (Amendment) Bill, 2018 had sent an apology and indicated that they would forward their proposed amendments on the Bill to the Committee. Subsequently the Members resolved to amend the agenda of the meeting to include adoption of the report on the Physical Planning Bill, 2017.

MIN. DCL/092/2018: CONFIRMATION OF MINUTES

The Minutes of the 14th Sitting were confirmed as a true record of the proceedings as proposed by Hon. Teddy Mwambire, M.P and seconded by Hon. Mishi Mboko, M.P

The Minutes of the 15th Sitting were confirmed as a true record of the proceedings as proposed by Hon. Joshua Kutuny, M.P and seconded by Hon. George Risa Sunkuyia, M.P

The Minutes of the 16th Sitting were confirmed as a true record of the proceedings as proposed by Hon. Joshua Kutuny, M.P and seconded by Hon. Samuel Kinuthia Gachobe, M.P

MIN. DCL/093/2018: SCHEDULE OF COMMITTEE ACTIVITIES.

The Committee adopted the schedule of committee activities for the Month on April, 2018 and the following Members were nominated to undertake a field visit to Kilifi County from **Thursday 5th to Sunday 8th April 2018** on a petition by Indigenous People of Vipingo Lands Community regarding alleged irregular acquisition of land belonging to the indigenous people of Vipingo in Kilifi County:

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Mishi Mboko, M.P
4. Hon. Omar Mwinyi Shimbwa, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Owen Yaa Baya, M.P
7. Hon. Simon Nganga Kingara, M.P

MIN. DCL/061/2018: Adoption of Report on the Physical Planning Bill, 2017

The Committee unanimously adopted the report on the Physical Planning Bill, 2017 with a further amendment to clause 71 sub clause 1 by deleting the words "with ten years" immediately before the words "physical planner" in paragraph, (a) "registered architect" in paragraph (b) and "registered surveyor" in paragraph (c) and replacing it "with seven years".

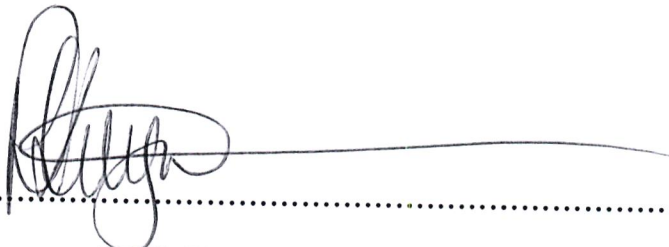
MIN. DCL/061/2018: Any Other Business

The Secretariat was tasked to draw a programme of bench marking visits and international conferences for the 2018 calendar year for the consideration of the Committee.

MIN. DCL/062/2018: Adjournment

The meeting was adjourned at ten minutes past eleven o'clock in the afternoon.

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date.....

14/4/2018

**MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON FRIDAY 3RD MARCH 2018, AT ENGLISH POINT MARINA AT 2.30
P.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Caleb Kositany, M.P
10. Hon. Catherine Waruguru, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. George Risa Sunkuyia, M.P
13. Hon. Josphat Gichunge Kabeabea, M.P
14. Hon. Owen Yaa Baya, M.P
15. Hon. Samuel Kinuthia Gachobe, M.P
16. Hon. Simon Nganga Kingara, M.P
17. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Babu Owino, M.P
2. Hon. George Aladwa, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo – Atenyo - Director, Committee Services
2. Mr. Leonard Machira - Clerk Assistant I
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Ahmad Adan Guliye - Clerk Assistant III
5. Mr. Joseph Tiyan - Research Officer III
6. Ms. Peris Kaburi - Serjeant At Arms

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|-----------------------|---|------------------|
| 7. Mr. John Mungai | - | Audio Officer |
| 8. Ms. Lydia Mwangi | - | Secretary |
| 9. Mr. Stephen Omunzi | - | Office Attendant |

MIN. DCL/060/2018: PRELIMINARIES

The meeting was called to order at fifteen minutes to three o'clock in the afternoon and prayers were said.

MIN. DCL/061/2018: ADOPTION OF COMMITTEE WORK PLAN FROM MARCH TO APRIL 2018

The Committee adopted the work plan for the months of March and April 2018 as indicated below and resolved to postpone the planned field visit to Kilifi County on a petition by petition by Indigenous People of Vipingo Lands Community on Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County to 4th April 2018 as then area member of Parliament Hon Hon. Owen Yaa Baya, indicated that he would not be available. The Committee also resolved to reschedule the field visit to Meru County on a County petition by members of Mt. Kenya Forest Squatters and residents of Meru on excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters to Thursday 22nd Mach 2018.

S/N	DATE	TIME	ACTIVITY	VENUE
MARCH 2018				
1	Friday 2 nd March, 2018	9:00AM	Retreat to consider proposed amendments to the Physical Planning Bill, 2017	Mombasa
2	Saturday 3 rd March, 2018	9:00AM	Retreat to consider proposed amendments to the Physical Planning Bill, 2017	Mombasa
3	Tuesday 13 th March	9:30 am	Briefing on the Land Value Index (Amendment) Bill, 2018	As allocated

4	Thursday 15 th March	9:30 am	Public hearing on the Land Value Index (Amendment) Bill, 2018	As allocated
5	Tuesday 20 th March, 2018	10:00 am	Meeting with the Ministry of Lands and Physical Planning & the National Land Commission on the Land Value Index (Amendment) Bill, 2018	As allocated
6	Thursday 22 nd , March, 2018	9:30 am 4:00pm (Departure)	<ul style="list-style-type: none"> • Adoption of report on the Land Value Index (Amendment) Bill, 2018 • Briefing on petitions pending before the Committee <p>Sub –Committee field visit to Kilifi County on a petition by Indigenous People of Vipingo Lands Community on Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County</p>	As allocated
7	Friday 23 rd March, 2018	9:00 am	Field visit to Kilifi County on a petition by Indigenous People of Vipingo Lands Community on Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County(Meeting with stakeholders)	Kilifi
8	Saturday 24 th March, 2018	9:00 am	Field visit to Kilifi County on a petition by Indigenous People of Vipingo Lands Community on	<u>Kilifi</u>

			Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County (Meeting with stakeholders)	
9	Tuesday 27 th March, 2018	9:00 am	<p>Meeting with the Ministry of Lands and Physical Planning on the petitions by:-</p> <ul style="list-style-type: none"> ● Residents of Mowlen Ward on alleged irregular allocation of Land LR No. 11379/3 located in Mowlem Ward Embakasi West Constituency; and ● Indigenous People of Vipingo Lands Community on Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County. ● Petition by members of Mt. Kenya Forest Squatters and residents of Meru on e excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters 	As allocated
10	Thursday 29 th March, 2018	10:00 am	<p>Meeting with the National Land Commission on petitions by:-</p> <ul style="list-style-type: none"> ● Residents of Mowlen Ward on alleged irregular allocation of Land LR No. 	As allocated

			<p>11379/3 located in Mowlem Ward Embakasi West Constituency; and</p> <ul style="list-style-type: none"> • Indigenous People of Vipingo Lands Community on Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County. • Petition by members of Mt. Kenya Forest Squatters and residents of Meru on e excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters 	
11	Tuesday 3 rd April 2018	9:30	<p>Consideration of other complaints lodged with the Committee:</p> <ul style="list-style-type: none"> • Complaint by Kamiti Forest Squatters degazattement of land portion No. Kamiti/ Anmer/8390 • Complaint by Ms. Sarah Joslyn on administration of the estate of Richard Ingram Crawford (deceased) • Complaint by Mr. Harrison Muema on alleged fraudulent compensation of LR No. 7879/4- Afrison Export and Import Ltd by the Ministry of Education or acquisition of land for Ndururomu Primary secondary school 	As allocated
12	Thursday 5 th April 2018	10:00am	Meeting with petitioners residents of Mowlen Ward on alleged	As allocated

			irregular allocation of Land LR No. 11379/3 located in Mowlem Ward Embakasi West Constituency; and	
13	Tuesday 10 th April, 2018	9:30am	Brief by the Parliamentary Budget Office on Report of the Controller of Budget	As allocated
14	Thursday 12 th April 2018	9:30 am	Adoption of reports on petitions by: <ul style="list-style-type: none"> • Residents of Mowlen Ward on alleged irregular allocation of Land LR No. 11379/3 located in Mowlem Ward Embakasi West Constituency; and • Indigenous People of Vipingo Lands Community on Irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County. Field visit to Meru County petition by members of Mt. Kenya Forest Squatters and residents of Meru on the excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters	As allocated
		4:00 pm Departure		

15	Friday 13 th April 2018	9:00am	Field visit to Meru County on petition by members of Mt. Kenya Forest Squatters and residents of Meru on the excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters	Meru County
16	Saturday 14 th April 2018	9:00am	Field visit to Meru County on petition by members of Mt. Kenya Forest Squatters and residents of Meru on the excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters	Meru County
18	Tuesday 17 th April, 2018		Adoption of report on a petition by members of Mt. Kenya Forest Squatters and residents of Meru on the excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters	As allocated

MIN. DCL/062/2018: Adjournment

The meeting was adjourned at thirty minutes past four o'clock in the afternoon.

Signature.....

HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date.....27/3/2018

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MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON FRIDAY 3RD MARCH 2018, AT ENGLISH POINT MARINA AT 09.30 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Caleb Kositany, M.P
10. Hon. Catherine Waruguru, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. George Risa Sunkuyia, M.P
13. Hon. Josphat Gichunge Kabeabea, M.P
14. Hon. Owen Yaa Baya, M.P
15. Hon. Samuel Kinuthia Gachobe, M.P
16. Hon. Simon Nganga Kingara, M.P
17. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Babu Owino, M.P
2. Hon. George Aladwa, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo – Atenyo - Director, Committee Services
2. Mr. Leonard Machira - Clerk Assistant I
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Ahmad Adan Guliye - Clerk Assistant III
5. Mr. Joseph Tiyan - Research Officer III
6. Ms. Peris Kaburi - Serjeant At Arms
7. Mr. John Mungai - Audio Officer

8. Ms. Lydia Mwangi - Secretary
9. Mr. Stephen Omunzi - Office Attendant

MIN. DCL/057/2018: PRELIMINARIES

The meeting was called to order at forty five minutes past nine o'clock and prayers were said.

MIN. DCL/058/2018: CONSIDERATION OF THE PHYSICAL PLANNING BILL, 2017

The Committee continued the consideration of the Physical Planning Bill, 2018 as follows:

Clauses 65 to 66

The Committee proposed that clauses 65 to 66 be amended

Clauses 67 to 68

The Committee agreed to clauses 67 to 68

I.

Clauses 69

The Committee proposed that clauses 69 be amended

Clause 70

The Committee agreed to clause 70

Clauses 71 to 73

The Committee proposed that clauses 71 to 73 be amended

Clauses 74 to 86

The Committee agreed to clauses 74 to 86

Committee observations

The Committee made the following observations:

- a) The memoranda submitted by stakeholders on the above clauses related to the establishment of physical planning liaison committees. Concerns have been raised on the on the membership and functions of the physical planning liaison committees at the national and county levels on grounds that they are too large and cost ineffective and on the offence for non-compliance with the enforcement notice given under clause 65 among others.
- b) Clause 65(5) should be amended to increase the penalty for non-compliance with the enforcement notice from one-hundred thousand shillings to five hundred thousand shillings to act as a deterrent for non-compliance.
- c) Clause 66 of the Bill should be deleted as it has a retrospective effect and would be disadvantageous to developers who might have completed development projects only to be

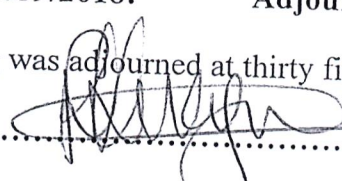
- be required to re-submit their application afresh.
- d) Clause 69(2)(c) should be amended to delete the word “regional” in paragraph (c) to align with the other provisions of the Bill.
 - e) Clause 71(1)(c), (d) and (e) should be amended provide for ten years of experience for persons to be nominated under paragraph (c), (d) and (e) to ensure that the persons nominated to the national physical liaison committee.
 - f) Clause 71(2) of the Bill should be amended to identify a maximum of five persons who can be co-opted to the liaison Committee to avoid leaving the option of co-opting many persons which might render the operations of the Committee inefficient.
 - g) 72 of the Bill should be amended to include as an additional role akin to the one provided for the National Physical Planning Liaison Committee provided for in clause 69(1)(a).
 - h) Clause 73 of the Bill should be amended to provide a term limit of three years renewable once for the members of the County Physical Planning Liaison Committee.
 - i) The Committee received memoranda from several stakeholders on clause 87 proposing its deletion on the basis that it contravenes the provisions of Article 185(4) of the Constitution which gives powers to the county assemblies to approve plans.
 - j) The Committee agreed with the proposals by the stakeholders proposed the deletion of clause 87 on the basis of the potential conflict with Article 185(4) of the Constitution.

SCHEDULES

The Committee received memoranda from various stakeholders on the Schedules to the Bill relating to among other things, the need to delete the First Schedule on grounds that it was unnecessary since the membership of the Forum is pre-determined. The Committee observed that some of the members to be nominated by various bodies to the Forum had to be interviewed prior to be appointed. In this regard, the Committee noted that the First Schedule was necessary in prescribing the procedure of appointment of members of the Forum. The Committee also proposed the deletion of the term “Governor” which inadvertently appeared in paragraph 1. The Committee also agreed with the contents of the Second, Third and Fourth Schedule save for the need to provide for the legal provisions in which they are referred to in the Bill.

MIN. DCL/059/2018: Adjournment

The meeting was adjourned at thirty five minutes past twelve o'clock in the afternoon.

Signature 

HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date..... 27/3/2018

**MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON FRIDAY 2ND MARCH 2018, AT ENGLISH POINT MARINA AT 2.30
P.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Caleb Kositany, M.P
10. Hon. Catherine Waruguru, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. George Risa Sunkuyia, M.P
13. Hon. Josphat Gichunge Kabeabea, M.P
14. Hon. Owen Yaa Baya, M.P
15. Hon. Samuel Kinuthia Gachobe, M.P
16. Hon. Simon Nganga Kingara, M.P
17. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Babu Owino, M.P
2. Hon. George Aladwa, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo – Atenyo - Director, Committee Services
2. Mr. Leonard Machira - Clerk Assistant I
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Ahmad Adan Guliye - Clerk Assistant III
5. Mr. Joseph Tiyan - Research Officer III
6. Ms. Peris Kaburi - Serjeant At Arms
7. Mr. John Mungai - Audio Officer

8. Ms. Lydia Mwangi - Secretary
9. Mr. Stephen Omunzi - Office Attendant

MIN. DCL/054/2018: PRELIMINARIES

The meeting was called to order at forty five minutes past two o'clock and prayers were said.

MIN. DCL/055/2018: CONSIDERATION OF THE PHYSICAL PLANNING BILL, 2017

The Committee continued the consideration of the Physical Planning Bill, 2018 as follows:

Clauses 25, 26, 27, 28, 29, 30 & 31

The Committee proposed amendments to clauses 25, 26, 27, 28, 29, 30, 31 & 32 and noted that:

- a) Stakeholders had raised questions with the issue of regional physical development plans on grounds that the plans negated the established administrative/devolution units in terms of counties as provided for in the Constitution among other things.
- b) The Committee observed that the term regional physical development plans indeed negated the devolution principle as enshrined in the Constitution and hence proposed to amend reference to the term regional development plan and substitute with inter-county physical planning development plans in furtherance of the objects of the Constitution on devolution. The Committee also observed that there was need to amend clause 29 of the Bill to align with the role of the County Assemblies to approve plans and further delete reference to the words "final approval" and substitute with the words "processing and certification".

Clause 33

The Committee agreed to clause 33

Clause 34

The Committee proposed that clause 34 be amended

Clause 35

The Committee agreed to clause 35

Clauses 36, 37, 38

The Committee proposed that clauses 36, 37 & 38 be amended

Clauses 40, 41, 42, 43

The Committee agreed to clauses 40, 41, 42 and 43

Clauses 44 to 45

The Committee proposed that clauses 44 to 45 be amended

Clauses 46, 47 & 48

The Committee agreed to clauses 46, 47 and 48

Committee observations

The Committee agreed observed that:

- a) The stakeholders submitted memoranda to clauses, 33, 34, 35, 36, 37, 39, 40, 41, 42, 44, 45, 46 and 47 which relate to the county physical development plans and the local physical development plans. The stakeholders raised concerns relating to potential conflict of the Bill with the provisions of the County Governments Act, 2012 and the Urban Areas and Cities Act, 2011 which had specific provisions dealing with county planning among others.
- b) Despite the provisions of the County Government Act, 2012 and the Urban Areas and Cities Act, 2011 the Bill clarifies the procedures of preparation, approval, review and modification of county physical development plans matters which have not been provided for in the two pieces of legislation.
- c) There was need to amend clause 34(2) to increase the period for displaying the notice for a period of fourteen days to twenty-one days at the offices of the county government;
- d) There was need to amend reword the provisions of clause 36(3) and (4).
- e) There was need to amend clause 37(2) by inserting the words "for approval" immediately after the words before the county assembly" to include publication through electronic media in clauses 38(2), 44(1) and 45.
- f) The stakeholders had submitted that there was need to broaden the objectives of development control to include among other things promotion of public safety and health. The Committee agreed with the proposal to include promotion of public safety and health as an objective of development control.

Clauses 50 to 51

The Committee agreed to clauses 50 to 51

Clauses 52, 53

The Committee proposed that clauses 52 to 53 be amended

Clause 54

The Committee agreed to clause 54

Clause 55

The Committee proposed that clauses 55 be amended

Clause 56 to 57

The Committee agreed to clauses 56 to 57

Clause 58

The Committee proposed that clauses 58 be amended

Clauses 59, 60, 61 & 62

The Committee agreed to clauses 59, 60, 61 and 62

Clause 64

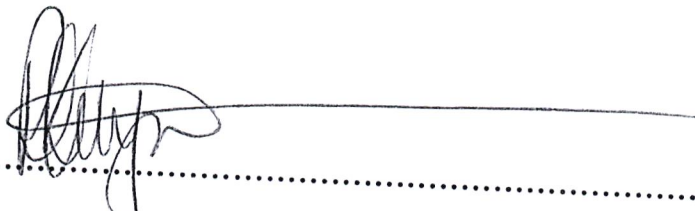
The Committee agreed to clauses 64

Committee observations

The Committee observed that:

- a) Stakeholders submitted memoranda relating to the need for developers to notify the public of the proposed development and invite objections and define who the planning authorities are, in particular by providing that a planning authority refers to the county government.
- b) There was need to amend clause 52 to include provisions for developers to notify the public of the proposed development and invite objections.
- c) Clause 2 of the Bill was clear that a planning authority refers to the county executive committee member and not the county government.
- d) There was need to amend clause 53(1) of the Bill by deleting the words “and validly registered” and substitute with “and licensed” as the words as currently used in the Bill are repetitive
- e) There was need to amend clause 58 to increase the timelines for lapsing of development permission from two years to three years in order to promote investors and give them adequate timing for processing among other things financing of investments projects.

The meeting was adjourned at thirty minutes past six o'clock in the evening.

Signature 

HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date... 27/3/2018

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**MINUTES OF THE 13TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON FRIDAY 2ND MARCH 2018, AT ENGLISH POINT MARINA AT 09.30
A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Caleb Kositany, M.P
10. Hon. Catherine Waruguru, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. George Risa Sunkuyia, M.P
13. Hon. Josphat Gichunge Kabeabea, M.P
14. Hon. Owen Yaa Baya, M.P
15. Hon. Samuel Kinuthia Gachobe, M.P
16. Hon. Simon Nganga Kingara, M.P
17. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Babu Owino, M.P
2. Hon. George Aladwa, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo – Atenyo - Director, Committee Services
2. Mr. Leonard Machira - Clerk Assistant I
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Ahmad Adan Guliye - Clerk Assistant III
5. Mr. Joseph Tiyan - Research Officer III
6. Ms. Peris Kaburi - Serjeant At Arms
7. Mr. John Mungai - Audio Officer

8. Ms. Lydia Mwangi - Secretary
9. Mr. Stephen Omunzi - Office Attendant

MIN. DCL/052/2018: PRELIMINARIES

The meeting was called to order at thirty minutes past nine o'clock and prayers were said.

MIN. DCL/052/2018: CONSIDERATION OF THE PHYSICAL PLANNING BILL, 2017

The Committee deliberated on the Bill and the memoranda received from the public as follows:
Long title of the Bill

The Committee agreed to the long title and noted that:

- a) several stakeholders save from the Ministry had proposed that the long title be amended to include reference to Article 66 of the Constitution which provides that the State may regulate the use of any land in the interest of land use planning.
- b) The Committee observed that the long title of the Bill was exhaustive as it sought to implement not only the provisions of Article 66 of the Constitution but also the provisions of paragraph 21 of Part A and paragraph 8 of Part B of the Fourth Schedule to the Constitution among others and therefore quoting only the provisions of Article 66 of the Constitution would be limiting.

Short title

The Committee agreed to the short title and noted that:

- a. Various stakeholders submitted that there was need to rename the Bill to Land Use Planning Bill so as to reference the wording used in Article 66 of the Constitution which provides that the State may regulate the use of any land in the interest of land use planning.
- b. The Committee observed that the short title namely the "Physical Planning Act" was appropriate as the contents of the Bill indeed made provisions for land use planning hence no need to rename the Bill.

Clauses 2 to 3

The Committee proposed amendments to clauses 2 to 3 and noted that:

- a) Various stakeholders had proposed that the amendment of clause 2 on interpretation to include the definitions of other terms not included in the Bill, including stakeholders, development, public and national association of residents.

- b) The Committee noted that clause 2 of the Bill was exhaustive save for a need to include the definition of the term electronic media which was being proposed to be included in other clauses of the Bill.
- c) The stakeholders submitted that there was need to amend the clause to delete reference to physical planning and further broaden the objects of the Bill
- d) The Committee observed that the objects of the Bill were broad enough and covered all aspects of land use planning. The Committee further observed that in light of its decision to retain the long and short title as proposed in the Bill, the Committee could not therefore delete reference to physical planning as suggested by some of the stakeholders.

Clause 4

The Committee agreed to clause 4 and noted that:

- a) The stakeholders submitted that there was need to amend the clause to delete reference to physical planning and further include the values and principles of the National Land Policy.
- b) The Committee observed that clause 4(b) of the Bill provides that every person engaged in physical planning is also bound by the principles of land policy, as such the proposed amendment by the stakeholders had already been captured in clause 4. The Committee further observed that in light of retaining the long and short title as proposed in the Bill, the Committee could not therefore delete reference to physical planning as suggested by some of the stakeholders.

Clauses 5 to 6

The Committee proposed amendments to clauses 5 to 6 and noted that:

- a) The stakeholders submitted that the composition of the National Physical Planning Consultative Forum was too bloated as it had a total of sixty-three members. The Institute of Social Accountability recommended that there was need to have broad representation to include representatives of registered civil society, informal trade association and engineers among others.
- b) The Committee noted that the forum was indeed not a planning authority but a forum for consultation on the national physical development plan and as such, the membership had to be broad to include among others county executive committee members of the forty-seven counties. The Committee however noted that there was need to amend the clause to specify with clarity on who the representative of the Council of Governors to the Forum is, in this case the Committee recommended the amendment of paragraph (c) to read “the chairperson of the relevant committee of the Council of Governors

- c) The stakeholders submitted that in light of the proposed amendments to clause 5 there was need to delete clause 6.
- d) The Committee noted that that clause 6 of the Bill enumerated the functions of the Consultative Forum and as such in light of retaining the Forum, there was need to outline the functions of the Forum.

Clause 7

The Committee agreed to clause 7 and noted that it had not received any proposed amendments to the clause.

Clause 8

The Committee proposed that clause 8 be amended and noted that the stakeholders proposed that there was need to align the functions of the National Land Commission with Article 67 of the Constitution.

i.

Clause 9

The Committee agreed to clause 9 and noted that:

- a) The stakeholders had submitted that there was need to delete paragraph (c) as the role of approving the national physical development plan should be conferred on Parliament and further that paragraph (d) which gives the Cabinet Secretary the monitoring and oversight role also conflicts with Article 67 of the Constitution as it is the role of the NLC to monitor and oversee land use planning.
- b) The Committee observed that it is Parliament which should approve the national physical development plan noting the importance of the plan in terms of acting as the base for the preparation of all other plans including inter-county and county physical planning development plans. On the proposed amendment to paragraph (d), the Committee was of the view that there exists no conflict with Article 67 of the Constitution as the Cabinet Secretary is responsible for monitoring and overseeing the technical arm at the national level and not land use planning as provided for in the Constitution.

Clause 10 to 13

The Committee proposed amendments to causes 10 to 13 and noted that:

- a) The stakeholders submitted that there is need to among other things delete clause 10 of the Bill as the functions assigned to the National Director of

Physical Planning are similar to the ones of the Cabinet Secretary and further delete reference to physical planning.

- b) The Committee observed that there was no conflict in terms of the roles of the Cabinet Secretary and the National Director of Physical Planning as the Bill makes it clear that the National Director shall serve to advise the Cabinet Secretary and shall also be responsible to the Cabinet Secretary.
- c) Some stakeholders submitted that submitted that there was need to amend paragraph (b) of the clause to provide for a bachelor's degree and further remove the words "related discipline".
- d) The Committee observed that there was need to delete reference to post-graduate and instead substitute with bachelor's degree as is the case in all the qualification requirements of most professions but retain the words related discipline noting until the year 2006, there was no degree being offered in most universities in urban and regional planning. The Committee further observed that there was need to put a term limit for the National Director of three years renewable once.
- e) The stakeholders submitted that there was need to delete the functions of the National Director on the basis that they are in conflict with the roles of the Cabinet Secretary and the Consultative Forum.
- f) The Committee observed that there was no conflict in terms of the roles of the Cabinet Secretary, the Consultative Forum and the National Director of Physical Planning as the Bill makes it clear that the National Director shall serve to advise the Cabinet Secretary and shall also be responsible to the Cabinet Secretary.
- g) Various institutions had submitted that there was need to amend the clause to among other things delete paragraph (b) as approval of county plans is the mandate of the county assemblies, establish the office of a county chief officer and delete reference to the term physical planning. The Ministry also submitted that there was need to amend paragraph (c) due to avoid conflict with Article 67 of the Constitution which provides that the role of NLC is monitoring and oversight of land use planning in the country.
- h) The Committee agreed to it that there was need to amend clause 13 to specify that the role of approval of plans lies with the county assemblies and further reword paragraph (c) to avoid the potential conflicts with Article 67 of the Constitution. The Committee also observed that there was no need to outline the functions of the county chief officer in the Bill noting such matters could be dealt with administratively.

Clause 14

The Committee agreed to clause 14

Clause 15 to 16

The Committee proposed amendments to causes 15 to 16 and noted that

- a) Some institutions had submitted that there was need to amend the clause to specify the qualifications of the County Director of Physical Planning.
- b) The Committee observed that there was need to amend clause 15 to specify the qualifications of the County Director of Physical Planning.
- a) Various institutions had submitted that there was need to amend the clause to among other things redefine the functions of the County Director of Physical Planning and also provide for an indemnity clause for public officers.
- b) The Committee observed that the functions of the County Director of Physical Planning as proposed by the Architectural Association of Kenya were already provided for in the Bill and further observed that the Bill had also an indemnity clause as provided for in clause 83 of the Bill.

Clauses 17

The Committee agreed to clause 17

Clauses 18, 19, 20, 21, 22, 23 & 24

The Committee proposed amendments to clauses 18, 19, 20, 21, 22, 23 & 24 and noted that:

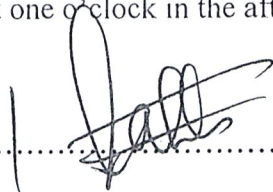
The Committee received memoranda to clauses 17, 18, 19, 20, 21, 22, 23 and 24 from various institutions relating to the need to amend the clauses to refer to land use planning, define who stakeholders are as used in clause 19(b) and require the Cabinet Secretary to provide evidence of having conducted public participation in the preparation of the national physical planning development plan among others.

i.

MIN. DCL/053/2018: Adjournment

The meeting was adjourned at one o'clock in the afternoon.

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date..... 15/03/2018

MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON TUESDAY 27TH FEBRUARY 2018, AT 2ND FLOOR, CONTINENTAL
HOUSE AT 09.30 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. George Aladwa, M.P
10. Hon. George Risa Sunkuyia, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Ali Mbogo, M.P
3. Hon. Babu Owino, M.P
4. Hon. Josphat Gichunge Kabeabea, M.P
5. Hon. Owen Yaa Baya, M.P
6. Hon. Samuel Kinuthia Gachobe, M.P
7. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Adan Guliye - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Ms. Brigita Mati - Legal Counsel II
5. Ms. Peris Kaburi - Serjeant At Arms
6. Mr. John Mungai - Audio Officer

MINISTRY OF LANDS AND PHYSICAL PLANNING

- | | | |
|------------------------------|---|-------------------------------------------------|
| 1. Hon Gideon Mungaro | - | Chief Administrative Secretary |
| 2. Dr. Nicholas Muraguri | - | Principal Secretary |
| 3. Ms. Terry Gathagu | - | Chief State Counsel |
| 4. Mr. Paul Mwangi | - | Ag. Director, Lands Adjudication and Settlement |
| 5. Mr. Owino Jacob Catwright | - | Senior Land Registrar |
| 6. Ms. Rose Mugita | - | Senior Deputy Director, Physical Planning |
| 7. Mr. Arhtur Mbatia | - | Senior Physical Planner |

MIN. DCL/049/2018: PRELIMINARIES

The meeting was called at twelve minutes past ten o'clock and prayers were said. Thereafter, introductions were made.

MIN. DCL/050/2018: PRESENTATION BY THE PRINCIPAL SECRETARY ON THE PHYSICAL PLANNING BILL, 2017

The Principal Secretary assisted by the Director of Physical Planning to presented the comments of the Ministry on the Physical Planning Bill, 2017 as follows;

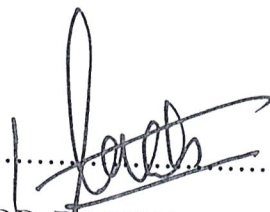
- i. The promulgation of the new constitution has called for recasting of the Physical Planning Act, CAP 286 to appropriately respond to the current setup and demands;
- ii. The new legislation once enacted, would provide more responsive and innovative planning approaches to address the current and emerging developmental issues;
- iii. The relevant stakeholders were involved during the formulation of the Bill;
- iv. The title of the Bill "The Physical Planning Bill" doesn't contravene the constitution as alleged by some stakeholders. Further the planning legislation of majority of countries in the Commonwealth tended to use derivatives of Physical Planning which included Town and Country Planning, Planning and Development and Urban & Rural Planning, Only Tanzania had adopted the term land use planning. The Constitution, particularly Article 68, doesn't prescribe a title for a bill on Physical OR Land use planning as alleged by various stakeholders;

- v. The constitutionality of the Bill was determined and confirmed by all the relevant agencies such as the State Law Office, Kenya Law Reform and Commission on the Implementation of the Constitution hence the Bill meets the constitutional threshold required;
- vi. The Ministry recommended that the term “regional planning” be used in the place of “county planning” sine regional planning entails planning for a homogeneous area transcending more than one county and includes planning for metropolitan areas, drainage basins, national transport corridors, conservation areas and wildlife migratory corridors;
- vii. The physical planning law would guide the preparation of physical development plans at the two levels of physical planning without creating two parallel regimes of physical planning;
- viii. The Bill sought to establish and strengthen the counties for effective execution of their planning functions by establishment of the office of the County Director of Physical Planning; and
- ix. The Bill was progressive, responsive to the reform agenda and met the constitutional threshold of public participation respected sound planning theory and was consistent with global best practices.

MIN. DCL/051/2018: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at five minutes past twelve o'clock.

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date.....

15/03/2018

MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 20TH FEBRUARY 2018, AT 2ND FLOOR, PROTECTION HOUSE AT 09.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Babu Owino, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. George Risa Sunkuyia, M.P
10. Hon. Jane Wanjuki Njiru, M.P
11. Hon. Josphat Gichunge Kabeabea, M.P
12. Hon. Owen Yaa Baya, M.P
13. Hon. Samuel Kinuthia Gachobe, M.P
14. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Mishi Mboko, M.P
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. George Aladwa, M.P
5. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

COUNCIL OF GOVERNORS – LANDS, PLANNING AND URBAN DEVELOPMENT COMMITTEE

1. H.E Ferdinand Waititu, - Governor, Kiambu County
2. H.E Stephen Sang, - Governor, Nandi County
3. Mr. Bernabas Ngeno - County Executive Committee Member,
Land Housing and Physical Planning –
Kericho County
4. Mr. Mohamed Shalle - County Executive Committee Member –

Lands, Garissa County

5. Mr. Jeremiah Lenya - County Executive Committee Member
Member – Lands, Meru County
6. Mr. James Maina - Member – Lands, Meru County Member –
Lands and Physical Planning, Kiambu
County
7. Mr. Nerry Achar - County Member – Physical Planning,
Kisumu County
8. Eng. Lucy Kariuki - Kisumu County Member – Lands, Housing
and Physical Planning, Nakuru County
9. Ms. Eva Sawe - Legal Officer – Council of Governors
10. Mr. Gibson Mburu - Chief of Staff, Kiambu County
11. Mr. Ronald Odanga - Council of Governors – Communications
Department

12. Ms. Wambui Githae - Communications Director – Kiambu County
13. Mr. Daniel Njenga - Information Officer – Kimabu acaounty
14. Mr. Nichodemus Mbwika - Council of Governors – Lands and Physical
Planning Department

THE TOWN AND COUNTY PLANNERS AND ASSOCIATION OF KENYA

1. Mr. Mairura Omwenga, - Chairperson
2. Mr. David Gatimu - Vice Chairperson

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Adan Guliye - Clerk Assistant III
2. Ms. Lucy Makara - Chief Fiscal Analyst
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Joseph Tiyan - Research Officer III
5. Ms. Winnie Kizziah - Media Relations Officer III
6. Ms. Peris Kaburi - Serjeant At Arms
7. Mr. John Mungai - Audio Officer

MIN. DCL/040/2018: PRELIMINARIES

The meeting was called to order at twelve minutes past nine o'clock and prayers were said.

MIN. DCL/041/2018: PRESENTATION BY THE COUNCIL OF GOVERNORS ON THE PHYSICAL PLANNING BILL, 2017

The Council of Governors submitted their memorandum on proposed amendments and made comments on the Physical Planning Bill, 2017 as follows;

Constitutional threshold : The Council of Governors argued that the Bill contravened provisions of the Constitution of Kenya 2010 including devolution as provided for in article 6 and 10. The process of preparing the Bill also failed to meet the requirements of the constitution under Article 232 (1) (d) (f). Further the process of coming up with the Bill did not specifically involve the County Governments and neither was information of the process of coming up with the Bill made public for the County Governments to access.

The Council of Governors also argued that an attempt by the Bill to amend Section 110 (3) of the County Government Act 2012 undermined devolution and flouted Article 174 (c) and 185 (4) of the Constitution which gives powers to counties to approve plans and policies.

Consistency with the existing legislation: The Council also contended that the Bill conflicted with the County Governments Act 2012 and the Urban Areas and Cities Act 2011 (amended in 2015) by introducing other plan typologies that added a lot of confusion to the county mandate to plan and approve the plans. An introduction of the County Physical Development Plan and the Local Physical Development plans only serves to create conflict and confusion with the County Spatial Plans and the integrated development plans provided for in the County Governments Act 2012 and the Urban Areas and Cities Act 2011 (amended in 2015) respectively.

Committee observation and resolution

- i. The Committee and Council of Governors agreed that the Bill should not be withdrawn but wide consultations be made in respect of the contentious clauses with a view of coming up with a Bill that conforms to the later and the spirit of the Constitution; and
- ii. The Committee resolved to consider and harmonise the proposed amendments by various stakeholders and revert to the Council of Governors and inform them of the Committee amendments.

MIN. DCL/042/2018: BRIEFING BY THE PARLIAMENTARY BUDGET OFFICE ON THE 2018/2019

The Chief Fiscal Analyst, Parliamentary Budget Office briefed the Committee on the 2018/2019 Budget Policy Statement of the Ministry of Land and Physical Planning and the National Land Commission as follows;

- i. The allocation of resources in the land sub-sector would be increased marginally from the 2017/18 allocation, in the Ministry of Land and Physical Planning the overall increase

- would be 1% from the 2017/18 financial year, while for National Land Commission stood at 0.7%;
- ii. In the Budget Policy Statement of the 2018/2019, the following policies were highlighted in respect of the Ministry of Lands and Physical Planning and the National Lands Commission;
 - a. Establishment of a land bank to set aside land for commercial use such as industrialization and construction of 500,000 affordable and decent houses.
 - b. Fast track finalization of the Land Value Index Bill to make sure that Kenyans are informed of the indicative prices of land in different parts of the country to control speculation
 - c. Provide alternative forms of compensation such as equivalent value of land or government bonds instead of monetary compensation
 - d. Government will fast track the approval of regulations for alternative dispute resolution mechanism.
 - iii. The policies that would be implemented by the ministry would work as enablers to the big four plan, particularly the land bank that would set aside land for commercial purposes for industrialization and construction of houses. Similarly alternative dispute resolutions would hasten the dispute resolutions and use of land for agriculture and other purposes;
 - iv. The Ministry of Lands and physical planning and the National Land Commission had been spending over 80% of the total allocated funds in the last four financial years. Expenditure for both recurrent and development resources had been high except in 2014/15 financial year when the National Land Commission spent 33% of the allocated development funds. Similar expenditure levels were expected in 2018/19 and the medium term when implementing the policies set;
 - v. Resources allocated to the Ministry of Lands and Physical Physical would mainly be used for development where allocation for development to recurrent was at the ration of 40 to 60 while, in the National lands commission most of the respurces would be used for recurrent expenditure at a ratio of 80 to 20 for recurrent and development respectively.; and
 - vi. There are both recurrent and development pending bills incurred in both the Ministry of Land and Physical Planning and National Land Commission. The pending bills had affected the implementation of development budget.

Committee observations

The Committee made the following observations in respect of the brief on the 2018/2019 Budget Policy Statement of the Ministry of Lands and Physical Planning and the National Land Commission;

- Prioritization of programs/projects was necessary as resources were always scares.
- Ongoing projects that are at advanced stages should be completed before new ones are started

MIN. DCL/043/2018: PRESENTATION BY THE TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA ON THE PHYSICAL PLANNING BILL, 2017

The Chairperson of Town and County Planners Association of Kenya accompanied by Vice Chairperson presented their proposed amendments made comments on the Physical Planning Bill, 2017 as follows;

The name and title: The Association argued that the title and name of the Bill was not contemplated and provided for in Constitution Article 66 and the Fifth Schedule on regulation of land use and property. The Association proposed that where “Physical planning” appeared in the Bill the same be replaced with “land use planning”.

Inconsistent with the Constitution: The Association further argued that clause 87 of the Bill contravened and was inconsistent with the Constitution Article 185(4) the clause also sought to amend sections 110(3) and 110(4) of the County Governments Act without disclosing the same in the Objects and Memoranda of the Bill -Section 87 of the Bill is in conflict with the Constitution Article 185 (4). Further the key stakeholders/county assemblies had not been consulted at all on the matter.

Bloated National Institutions and Offices: The Association also stated that the Bill created many bloated-member size institutions and offices at national level with duplicated and competing functions and contravened the Inter-Governmental Relations Act. Further Land use planning and county planning were functions fully devolved to the county governments and therefore there should be only be one or two national institutions to formulate policy and general guidelines, coordinate and oversee planning by the counties- Constitution 4th Schedule, part 1 paragraph 8.

Addressing all “land elements”: The association also argued that the Bill failed to address all “land elements” as defined in Article 260 of the Constitution. Therefore the Bill failed to address vast regions of the country and key economic sectors – waters, marine resources, forests, parks and wildlife, biodiversity, rocks, minerals, petroleum oil etc.

Omission of rural area planning and regulation: The Bill failed to include rural, agriculture, livestock, wildlife parks and reserves, mining land use planning and development control. This implied that about 90% of the country area and 75% of Kenya population remains unplanned and uncontrolled. The omission of rural area planning and regulation contravenes Articles 39, 40, 42, 43, 60, 68 and 69 of the Constitution.

Property regulation: The Bill failed to cover Property regulation as required in the Constitution Article 66, 260 and the Fifth Schedule on regulation of Land Use and Property.

Limited scope The Association stated that the scope of Bill was limited, internally inconsistent, contradictory, mixed-up and had too many errors of flow and content and cannot be implemented.

The Association recommended that the Bill be withdrawn from Parliament/National Assembly and forwarded to the Attorney General and the Law Reform Commission for review and with fully participation of stakeholders. The Association however proposed specific amendment to the Bill.

Committee Observation

The Committee noted that the proposed amendments submitted by the Town and County Planners Association of Kenya mainly border on the inconsistencies of the Bill with the Constitution and assured the Association that the Committee would propose amendments to align the Bill with the Constitution.

MIN. DCL/044/2018: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at twenty two minutes to two o'clock.

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date.....

15/03/2018

MINUTES OF THE 9TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON THURSDAY 15TH FEBRUARY 2018, AT 2ND FLOOR,
CONTINENTAL HOUSE AT 09.30 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Owen Yaa Baya, M.P
11. Hon. Samuel Kinuthia Gachobe, M.P
12. Hon. Simon Nganga Kingara, M.P
13. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Joshua Kutuny, M.P
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Babu Owino, M.P
4. Hon. Caleb Kositany, M.P
5. Hon. George Aladwa, M.P
6. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

THE INSTITUTE FOR SOCIAL ACCOUNTABILITY

1. Ms. Wanjiru Gikonyo, - The Institute for Social Accountability
2. Ms. Christine Akinyi, - The Institute for Social Accountability
3. Mr. Thomas Mhuri - The Institute for Social Accountability
4. Mr. Constant Cap - Kilimani Project Fondation
5. Hon. Eng. Geche Karanja Association - The Kenya Alliance of Residents

THE KENYA INSTITUTE OF PLANNERS

- | | | |
|------------------------------|---|--------------------------------------------|
| 1. Dr. Lawrence Esho, | - | Chairperson |
| 2. Mr. Kim Oduor Okoth | - | Chief Executive Officer |
| 3. Mr. Dennis Kimathi | - | Chairperson, Young Planners of Kenya |
| 4. Mr. Modix Okeyo | - | Secretary General, Young Planners of Kenya |
| 5. Mr. Robert Koech | - | Member |
| 6. Mr. Patrick Analo Akivaga | - | Member |
| 7. Mr. Arthur Mbatia | - | Member |
| 8. Ms. Joyce Kariuki | - | Member |
| 9. Mr. John Barreh | - | Member |
| 10. Mr. Joakim Nyarangi | - | Member |
| 11. Mr. Evans Kipruto | - | Member |
| 12. Ms. Judy Wambui | - | Member |

KENYA NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|--------------------------|---|-----------------------------|
| 1. Mr. Ahmad Adan Guliye | - | Clerk Assistant III |
| 2. Ms. Jemimah Waigwa | - | Legal Counsel I |
| 3. Mr. Joseph Tiyan | - | Research Officer III |
| 4. Ms. Winnie Kizziah | - | Media Relations Officer III |
| 5. Ms. Peris Kaburi | - | Serjeant At Arms |
| 6. Mr. John Mungai | - | Audio Recording Officer |

MIN. DCL/034/2018: PRELIMINARIES

The meeting was called to order at twenty two minutes to ten o'clock and prayers were said.

MIN. DCL/034/2018: COMMUNICATION FROM THE CHAIR

The Chairperson communicated the following to the Members:

- a. The Budget Policy Statement was tabled in the House on Wednesday 14th February 2018.
- b. The Parliamentary Budget Office would brief the Committee on Tuesday 20th February 2018 at 9.00 a.m.
- c. The Committee would meet with the Council of Governors on the Physical Planning Bill, 2017 on Tuesday 20th February 2018 at 10.00 a.m and the Town and County Planners Association of Kenya at 11.30 a.m the same day.
- d. The Committee would also hold a meeting with the Principal Secretary Ministry of Lands and Physical Planning and the National Lands Commission on the Budget Policy Statement on Thursday 22nd Feb 2018 at 10.00 a.m.

- e. The Committee will meet with the Ministry of Lands and Physical Planning on Tuesday 27th February 2018 to conclude the consideration of the Physical Planning Bill, 2017.
- f. The Committee would hold a retreat from 1st to 4th March 2018 to consider the proposed amendments to the Physical Planning Bill, 2017 and compile a report on the said Bill.

MIN. DCL/035/2018: CONFIRMATION OF MINUTES

- i. The minutes of the first sitting of the Committee that was held on 29th January 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Jane Kihara, M.P and Hon. Ali Mbogo, M.P respectively;
- ii. The minutes of the second sitting of the Committee that was held on 29th January 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Ali Mbogo, M.P and Hon. Simon Kingara, M.P respectively;
- iii. The minutes of the third sitting of the Committee that was held on 30th January 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Ali Mbogo, M.P and Hon. Catherine Waruguru, M.P respectively;
- iv. The minutes of the fourth sitting of the Committee that was held on 30th January 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Khatib Mwashetani, M.P and Hon. Jane Wanjuki, M.P respectively;
- v. The minutes of the fifth sitting of the Committee that was held on 1st February 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Owen Baya, M.P and Hon. Jane Wanjuki, M.P respectively;

MIN. DCL/036/2018: MATTERS ARISING

- i. The secretariat was asked to circulate a soft copy of the presentations that were made during the retreat to the respective e-mails of the members.
- ii. The Committee resolved to hold a joint meeting with the Ministry of Lands and Physical Planning and the National Lands Commission to address the persistent differences over mandate between the Commission and the Ministry.

MIN. DCL/037/2018: PRESENTATION BY THE INSTITUTE FOR SOCIAL ACCOUNTABILTY ON THE PHYSICAL PLANNING BILL, 2017

The Committee brought to the attention of the witness Ms. Wanjiru Gikonyo of a petition signed by herself on behalf of ten (10) citizens refraining the Committee considering the Bill, due to lack of adequate consultations and public participation.

The Committee inquired from the witness the circumstances under the Institute wished to appear before the Committee in response to a memorandum that requested the public to submit their

views in respect of The Physical Planning Bill, 2017 while at the same time petitioning Parliament not to consider the Bill.

Ms. Wanjiru Gikonyo undertook on behalf of the institute to withdraw the petition and outlined the following shortcomings of the Bill in their submissions;

- a. The Bill does not provide for an integrated approach in the preparation and implementation of Local Physical Development Plans.
- b. The Bill does not integrate physical planning⁴ with land use management⁵ and therefore fails to meet the threshold of reform envisaged under the Constitution 2010 and the National Land Policy 2009.
- c. The Bill does not ensure effective public participation in the exercise of development control. The Bill does not
- d. The Bill does not provide for civic education for the empowerment and enlightenment of citizens and continual and systemic engagement of citizens and the county government through sustained civic education of citizens prior to the planning process contrary to the Constitution 2010.
- e. The Bill offends the principles of distinctness by assigning the Cabinet Secretary an implementation role in several instances and thereby re-centralising planning contrary to the Constitution.

Committee observation

The Committee observed that the memorandum submitted by the Institute did not contain specific proposed amendments and requested the organization to submit an additional memorandum detailing the specific proposed amendments if any.

MIN. DCL/038/2018: PRESENTATION BY THE KENYA INSTITUTE OF PLANNERS

The, Chairperson Kenya Institute of Planners accompanied by the Young Planners of Kenya presented the following concerns with respect to The Physical Planning Bill, 2017;

- i. The title of the Bill should invoke constitutional references to planning and capture the full extent of the planning function.
- ii. The short title of the Bill should read "*Planning and Development Act*".
- iii. The preliminaries should include the scope and the jurisdiction of the ACT.
- iv. The mandates and responsibilities following need to be clearly defined and outlined to prevent overlaps and conflicts
 - a. The Cabinet Secretary
 - b. The County Executive Member
 - c. The City, Municipal Manager and Town Administrator
 - d. The Director-General of Planning

- e. The County Director of Planning
 - f. Officers with Delegated Functions and Powers
 - g. Parliament
 - h. County Assemblies
 - i. The National Land Commission
 - j. The Planners Institute
- v. The Institute proposed the establishment of Planning Consultative Forums at the following levels;
- a. Ward and Village Planning Consultative Forums, to represent the lowest levels of engagement of citizens for purposes of urban and rural planning, respectively;
 - b. City, Municipal or Town Planning Consultative Forums, for engagement on city-wide or town-wide planning matters;
 - c. The Sub-county Planning Consultative Forum, for engagement on planning matters affecting a Sub-county;
 - d. The County Planning Consultative Forum, for engagement on County-wide planning matters;
 - e. The Inter-county Planning Consultative Forum, for two or more County Governments collaborating on a planning matter, including on metropolitan areas;
 - f. The Special Areas Planning Consultative Forum, for engagement regarding Special Planning Areas as provided for in Section 37 of this Act
 - g. The National Planning Consultative Forum, for engagement regarding planning matters that impact upon the whole country.
- vi. The Land Use and Development Management Framework section of the Bill should be broadened to include the following;
- a. The Planning Control Regime
 - b. The Establishment of the Planning Permission Determination Panel
 - c. Application and Determination of Planning Permission
 - d. The Establishment of the County Planning Inspectorate
 - e. Enforcement of Planning Control Decisions

MIN. DCL/039/2018: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at thirty four minutes past twelve o'clock. The next meeting will be held on Tuesday 22nd February 2018 at 9:00am

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date.....

15/03/18

**MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON THURSDAY 8TH FEBRUARY 2018, AT 2ND FLOOR,
CONTINENTAL HOUSE AT 10.00 A.M**

PRESENT

1. Hon. Catherine Waruguru, M.P - **Session Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Josphat Gichunge Kabeabea, M.P
4. Hon. Owen Yaa Baya, M.P
5. Hon. Samuel Kinuthia Gachobe, M.P
6. Hon. Simon Nganga Kingara, M.P
7. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Ali Mbogo, M.P
8. Hon. Babu Owino, M.P
9. Hon. Caleb Kositany, M.P
10. Hon. George Aladwa, M.P
11. Hon. George Risa Sunkuyia, M.P
12. Hon. Jane WanjukiNjiru, M.P

IN ATTENDANCE

ARCHITECTURAL ASSOCIATION OF KENYA: TOWN PLANNERS CHAPTER

1. Ms. Juliet Rita, - **Chairperson,**
2. Ms. Maureen Waruguru Gikonyo, - **Research and Advocacy Manager**

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - **Clerk Assistant I**
2. Mr. Ahmad Adan Guliye - **Clerk Assistant III**

- | | |
|-----------------------|-------------------------------|
| 3. Ms. Jemimah Waigwa | - Legal Counsel I |
| 4. Mr. Joseph Tiyan | - Research Officer III |
| 5. Ms. Winnie Kizziah | - Media Relations Officer III |
| 6. Ms. Peris Kaburi | - Serjeant At Arms |
| 7. Mr. John Mungai | - Audio Recording Officer |

MIN. DCL/31/2018: PRELIMINARIES

The meeting was called to order at ninety minutes past nine o'clock and a prayer was said

In the absence of the Chairperson and Vice Chairperson, the Committee elected Hon. Catherine Waruguru, M.P to chair the session having been proposed and seconded by Hon. Joshua Kutuny, M.P and Hon. Owen Yaa Baya, M.P respectively. Thereafter, introductions were made.

MIN. DCL/32/2018: SUBMISSIONS BY THE CHAIRPERSON, ARCHITECTURAL ASSOCIATION OF KENYA - TOWN PLANNERS CHAPTER ON THE PHYSICAL PLANNING BILL, 2017

The Chairperson, Town Planners Chapter of the Architectural Association of Kenya proposed the following amendments to the Bill:

Short Title

That the short title is amended to *read this Act may be cited as Planning and Land use Regulation Act, 2017*

Justification

It does not reflect the full scope of the constitution in relation to planning and Land use regulation

Clause 6

That clause 6 is deleted and moved to Part VI- Liaison as the tribunals already play this role.

Justification

The forum offers a framework to engage on the national level. It also offers comments and inputs but has no legal mandate to make planning decisions and has no legal mandate to coordinate and integrate physical development planning and sector planning, no mandate to mobilize resources.

Clause 8

That clause 8 is amended to align it with the provision of Article 62 of the Constitution.

Justification

To align the Bill to the requirements of article 67 of the constitution and the National Land Commission Act

Clause 9

That clause 9 is amended to read the Cabinet Secretary shall:

- a) Formulating a national planning policy;
- b) Formulating a national land use policy
- c) Formulation of national guidelines, standards and regulations on planning
- d) Approval of national development plans;
- e) Coordinating planning by the counties in line with the fourth schedule (Article 185, 186, and 187) of the constitution
- f) In the formulation of policies, plans, guidelines, and standards effective public participation is mandatory.
- g) Recommends and submits national development plans, policies, guidelines, standards and regulations to the cabinet for consideration and subsequent submission to the parliament for approval
- h) Cause gazettelement of the approved national development plans and policies

Justification

The current functions are inadequate and duplicate the roles of the Director of Physical Planning (Section 12 (b), (d)) of the PPB 2015.

Cause 49

That cause 49 is amended by adding:
(g) to promote public safety and health

Justification

This is in line with provisions of the constitution.

Cause 50

That clause 50 is amended to read subject to the provisions of this Act the County government shall have the power within their areas of jurisdiction to-

- a) prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- b) control and approve public and private land, amalgamation, land readjustment, change of user,
- c) consider and approve all development applications and grant all development permissions;
- d) ensure the proper execution and implementation of approved land use spatial plans;
- e) formulate relevant laws and regulations to regulate zoning in respect of land use and density of development; and

f) Reserve and maintain all the land planned for open spaces, parks, forests and green belts in accordance with the approved land use spatial plans.

Justification

To recognize the role Counties play fully in development control

Clause 51

That clause 51 is amended by Changing *Planning Authority to County Government in all* sub-clauses.

Justification

The County Government is mandated to undertake development control in line with the spirit of devolution.

New- Application

That a new application clause be added to the Bill to provide that the provisions of the Act

1. shall apply to the entire territory of the Republic as delimited in Article 5 of the Constitution of Kenya
2. All land as defined in Article 260 and as classified in Article 61 of the Constitution of Kenya
3. All persons , institutions and governments, are bound by the provisions of this Act
4. Except as provided by this Act, no legislation not repealed by this Act may provide an alternative mechanism, measure, institution or system of planning, the regulation of land use and property rights in a manner inconsistent with provisions of this Act

Justification

The Bill does not specify the jurisdiction within which its powers may be exercised; it needs to leave no doubt as to its applicability.

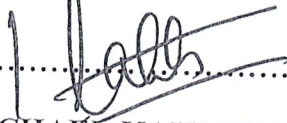
Committee resolution

The Committee resolved that the Association provides more information and specific amendments on the proposal to amend part III of the Bill to provide for more types of plans to be included that would provide for natural resource utilization, environmental management, funds equalization, and fulfillment of the Bills of Rights through a supplementary memorandum on the same.

MIN. DCL/33/2018: ADJOURNMENT

There been no other business to discuss, the meeting was adjourned at nineteen minutes past noon. The next meeting will be held on Thursday 15th February, 2018 at ten o'clock

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date..... 15/03/2018

**MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON WEDNESDAY 7TH FEBRUARY 2018, AT 2ND FLOOR,
CONTINENTAL HOUSE AT 10.00 A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Caleb Kositany, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. Owen Yaa Baya, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Jayne Kihara, M.P
2. Hon. Kimani Ngunjiri, M.P
3. Hon. Ali Mbogo, M.P
4. Hon. Babu Owino, M.P
5. Hon. George Aladwa, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Jane Wanjuki Njiru, M.P
8. Hon. Josphat Gichunge Kabeabea, M.P
9. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

NATIONAL LAND COMMISSION

1. Prof. Muhammad Swazuri - Chairperson
2. Mr. Aziz Chavangi, - Chief Executive Officer
3. Dr. Herbart Musoga - Director
4. Ms. Rose Kutur, - Deputy Director, Land Use
5. Ms. Naomi Kamu - Chief Land Use Planner

NATIONAL ASSEMBLY SECRETARIAT

- | | |
|--------------------------|-------------------------------|
| 1. Mr. Leonard Machira | -Clerk Assistant III |
| 2. Mr. Ahmad Adan Guliye | - Clerk Assistant III |
| 3. Ms. Jemimah Waigwa | - Legal Counsel I |
| 4. Mr. Joseph Tiyan | - Research Officer III |
| 5. Ms. Winnie Kizziah | - Media Relations Officer III |
| 6. Ms. Peris Kaburi | - Serjeant At Arms |
| 7. Mr. John Mungai | - Audio Recording Officer |

MIN. DCL/27/2018: PRELIMINARIES

The meeting was called to order at nineteen minutes past ten o'clock and a prayer was said.

MIN. DCL/28/2018: SUBMISSION BY THE CHAIRPERSON OF THE NATIONAL LAND COMMISSION ON THE PHYSICAL PLANNING BILL, 2017

The Chairperson, National Land Commission highlighted the following shortcomings in the Bill:

- i. The title "Physical Planning" had no reference in the constitution. The constitution provides for "land use" in Articles 60, 66, 67 and 68 and fifth schedule
- ii. The Bill failed to meet the requirements of Article 68(b) of the constitution which required parliament to revise land use laws in accordance with the principles set out in Article 60(1).
- iii. The process of preparing the Bill failed to meet the requirements of Articles 10 and 232(1) (d) & (f) of the constitution that requires state agencies to observe the principles of: *involvement of the people in the process of policy making and transparency and provision to the public of timely, accurate information*. These principles were grossly violated by the secrecy and deliberate dis-information that had attended the process of coming up with the said Bill.
- iv. By amending section 110(3) of the County Governments Act, 2012, the Bill undermines devolution and flouts Articles 174 (c)(f) and 185(3)(4) of the Constitution. This amendment essentially had taken away plan approval powers of the County Assemblies and undermines the principle of separation of powers.

He further proposed the following specific amendments to the Bill;

Clause 5-7

That Clauses 5 to 7 be deleted

Justification

- v. Its functions were akin to oversight, therefore duplicates the functions assigned to the National Land Commission at Article 67 (2) (h) of the Constitution and the National

Land Commission Act section 5 (1)(h) and to Cabinet Secretary at Section 9 of the Bill;

- vi. The membership of the forum was bloated at more than 63 members; and
- vii. The large membership rendered it dysfunctional

Clause 8

That Clause 8 be amended to provide for the functions of the National Land Commission as stated in Article 67(2) (h) of the Constitution.

Justification

The Bill should observe fidelity to the constitution with regard to the wording and use of terminologies introduction of new terminologies as "physical planning" blurs the intention of the constitution.

Clause 9

That clause 9 (d) is deleted.

Justification

Monitoring and oversight is a function given to National Land Commission at Article 67 (2) (h) and section 5 (h) of National Land Commission Act.

Clauses 10 - 12

That clauses 10 to 12 be deleted

Justification

The functions assigned to the National Director are already assigned to the Cabinet Secretary and the National Land Commission. Further the office of the Director can be created administratively in the office of the Cabinet Secretary and therefore not necessary to legislate.

Clause 13

That clause 13 (b) & (c) be deleted

Justification

Clause (b) Conflicts with Article 185 (3) of the constitution and the County Governments Act 2012 Sec. 109 (1) (c), 110 (3) 111 (6) 112 (2) (a) that stipules that approval of county plans is the responsibility of County assemblies.

Clause 16

That clause 16 (c) be deleted

Justification

Same as clause 13 (b) & (c)

Clauses 17 - 46

That the phrase Physical Development Plans in clauses 17 – 46 be deleted and replace with land use plans.

Justification

The planning framework established through the plans disregards the integrated framework established under the County Governments Act Section 102-115 and the integrated development planning framework provided under Section 36-41 of the Urban Areas and Cities Act 2011. This is likely to create confusion.

Clauses 21-22

That clauses 21 and 22 are amended to provide for the Cabinet Secretary as the preparatory authority.

Justification

The preparatory authority was unclear. It changed from Cabinet Secretary at Section 21 (1), the Cabinet at Section 21 (2), National Physical Planning Consultative Forum at Section 22 (1)

Clauses 22

That clause 22 is amended to provide that approval of National Physical Development Plan by Parliament.

Justification

The provision is not in line with approval procedures for public policies binding the entire nation. The Cabinet endorses the plan and its approval should rest with the Parliament in furtherance of separation of powers.

Clauses 25

That 25 (3) and (5) is amended to provide for Regional Plans to be prepared under the framework provided for in Inter-governmental Relations Act Section 23 and Article 189 (2) of the constitution. The plans should be called inter county land use plans.

Justification

Pre determining the membership and assigning National Director as chair goes against and undermines the spirit of devolution in Article 189 (2)

Clause 29

That clause 29 is amended to provide for regional plans to be approved by the respective County Assemblies.

Justification

Contravenes the spirit of Devolution and takes away the approval powers of County Assemblies provided for under Article 185 (3) and (4) of the Constitution

Clause 32

That clause 32 (4) is deleted.

Justification

The scope and framework of the county physical development plan varies from the scope and framework of the county spatial plan in sec 110 of the County Governments Act 2012.

Clause 33-39

That clauses 33 to 39 be deleted

Justification

The provision is already contained in the County Governments Act 2012, the procedural aspects should be detailed in regulations accompanying County Governments Act 2012.

Clauses 41 to 45

That clauses 41 to 45 be deleted

Justification

It contradicts section 38 – 41 of Urban Areas and Cities Act 2011

Clauses 67 to 81

That clauses 67 to 81 be deleted

Justification

Clause 68(4) opens the chairmanship of the committee to non-planners. The body that regulates the planning profession should nominate the chair. Committee as proposed in the Bill is bloated and not cost effective and inefficient.

Clause 87

That clause 87 is deleted.

Justification

The Bill amends Sec 110(3) of the County Governments Act 2012 essentially taking away the approval powers of the county assemblies thereby flouting Article 174(c),(i)and 185 (4), of the Constitution. It further contradicts the County Governments Act 2012.

First schedule

That the first schedule is deleted

Justification

The schedule is unnecessary since the membership to the forum is predetermined

Second Schedule:

That the second schedule is deleted

Justification

The schedule introduces the Inter-county Physical Development Plans which are not provided for in the body of the Bill.

Third Schedule

That part c of the third schedule is deleted

Justification

The schedule introduces a new type of plan that is not provided for in the body of the Bill.

Interpretation

Planning authority Delete (b) and replace with the County Government

Justification

This contravenes section 104 (1) & (3) of the County Governments Act 2012.

Long title

The long title is amended to read "An Act of Parliament to give effect to Article 66(1) of the Constitution to make provisions for the planning, use, regulation and development of land and for connected purposes".

Justification

Reason for legislation should be drawn from the Constitution. The Long Title is at Variance with the Statement of Objects and Reasons.

Short title

That the short title is amended to read: "Land Use Planning Act, 2017"

Memorandum of objects and reasons

That the memorandum of objects and reasons be amended by deleting the phrase "Physical Planning Bill" 2017 and replacing it with "Land Use Planning Bill" 2017. All other reference to "physical planning" should be replaced with "land use planning".

Justification

The Constitution provides for "Land Use Planning" Article 60(1), 60(2), 66(1), 67(2) (h), 4th Schedule 1/21 and 5th Schedule (chapter 5).

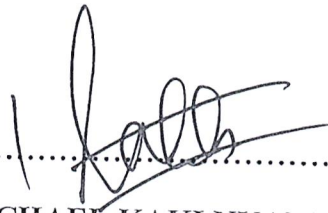
MIN. DCL/29/2108: ANY OTHER BUSINESS

- I. The Committee resolved to undertake a retreat on Friday 2nd March to consider the amendments to the Physical Planning Bill, 2017 and adopt its report.
- II. The Committee also resolved to undertake a filed visit on Saturday 3rd March 2018 in response to the petition by indigenous people of Vipingo Lands Community on irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County.

MIN. DCL/30/2018: ADJOURNMENT

There been no other business to discuss, the meeting was adjourned at sixteen minute past noon. The next meeting will be held on Thursday 8th February 2018 at 10:00am.

Signature



HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date.....

15/03/2018

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11

**MINUTES OF THE 6TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON TUESDAY 6TH FEBRUARY 2018, AT 2ND FLOOR, CONTINENTAL
HOUSE AT 10.00 A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. Caleb Kositany, M.P
5. Hon. Catherine Waruguru, M.P
6. Hon. Owen Yaa Baya, M.P
7. Hon. Samuel Kinuthia Gachobe, M.P
8. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Kimani Ngunjiri, M.P
4. Hon. MishiMboko, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. BabuOwino, M.P
7. Hon. George Aladwa, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane WanjukiNjiru, M.P
10. Hon. JosphatGichungeKabeabea, M.P
11. Hon. Simon NgangaKingara, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Adan Guliye - Clerk Assistant III
2. Ms. Jemimah Waigwa - Legal Counsel I
3. Mr. Joseph Tiyan - Research Officer III
4. Ms. Winnie Kizziah - Media Relations Officer III
5. Ms. Peris Kaburi - Serjeant At Arms
6. Robert Rop - Audio Officer

MIN. DCL/25/2018: PRELIMINARIES

The meeting was called to order at 10.17 a.m. and a prayer was said.

MIN. DCL/26/2018: CONFIRMATION OF MINUTES

The minutes of the 1st sitting of 2017 held on 20th December 2017 was confirmed as true record of the Committee's deliberations having been proposed and seconded by Hon. Caleb Kositany, M.P and Hon. Kinuthia Gachobe, M.P respectively.

MIN. DCL/27/2018: BRIEFING ON THE PHYSICAL PLANNING BILL, 2017

The Legal Counsel to the Committee briefed the members on the Physical Planning Bill, 2017 as follows;

- I. The Bill seeks to make provision for the planning, use, regulation and development of land.
- II. The Bill also seeks to provide for the principles, procedures and standards for preparation and implementation of physical development plans at the national, regional, county, rural and cities levels and further provides for the administration and management of physical planning in Kenya.
- III. Part I of the Bill contains the preliminary provisions including key words as defined in the Bill.
- IV. Part II outlines the physical planning institutions.
- V. Part III of the Bill makes provision for Physical Development Plans.
- VI. Part IV of the Bill deals with Development Control.
- VII. Part V contains provisions on enforcement notices and provides that a planning authority shall serve on the owner or occupier of land with an enforcement notice specifying among other things the development alleged to have been undertaken without permission and the measures that should be taken.
- VIII. Part VI of the Bill establishes the Physical Planning Liaison Committees.
- IX. PART VII contains miscellaneous provisions in particular repeal of PP Act, 1996, transitional provisions and consequential amendments.
- X. The Bill also contains four schedules. The First Schedule prescribes procedure for appointment of members of the National Physical Consultative Development Forum, Second Schedule outlines the contents of national, inter-county and county physical development plans, Third Schedule outlines the contents of local physical development plan and the Fourth Schedule outlines the matters which may be dealt under development control.

MIN. DCL/28/2018: ANY OTHER BUSINESS

The Committee nominated the following members to participate in the Land and Poverty Conference to be held in Washington DC.

- I. Hon. Dr. Rachael Nyamai, M.P, - Chairperson and Leader of the Delegation
- II. Hon. Jayne Kihara, M.P.
- III. Hon. Caleb Kositany, M.P
- IV. Hon. George Aladwa, M.P
- V. Hon. Teddy Mwambire, M.P
- VI. Hon. Catherine Waruguru, M.P

MIN. DCL/26/2018: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 10.50 a.m. The next meeting will be held on Wednesday 7th February 2018 at 10:00 am

Signature


HON. DR. RACHAEL KAKI NYAMAI, M.P.

(Chairperson)

Date..... 15/03/2018

Annex III

SPECIAL ISSUE

Kenya Gazette Supplement No. 143 (National Assembly Bills No. 34)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

NAIROBI, 18th September, 2017

CONTENT

Bill for Introduction into the National Assembly—

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THE PHYSICAL PLANNING BILL, 2017
ARRANGEMENT OF CLAUSES

Clauses

PART I – PRELIMINARY

- 1—Short title.
- 2—Interpretation.
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THE PHYSICAL PLANNING BILL, 2017

A Bill for

AN ACT of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes.

PART I—PRELIMINARY

1. This Act may be cited as the Physical Planning Act, 2017.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation

“advertisement” means any word, letter, device, model, sign, placard, board, notice or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purpose of the advertisement of proprietary article and without prejudice to the foregoing includes any hoarding or similar structure used or adapted for use for the display of advertisement, and references to the display of advertisements shall be construed accordingly:

Provided that any advertisement displayed inside a building shall not be included;

“building” means any structure or erection and any part of any structure or erection of any kind whatsoever whether permanent, temporary or movable, and whether completed or uncompleted;

“building operations” include rebuilding operations, structural alterations or additions to buildings and other similar operations and the making of access roads, railways, waterworks, sewerage and drainage works, electrical and telephone installations and any road works preliminary to, or incidental to, the erection of buildings;

“building or works” include waste materials, refuse and other matters deposited on land and reference to the erection or construction of building or works shall be construed accordingly;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to physical planning;

“commercial use” includes shops, offices, hotels, restaurants, bars, kiosks and similar business enterprises but does not include petroleum filling stations;

No. 6 of 2012

“Commission” means the National Land Commission established under Article 67 of the Constitution;

“density” means the maximum amount of development permitted or the maximum number of persons permitted to reside, as the case may be, on any area of land;

“development” means carrying out any works on land or making any material change in the use of any structures on the land;

“development control” means the process of managing or regulating the carrying out of any works on land or making of any material change in the use of any land or structures and ensuring that operations on land conform to spatial development plans as well as policy guidelines, regulations and standards issued by the planning authority from time to time in order to achieve a purposeful utilization of land in the interest of the general welfare of the public;

No. 6 of 1996.

“dwelling” means a building or any part or portion of a building, used or constructed, adapted or designed to be used for human habitation.

“emerging technologies” include telecommunication installations, information and communications technology parks and aviation services;

Cap. 536.

“existing building” or “existing works” means, respectively, a building or works erected, constructed or carried out before the date this Act becomes applicable to the area in which the building or works are situated, and includes a building or works, as the case may be, commenced before, but completed after such date;

“existing use” means in relation to any building or land the use of that building or land for any purpose of the same character as that for which it was used before the date this Act becomes applicable to the area in which the building or land is situated:

Provided that where an existing use of land is, after such date, extended onto, under or over adjoining land, whether such adjoining land is held under the same title or

not, such extension shall not be an existing use for the purposes of this Act;

“industrial use” includes manufacturing, processing, distilling, brewing, warehousing and storage, workshops and garages, mining and quarrying, power generation and similar industrial activities including petroleum filling stations;

“land use planning” refers to a branch of physical planning encompassing various disciplines which seek to order and regulate land use in an efficient and ethical way;

“local physical planning development plan” means a plan for the area or part thereof of a city, municipal, town or urban council and includes a plan with reference to any trading or marketing centre;

“National Director of Physical Planning” means the National Director appointed under section 10 of this Act;

“physical planning” refers to the active process of organizing the structures and function to ensure orderly and effective sitting or location of land uses, and it encompasses deliberate determination of spatial plans with an aim of achieving the most optimum level of land utilization in a sustainable manner.

“planning authority” includes-

- (a) the Cabinet Secretary; and
- (b) the County Executive Committee Member responsible for matters relating to physical planning;

“private land” has the meaning assigned to it the Land Act, 2012;

“public purposes” means the purposes of –

- (a) transportation including roads, canals, highways, railways, bridges, wharves and airports;
- (b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- (c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;

- (d) public parks, playgrounds, gardens, sports facilities and cemeteries;
- (e) security and defence installations;
- (f) settlement of squatters, the poor and landless, and the internally displaced persons; and
- (g) any other analogous public purpose.

“regional physical development plan” means a plan for the area covering two or more counties or parts thereof;

“registered physical planner” means a person who is holding a certificate as a registered physical planner under section 7 of the Physical Planners Registration Act, 1996; and

“spatial planning” means a plan that outlines the spatial expression to national and county development policies and integrates proposals from various sectors and includes identified priority investments.

3. The objects of this Act are to provide –

Objects of the Act

- (a) the principles, procedures and standards for the preparation and implementation of physical development plans at the national, regional, county, urban, rural and cities level;
- (b) the administration and management of physical planning in Kenya;
- (c) the procedures and standards for development control and the regulation of physical planning and land use;
- (d) a framework for the co-ordination of physical planning by county governments;
- (e) a mechanism for dispute resolution;
- (f) a framework for equitable and sustainable use, planning and management of land; and
- (g) the functions of and the relationship between planning authorities.

4. Every State organ, State officer, public officer and person engaged in physical planning or land use regulation is bound by the Constitution and in particular—

Principles and norms

- (a) the national values and principles set out in Articles 10 and 232 of the Constitution;

- (b) the principles of land policy set out in Article 60 of the Constitution;
- (c) the leadership and integrity principles set out in Articles 73 and 75 of the Constitution; and
- (d) the principles, procedures, and standards of physical planning contemplated in this Act.

PART II – PHYSICAL PLANNING INSTITUTIONS

5. (1) There is established the National Physical Planning Consultative Forum.

National Physical
Planning
Consultative
Forum.

(2) The National Physical Planning Consultative Forum shall comprise of –

- (a) the Cabinet Secretary for the time being responsible for matters related to physical planning, who shall be the chairperson and shall provide the secretariat;
- (b) the National Director of Physical Planning;
- (c) a representative of the Council of Governors;
- (d) the Chairperson of the National Land Commission;
- (e) one County Executive Committee Member from each County being a member responsible for physical planning, environment, or infrastructure;
- (f) the Cabinet Secretary for the time being responsible for matters related to economic planning;
- (g) the Cabinet Secretary for the time being responsible for matters related to the environment;
- (h) the Cabinet Secretary for the time being responsible for matters related to roads and infrastructure;
- (i) the Cabinet secretary for the time being responsible for matters related to social and community development;
- (j) the Cabinet Secretary for the time being responsible for matters related to culture;
- (k) a person nominated by the Kenya Institute of Planners;

- (l) a person nominated by the Institution of Surveyors of Kenya;
- (m) a person nominated by the Architectural Association of Kenya;
- (n) a person nominated by an association representing the private sector in Kenya as shall be determined by the Cabinet Secretary;
- (o) a person nominated by a registered body representing a national association of residents;
- (p) a person nominated by the National Council for Persons with Disability; and
- (q) any person co-opted by the Forum for that person's special skills, interest and knowledge.

(3) The institutions or organizations nominating members under subsection (2), (k), (l), (m) and (n) shall nominate two persons, one each of either gender, from which the Cabinet Secretary shall appoint the members of the Forum.

6. The functions of the National Physical Planning Consultative Forum shall be to—

Functions of the
National Physical
Planning
Consultative
Forum

- (a) provide a forum for consultation on the national physical development plan;
- (b) promote effective coordination and integration of physical development planning and sector planning;
- (c) advise on the mobilization of adequate resources for the preparation and implementation of physical development plans and strategies; and
- (d) advise on strategic physical development projects of national, inter-county, county, or transnational importance.

7. (1) The National Physical Planning Consultative Forum shall meet at least four times in a year.

National Physical
Planning
Consultative
Forum Meetings.

(2) Subject to this Act, the National Physical Planning Consultative Forum may regulate its procedure.

(3) The National Physical Planning Consultative Forum may establish committees for the effective performance of its functions.

8. The National Land Commission shall, in relation to the matters set out in this Act—

Functions of the National Land Commission.

- (a) monitor and oversee physical planning in Kenya;
- (b) prepare status reports on the preparation and implementation of physical development plans in Kenya; and
- (c) develop monitoring framework and formulate oversight parameters relating to physical planning.

9. The Cabinet Secretary shall be responsible for—

Functions of the Cabinet Secretary.

- (a) formulating a national policy on physical planning;
- (b) issuing in the Gazette policy statements, guidelines and circulars on general and specific aspects of physical planning;
- (c) approval of national physical development plans;
- (d) monitoring and overseeing the technical arm at the national level in the performance of their functions; and
- (e) coordinating the national and county levels of planning.

10. (1) There shall be established the office of the National Director of Physical Planning which shall be an office in the public service.

National Director of Physical Planning

(2) The National Director of Physical Planning shall advise and be responsible to the Cabinet Secretary responsible for physical development planning.

11. A person is qualified for appointment as the National Director of Physical Planning if that person—

Qualifications of the National Director of Physical Planning.

- (a) is a citizen of Kenya;
- (b) possesses a postgraduate degree in urban and regional planning or related discipline from a recognized university;
- (c) is registered as a physical planner under the Physical Planners' Registration Act, 1996;
- (d) has at least ten years' post-qualification professional experience in physical planning; and

No. 6 of 1996.

- (e) is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.

12. The National Director of Physical Planning shall be responsible for—

Responsibilities of the National Director of Physical Planning.

- (a) advising the government on strategic physical planning matters that impact on the whole country;
- (b) formulating national physical planning policies, guidelines and standards;
- (c) preparation of national physical development plans;
- (d) coordination of the preparation of regional physical development plans; and
- (e) undertaking capacity building and technical support for county planning authorities.

13. The County Executive Committee member responsible for physical planning shall be responsible for—

Responsibilities of the County Executive Committee Member responsible for Physical Planning

- (a) formulating a county policy on physical planning;
- (b) approving county physical development plans;
- (c) monitoring and overseeing the planning function; and
- (d) promoting the integration of county physical planning functions and sectoral planning levels.

14. (1) There is established the office of the County Director of Physical Planning which shall be an office in the county public service.

County Director of Physical Planning.

(2) The County Director of Physical Planning shall advise and be responsible to the County Executive Committee Member in charge of physical planning.

15. The qualifications for appointment as a County Director of Physical Planning shall be similar to those for the appointment of the National Director of Physical Planning.

Qualifications of the County Director of Physical Planning.

16. The County Director of Physical Planning shall be responsible for—

Responsibilities of the County Director of Physical

- (a) advising the county government on physical planning matters that impact on the whole country;
- (b) formulating county physical planning policies, guidelines and standards;
- (c) preparation of county physical development plans;
- (d) preparation of local physical development plans;
- (e) participating in the preparation of regional physical development plans;
- (f) undertaking research on matters relating to physical development planning at the county level; and
- (g) recommending to the county government the establishment of planning units as may be necessary.

Planning.

PART III – TYPES OF PHYSICAL DEVELOPMENT PLANS

17. (1) The Cabinet Secretary shall initiate, and the National Director of Physical Planning shall finalize, the preparation of a National Physical Development Plan.

The National Physical Development Plan.

(2) The National Physical Development Plan—

- (a) shall cover an implementation period of twenty years; and
- (b) may be reviewed after ten years or as necessary when special needs arise.

18. (1) The National Physical Development Plan shall define strategic policies for the determination of the general direction and trends of physical development and sectoral development in Kenya and provide a framework for the use and development of land.

Purpose and objects of the National Physical Development Plan.

(2) The National Physical Development Plan is the basis for—

- (a) environmental conservation, protection and improvement;
- (b) promoting social and economic development including national competitiveness;

- (c) promoting balanced national development;
- (d) optimal use of land and natural resources;
- (e) formulation of national physical development planning policies;
- (f) guiding regional, county and local planning;
- (g) coordinating sectoral planning and development;
- (h) managing human settlements; and
- (i) providing a framework for guiding the location and development of strategic national investments and infrastructural development.

19. (1) In preparing a National Physical Development Plan, the National Director of Physical Planning shall—

- (a) consider relevant national policies;
- (b) ensure effective participation by the public and relevant stakeholders; and
- (c) consult the National Physical Planning Consultative Forum prior to the initiation of the National Physical Development Plan and submit the proposed plan to the National Physical Planning Consultative Forum for consideration and input before its final approval.

Procedure for preparation of the National Physical Development Plan.

(2) The Cabinet Secretary shall, at least fourteen days before commencement of the preparation of a National Physical Development Plan, publish a notice in the *Gazette* and in at least two newspapers of national circulation of the intention to prepare a National Physical Development Plan.

(3) A notice published in accordance with this section shall state the objectives of National Physical Development Plan, the purpose of the National Physical Development Plan and the matters to be addressed in the plan; and the places where members of the public may provide written proposals for the National Physical Development Plan

20. (1) A National Physical Development Plan shall include—

- (a) the objectives of the plan;
- (b) situation analysis including—
 - (i) an analysis of the state of physical development in Kenya; and

Content of National Physical Development Plan

- (ii) the relevant studies and reports concerning physical development in Kenya;
- (c) policies, strategies and measures necessary to optimize opportunities and potentials and resolve challenges relating to physical development planning in Kenya;
- (d) maps and plans showing current and anticipated physical and land use patterns;
- (e) an implementation framework;
- (f) a monitoring and evaluation strategy; and
- (g) such other information as may be necessary.

(2) The National Director of Physical Planning shall, in addition to what is provided for in sub-section (1), take into account matters specified in the Second Schedule to this Act.

(3) The preparation of the National Physical Development Plan shall be completed within twenty four months after the publication of the intention to prepare the plan.

(4) The Cabinet Secretary may, by notice in the *Gazette*, extend the period within which a National Physical Development Plan is to be prepared by one year.

21. (1) Within thirty days of the preparation of the National Physical Development Plan, the Cabinet Secretary shall publish a notice in the *Gazette* and in at least two newspapers of national circulation informing the public that the draft National Physical Development Plan is available at the places and times designated in the notice for inspection and that any interested person may comment on the content of the draft National Physical Development Plan.

Notice of preparation of National Physical Development Plan.

(2) The Cabinet shall consider the comments made about the National Physical Development Plan and may or may not incorporate the comments in the plan.

(3) Any person dissatisfied with the decision of the Cabinet Secretary may apply to the Cabinet Secretary for review of his or her decision and the Cabinet Secretary shall consider the same and communicate his or her decision within sixty days of receipt of application for review.”

22. (1) If there have been no applications for review of the decision of the Cabinet Secretary or if the applications for review have been heard and determined, the Cabinet Secretary shall submit the draft National Physical Development Plan to the National Physical Planning Consultative Forum for comments.

Approval of National Physical Development Plan.

(2) The National Physical Planning Consultative Forum shall consider the plan and may propose changes which shall be incorporated in the plan.

(3) Upon incorporation of the proposed changes by the National Physical Planning Consultative Forum the plan shall be submitted to the Cabinet for approval.

4 (3) The Cabinet, through the Cabinet Secretary, shall publish the approved plan in the *Gazette* and in at least two newspapers of national circulation within fourteen days of the approval of the National Physical Development Plan.

23. (1) The national government and county governments shall base the preparation of regional physical development plans, integrated county physical development plans, city physical development plans, urban area physical development plans and sectoral plans on the National Physical Development Plan.

Implementation of a National Physical Development Plan.

(2) Notwithstanding the lack of a National Physical Development Plan, planning authorities at the county level shall prepare County and Local Physical Development Plans.

24. (1) At least three months before the end of the financial year, each public institution of the national government that is responsible for the application or the implementation of a National Physical Development Plan shall prepare a status report on the implementation of that plan and submit it to the Cabinet Secretary and the National Land Commission for their purposes.

Status Reports.

(2) At least three months before the end of the financial year, each public institution of a government that is responsible for the application or the implementation of a National Physical Development Plan shall prepare and submit a status report on the implementation of the National Physical Development Plan to the Cabinet Secretary or the County Executive Committee member responsible for physical planning and the National Land Commission for their purposes.

25. (1) Two or more Counties may, by mutual agreement or out of compelling necessity, formulate a regional physical development plan.

Establishment of Regional Joint Physical Planning Development Committees.

(2) In the preparation of the regional physical development plan, the counties shall form a Regional Physical Planning Committee.

(3) The Regional Physical Planning Development Committee shall consist of—

- (a) the National Director of Physical Planning who shall, for the purpose of co-ordinating the preparation of the regional physical development plan, chair the Committee;
- (b) the County Executive Committee member responsible for physical planning for each county involved and any other relevant County Executive Committee member.

(4) The regional joint physical planning committee may co-opt such other persons as may be necessary to assist it in performance of its duties.

(5) The National Director of Physical Planning shall provide the secretariat services for the purposes of this section.

26. A Regional Physical Development Plan shall—

- (a) define the scope of the plan; and
- (b) define the geographical area to which the plan relates.

Scope of the Regional Physical Development Plan

27. (1) The Regional Physical Planning Joint Committee preparing a Regional Physical Development Plan shall publish a notice of intention to prepare a plan in the gazette and in at least two newspapers with a national circulation.

Commencement of Regional Physical Planning Process.

(2) The notice published under sub-section (1) shall state the constitution of the Regional Physical Planning Joint Committee, the broad reasons for the constitution of the joint committee and the joint committee's address where views on the plan may be submitted.

(3) The joint committee shall prepare and complete the Regional Physical Development Plan within two years from the time notice of intention to plan is published.

(4) The joint committee shall consult, publish, and hold stakeholders' meetings during the preparation of the Regional Physical Development Plan.

28. (1) Within thirty days of the completion of a Regional Physical Development Plan, the Regional Physical Planning Joint Committee shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that the plan is available at the places and times designated in the notice for inspection and that any interested person may comment on the content of the plan.

Notice of and objections to a Regional Physical Development Plan.

(2) The Regional Physical Planning Joint Committee shall consider the comments made about the plan and may or may not incorporate the comments in the plan.

(3) Any person dissatisfied with the decision of the Regional Physical Planning Joint Committee may appeal to the National Physical Planning Liaison Committee and the committee shall consider the application and make its determination within (60) days of the receipt of the application.

(4) Any person dissatisfied with the decision of the National Physical Planning Liaison Committee may appeal to Environment and Land Court.

29. (1) The County Executive Committee members of all counties participating in the regional physical development plan shall separately approve the plans and submit the same to the National Director of Physical Planning for final approval.

Approval of Regional Physical Development Plan.

(2) Within thirty days of the completion of a Regional Physical Development Plan or if objections have been heard and determined the Cabinet Secretary shall approve and publish the Regional Physical Development Plan in the Gazette and in at least two newspapers of national circulation.

(3) Before the Regional Physical Development Plan can be implemented, the governors of the relevant counties shall adopt the plan at a joint meeting of the relevant governors that shall be organized by the Regional Physical Planning Joint Committee.

(4) The approved Regional Physical Development Plan shall be deposited with the relevant County Director of Physical Planning.

30. (1) In addition to the national physical development plan, the Regional Physical Development Plan shall inform the preparation of a county physical development plan, a local physical development plan or an urban area physical development plan for the county governments within the planning area covered by the Regional Physical Development Plan.

Implementation of the Regional Physical Development Plan.

(2) Where a National Physical Development Plan and a Regional Physical Development Plan have not been prepared or approved, county governments may prepare other physical development plans which will be incorporated into the National Physical Development Plan or the relevant Regional Physical Development Plan after they have been prepared and approved.

31. At least three months before the end of a financial year, every county executive committee member responsible for physical planning in a county covered by a Regional Physical Development Plan shall submit a report on the implementation of the Regional Physical Development Plan to the National Land Commission and the Cabinet Secretary for their purposes.

Status Reports on Regional Physical Development Plan.

32. (1) Once in every ten years, a county government shall prepare a county physical development plan for that county.

County Physical Development Plan.

(2) Each county physical development plan shall be in conformity with the National Physical Development Plan and any relevant Regional Physical Development Plan

(3) The county executive committee member in charge of physical planning shall ensure the county physical development plan is prepared and published within a period of eighteen months from the time notice of intention to plan is published.

No. 17 of 2012.

(4) The county physical development plan shall suffice for purposes of the provisions of section 110 of the County Governments Act.

33. The objects of a county physical development plan shall be—

Purpose and objects of a county physical development plan.

(a) to provide an overall physical development framework for the county;

- (b) to guide rural development and settlement;
- (c) to provide a basis for infrastructure and services delivery;
- (d) to guide the use and management of natural resources;
- (e) to enhance environmental protection and conservation;
- (f) to identify the proper zones for industrial, commercial, residential and social developments;
- (g) to improve transport and communication networks and linkages; and
- (h) any other purposes that may be determined by the planning authority.

34. (1) At least fourteen days before commencing the preparation of a county physical development plan, the member of the executive committee shall publish a notice in the *Gazette* and the notice shall include the intention to prepare a county physical development plan, the objects of the plan and the matters to be considered in the plan and the address to which any views on the plan may be sent.

Notice of intention to prepare a county physical development plan.

(2) The notice shall be displayed for a period of fourteen days at the offices of the county government and such other places as may be necessary in all the wards within the county.

(3) The county planning authority shall hold adequate stakeholder meetings in each ward before the completion of the preparation of the county physical development plan.

35. (1) A county physical development plan shall consist of—

Contents of a county physical development plan.

- (a) policies, strategies and general proposals for the development and use of land;
- (b) a summary of the situational analysis;
- (c) proposals for proper county development, resource utilization and linkage with neighboring counties;
- (d) diagrams, illustrations and description of current and anticipated developments in the county;

- (e) an implementation strategy;
- (f) a reporting, monitoring and evaluation strategy;
and
- (g) any other matters as may be prescribed.

(2) In addition to the provisions of sub-section (1) the county government shall take into account those matters specified in the Second Schedule.

36. (1) Within thirty days of the preparation of a county physical development plan, the county planning authority shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that the draft county physical development plan is available at the places and times specified in the notice.

Public Participation in the preparation of a county physical development plan.

(2) The county executive committee member in charge of physical planning shall facilitate public participation.

(3) The county executive committee member in charge of physical planning shall consider the comments made about the draft county physical development plan and may or may not incorporate the comments in the plan.

(4) Any person aggrieved by a decision of the county planning authority concerning the county physical development plan or matters connected therewith, may within sixty days of receipt by him of notice of such decision, appeal to the county physical planning liaison committee in writing against the decision in such manner as may be prescribed.

(5) Subject to sub-section (4), the county physical planning liaison committee may reverse, confirm or vary the decision appealed against and make such order as it deems necessary or expedient to give effect to its decision.

(6) When a decision is reversed by the county physical planning liaison committee it shall, before making any order under subsection (5), afford the county planning authority an opportunity of making representations as to any conditions or requirements which in his opinion ought to be included in the order, and shall also afford the appellant an opportunity to replying to such representations.

(7) Any person aggrieved by a decision of the County Physical Planning Liaison Committee under this section may appeal to the Environment and Land Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court.

37. (1) If there are no applications for the review of a county physical development plan or if all applications for review have been heard and determined, the county executive committee member in charge of physical planning shall publish the county physical development plan in the *Gazette* and in at least two newspapers with a national circulation within thirty days of the county physical development plan's completion.

Completion and approval of a county physical development plan.

(2) The county executive committee member in charge of physical planning shall submit the completed county physical development plan to the governor who shall cause it to be placed before the county assembly.

(3) A county physical development plan shall be the basis for the preparation of sectoral programmes and projects in the county and sub-county levels.

(4) On the approval of the county physical development plan no development shall take place on any land unless it is in conformity with the approved plan.

38. (1) A county executive committee member in charge of spatial planning, on his own motion or on recommendation of the county government may initiate the modification of a county physical development plan if—

Modification of a County Physical Development Plan.

- (a) there are practical difficulties in the execution or enforcement of that county physical development plan; or
- (b) there has been a change of circumstances since the county physical development plan was approved.

(2) On the approval of the county government, the County Executive Committee member in charge of physical planning shall publish a notice in the *Gazette* and in at least two newspapers of national circulation notifying any interested parties of the proposed amendments to the county physical development plan and the period within which interested parties may make representations to the County Executive Committee member.

No. 17 of 2012.

(3) A proposal for amending a county physical development plan shall—

- (a) state the reasons for the proposed amendment;
- (b) comply with the relevant provisions of the County Governments Act, 2012; and
- (c) be in conformity with the National Physical Development Plan, Inter-County Physical Development Plan and any existing regional development plan.

(4) Where a county executive committee member in charge of physical planning discovers that a proposed amendment to the county physical development plan shall affect other counties, the county executive committee member shall consult the county executive committee members in charge of physical planning in the other counties and shall take into account their comments before proceeding with the amendment of the county physical development plan.

(5) During the process of amending a county physical development plan, the county executive committee member shall ensure public participation.

(6) The amended County physical development plan shall be published by the county planning authority in accordance with section 37 of this Act

(7) This section shall not prevent the national government or a person ordinarily resident in a county from proposing an amendment to the county physical development plan.

39. (1) A county executive committee member in charge of physical planning may only initiate the process of revising a county physical development plan after eight years have elapsed since the county plan was published in the *Gazette*.

Revision of a county physical development plan.

(2) The provisions of section 38 of this Act shall apply with the necessary modifications to the revision of a county physical development plan.

40. (1) A county government shall prepare a local physical development plan in respect of a city, municipality, town or unclassified urban area as the case may be.

Local Physical Development Plan.

(2) A local physical development plan may be for long-term physical development, short-term physical development, urban renewal or redevelopment and for the purposes set out in the Third Schedule in relation to each type of plan.

No.13 of 2011.

(3) A local physical development plan shall be consistent with an Integrated City or Urban Development Plan as contemplated under Part V of the Urban Areas and Cities Act, 2011.

41. A county government shall prepare a local physical development plan for—

Purpose of a Local Physical Development Plan.

- (a) zoning, urban renewal, or redevelopment;
- (b) (ii)guiding and co-ordinating the development of infrastructure;
- (c) regulating the land use and land development;
- (d) providing a framework for coordinating various sectoral agencies;
- (e) giving effect to any Integrated City or Urban Development Plan; and
- (f) providing a framework and guidelines on building and works development in the city, municipality, urban area, or other smaller urban centres including local centres, and market centres.

42. The preparation of a local physical development plan may be initiated by the county executive committee member in charge of physical planning.

Initiation and preparation of local physical development plan.

43. (1) A local physical development plan shall consist of—

Contents of a Local Physical Development Plan.

- (a) a survey report in respect of the area to which the plan relates carried out as the manner specified in the Third schedule; and
- (b) any Geographical Information System-based maps and descriptions as may be necessary to indicate the manner in which the land in the area may be used in accordance with the requirements of the Third Schedule.

(2) The survey report in a local physical development plan should include technical annexes and a sieve analysis

of gradient, environment and infrastructure so as to provide for maximum locations for new developments.

44. (1) Within thirty days of the preparation of a local physical development plan, a county planning authority shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that the plan is available at the places and times designated in the notice for inspection and that an interested person may comment on the content of the plan.

Notice of and objections to a Local Physical Development Plan.

(2) The provisions of section 36 relating to the making of representations or objections to the county physical planning liaison committee concerning county physical development plans and to the consideration by the committee of such representations or objections and to appeals shall apply *mutatis mutandis* to this section.

(3) The provisions of section 37 relating to the approval or disapproval of a county physical development plan shall apply *mutatis mutandis* to the approval or disapproval of a local physical development plan.

45. The County Executive Committee member in charge of physical planning shall within fourteen days after the approval of a local physical development plan publish a notice in the Gazette and in at least two newspapers of national circulation that the plan has been approved with or without modification and that the plan may be inspected at the place or places and times specified in the notice during normal working hours.

Approval of Local Physical Development Plans.

46. (1) A county executive committee member in charge of physical planning may amend or revise a local physical development plan where—

Amendment or Revision of Local Physical Development Plan.

- (a) there are practical difficulties in the implementation of the plan; or
- (b) there has been change of circumstances since the plan was approved.

(2) Where the county executive committee member in charge of physical planning intends to amend or revise a local physical development plan, the provisions of section 38 shall apply with the necessary modifications.

(3) A County Executive Committee member in charge of physical planning may initiate the revision of a local physical development plan after a period of three years

after the plan has been approved in accordance with section 45 of this Act or as the need may arise.

47. (1) A county government may, on its own motion or as may be requested by the national government or the National Physical Planning Consultative Forum, declare an area as a special planning area if—

Declaration of a
Special Planning
Area.

- (a) that area has unique development and environmental potential or challenges;
- (b) that area has been identified as suitable for intensive and specialized development activity;
- (c) the development of that area might have significant effect beyond that area's immediate locality;
- (d) the development of that area raises significant urban design and environmental challenges; or
- (e) the declaration is meant to guide the implementation of strategic national projects; or guide the management of internationally shared resources.

(2) Where a county government has declared an area as a special planning area, the county executive committee member may, by notice in the *Gazette*, suspend for a period of not more than two years any development in the special planning area until a physical development plan in respect of that area has been approved.

(3) Despite sub-section (2), where planning permission has been granted in an area declared to be a special planning area before the declaration is made, the permitted development shall be permitted to continue but only if planning permission was granted more than six months before the declaration of the special planning area.

(4) The county government shall declare an area as a special planning area by notice in the *Gazette* and in at least two newspapers of national circulation and the notice shall specify the area declared as a special planning area and the nature of the proposed development for which the declaration has been made.

(5) A county planning authority may publish such Regulations as may be necessary to promote public

participation during the process of declaring an area a special planning area.

(6) A physical development plan prepared for a special planning area shall undergo the process of approval in accordance with section 45 of this Act.

48. A special area plan shall contain—

- (a) a written statement highlighting the grounds for the declaration of a special plan area;
- (b) the challenges the special plan intends to address;
- (c) the geographical area covered by the special plan;
- (d) the infrastructure needs of the special plan area;
- (e) a detailed assessment of the social, environmental and economic conditions of the special plan area;
- (f) proposed zones in the special plan area;
- (g) proposed conditions for development in the special plan area;
- (h) how public participation and innovative approaches will be used in planning and implementation process; and
- (i) a framework for the implementation, monitoring and evaluation of the special plan.

Contents of a Special Area Plan.

PART IV – DEVELOPMENT CONTROL

49. The objectives of development control are—

- (a) to ensure orderly physical development;
- (b) to ensure optimal land use;
- (c) to ensure the proper execution and implementation of approved physical development plans;
- (d) to protect and conserve the environment;
- (e) to promote public participation in physical development decision-making; and
- (f) to ensure orderly and planned building development, planning, design, construction, operation and maintenance.

Objectives of development control.

50. Subject to the provisions of this Act, the Urban Areas and Cities Act, 2011, and the County Governments

Power to undertake development

Act, 2012, the planning authorities shall have the power within their areas of jurisdiction to—

control

No.13 of 2011
No.17 of 2012

- (a) prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- (b) control or prohibit the subdivision of land;
- (c) consider and approve all development applications and grant all development permissions;
- (d) ensure the proper execution and implementation of approved physical development plans;
- (e) formulate by-laws to regulate zoning in respect of use and density of development; and
- (f) reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plans.

51. (1) A person shall not carry out development within the area of a planning authority without a development permission granted by the planning authority.

Development
permission.

(2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

(3) The planning authority may require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.

(4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the planning authority may undertake to restore the land as required and may recover the cost of the restoration from the person required to undertake the restoration.

(5) The planning authority may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.

(6) The planning authority may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

52. (1) A person shall obtain development permission from a planning authority by applying for development permission from that planning authority in the prescribed form and after paying the prescribed fees.

Application for development permission.

(2) An applicant for development permission shall provide documents, plans and particulars as may be required by the planning authority to indicate the purposes of the proposed development.

(3) An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which that land shall be subjected and the portion of the land the applicant shall provide for easements as a consequence of the applicant's proposed development.

(4) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the planning authority at the time of applying for development permission.

(5) The development permission granted by planning authorities shall be subject to compliance with the provisions of any other written law.

(6) Where an applicant does not receive written response for development permission within sixty days, such permission shall be assumed to have been given in terms of this Act.

53. (1) A person applying for development permission shall ensure that any documents, plans and particulars that are provided to the planning authority while applying for development permission have been prepared by the relevant qualified, registered and validly registered professionals

Plans and documents to be prepared by qualified person.

(2) A person who purports to prepare a document, plan or particulars required under this Act shall prove that person's credentials when asked to do so by the planning authority and shall be required to authenticate the copies of the documents, plans or particulars provided to the planning authority in that person's name.

54. (1) Within seven days of receiving an application for development permission, a county government shall give a copy of the application to the relevant authorities or agencies to review and comment and the relevant authorities or agencies shall comment on all relevant matters including—

Development application referred to relevant authorities

- (a) land survey;
- (b) roads and transport;
- (c) agriculture and livestock;
- (d) health;
- (e) public works and utilities;
- (f) environment and natural resources; and
- (g) any other relevant authority.

(2) Within fourteen days of receiving the copy of the development permission from the planning authority, the relevant authorities or agencies shall submit their comments to the development authority.

55. (1) When considering an application for development permission, a planning authority—

Decision making and communication

- (a) shall be bound by the relevant approved physical development plan;
- (b) shall take into consideration the provision of community facilities, environmental, and other social amenities in the area where development permission is being sought;
- (c) shall take into consideration the comments made on the application for development permission by other relevant authorities in the area where development permission is being sought; and
- (d) in the case of a leasehold property, shall take into consideration any special conditions stipulated in the lease.

(2) With regards to an application for development permission that complies with the provisions of this Act and within thirty days of receiving an application for development permission, the planning authority may—

- (a) grant the applicant the development permission in the prescribed form and may stipulate any

(iii) a development where the building works are inconsistent with the plans approved by the planning authority.

(c) Despite the provisions of subsections (1) (a) and (1) (b) (iii) of this section, in case of any material variations in a development permission, the applicant may apply to the planning authority for development permission.

(2) A person who commits an offence under this section is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

62. (1) A planning authority may demand the production of, and make extracts from, all registers or other records or any deeds or instruments belonging to, or in the custody or possession of, any public officer or any person and in which are contained particulars of any land or property affected by the relevant physical development plan.

Access to information.

(2) The information obtained by a planning authority in accordance with sub-section (1) shall be treated confidentially and shall not be disclosed to any other person except by an order of a court in connection with any legal proceedings.

(3) Any request for information shall protect the rights enshrined in Article 31 of the Constitution.

63. (1) The Cabinet Secretary shall consider and offer policy guidance to any public institution proposing a project of strategic national importance.

Strategic national or inter-county projects

(2) Any regional physical development projects shall be approved in accordance with section 29.

(3) The Cabinet Secretary shall within sixty days of the enactment of this Act make regulations prescribing for the projects that may be classified as strategic national or inter-county projects.

64. (1) Subject to the provisions of National Museums and Heritage Act, 2006, the county government may, after consultation with the Cabinet Secretary responsible for national heritage, serve on the owner or occupier of a building which in the opinion of the county government is of special architectural value or historic interest, an order

Preservation of heritage sites. No.6 of 2006.

No. 6 of 2006.

prohibiting the demolition, alteration or extension of such building.

(2) All physical development plans shall take into account and record all heritage sites declared or deemed to have been declared under the National Museums and Heritage Act, 2006.

(3) The owner of any building which shall be declared a national monument building shall be compensated for loss of use and income.

PART V – ENFORCEMENT

65. (1) A planning authority shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that planning authority that—

Enforcement
notice

(a) a developer commences development on any land without development permission after the commencement of this Act without the required development permission having been obtained; or

(b) any condition of a development permission granted under this Act has not been complied with.

(2) An enforcement notice shall—

(a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened;

(b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied; and

(c) require within a specified period the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities .

(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.

conditions it considers necessary when granting the development permission; or

(b) refuse to grant the applicant the development permission in the prescribed form and state the grounds for the refusal in writing.

(3) An applicant or an interested party that is aggrieved by the decision of the planning authority regarding an application for development permission may appeal against that decision to the County Physical Planning Liaison Committee within fourteen days of the decision by the authority and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.

(4) An applicant or an interested party who files an appeal under sub-section (3) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court.

56. (1) A planning authority shall maintain a register of documents submitted by applicants for development permission and shall issue a submission certificate to every applicant who submits such documents.

Registers.

(2) A planning authority shall maintain a register of development permission and shall enter the details of each applicant for development permission, whether or not development permission was granted to that applicant and the details of the proposed project for which development permission has been applied for.

(3) A register maintained by the planning authority under this Act shall be open to the public for scrutiny and the planning authority shall publish guidelines for public access to that register.

57. (1) A planning authority may levy a development fee against an applicant for development permission.

Development fees.

(2) Each county government may, by notice in the *Gazette*, publish Regulations determining the circumstances under which a development fee shall be levied, the rates that shall be payable and the circumstances under which a development fee may be waived.

(3) Where a development fee has been waived in relation to an application for development permission, the

planning authority may require that applicant to develop infrastructure in relation to the property in question for general use by the residents of the area where the property in question is located.

58. (1) Where an applicant for development permission has been granted development permission but has not commenced the proposed project within two years of receiving the development permission that permission shall lapse.

Lapse of development permission.

(2) Despite sub-section (1), the planning authority, where an applicant makes an application, may extend development permission by a period of one year if the planning authority determines it is necessary or just to grant that extension.

(3) Where the planning authority extends development permission, it may impose further conditions on the applicant that it considers fit.

59. The planning authority may impose conditions or impose a fine to be prescribed in regulations on an applicant for development permission for building works where that applicant fails to complete the building works within five years.

Commencement and completion of building.

60. 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 planning authority.

Prohibition of grant of license for development of a commercial or industrial nature

61. (1) A person commits an offence if that person—

(a) uses or permits to be used any land or building in contravention of any conditions imposed by a planning authority when granting development permission; or

Offences relating to development permission.

(b) commences, undertakes or carries out—

(i) a development where development permission has been revoked;

(ii) a development where development permission has been modified and the development does not comply with the modifications in the development permission; or

(4) Any party aggrieved with the determination of the county physical planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.

(5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

66. (1) A planning authority in charge of an urban area or a city shall require an owner, agent or developer of property or land to present a development application for consideration of the planning authority if, after the commencement of this Act—

Requirement to present development application.

(a) it comes to the notice of the planning authority that a development has commenced or has been completed where that development commenced or was completed before the commencement of this Act; and

(b) in the assessment of the planning authority that development would meet the requirements of this Act.

(2) A notice under this section shall state the period within which the owner, agent or developer shall comply with the notice.

(3) The planning authority shall serve on the owner, agent or developer who is required to apply for development permission with an enforcement notice as contemplated in section 65 if the planning authority refuses to grant that owner, agent or developer a development permission or—

(a) fails to make an application despite being afforded a chance to make such an application; or

(b) fails to make the application within the prescribed time.

PART VI—PHYSICAL PLANNING LIAISON COMMITTEES

67. There is established the National Physical Planning Liaison Committee.

Establishment of the National Physical Planning Liaison Committee.

68. (1) The National Physical Planning Liaison Committee shall consist of—

Composition of
National Physical
Planning Liaison
Committee

- (a) a representative of the National Land Commission;
- (b) the Director-General of the National Environment Management Authority or a designated representative;
- (c) the Director-General of the Water Resources Management Authority or a designated representative;
- (d) the Director-General of the Kenya National Highways Authority or a designated representative;
- (e) the Chairperson of the National Construction Authority or a designated representative;
- (f) the Chief of Defence Forces or a designated representative;
- (g) a representative of the Council of Governors;
- (h) a person nominated by an alliance representing associations in the private sector in Kenya and appointed by the Cabinet Secretary;
- (i) a registered architect nominated by an association of architects in Kenya and appointed by the Cabinet Secretary;
- (j) a registered physical planner nominated by the Kenya Institute of Planners and appointed by the Cabinet Secretary;
- (k) a registered surveyor nominated by the Institution of Surveyors of Kenya and appointed by the Cabinet Secretary; and
- (l) an advocate of the High Court nominated by the Law Society of Kenya and appointed by the Cabinet Secretary.

(2) The Cabinet Secretary shall provide the secretariat services to the committee.

(3) The members of the National Physical Planning Liaison Committee appointed under sub-section (1)(f), (h),

(i), (j) and (l) shall serve for a term not exceeding five years and shall not be eligible for re-appointment.

(4) The Chairperson of the committee shall be a person appointed under paragraphs (h), (i), (j), (k) or (l).

(5) The National Physical Planning Liaison Committee may co-opt any other persons with special skills, interest and knowledge to assist in its deliberations but not more than three persons at any one time.

(6) The co-opted members of the National Physical Planning Liaison Committee may not vote on any matter for which a vote of the committee is required and the numbers of the co-opted members shall not count in determining the quorum of the National Physical Planning Liaison Committee.

69. (1) The National Physical Planning Liaison Committee shall—

- (a) advise the Cabinet Secretary on broad physical planning policies, strategies and standards; and
- (b) hear and determine appeals under this Act or as may be provided for under any other written law.

(2) The National Physical Planning Liaison Committee may hear appeals against decisions made by the national planning authority including decisions on—

- (a) the development of major infrastructure facilities;
- (b) the reserving of public land for public projects;
- (c) the implementation of national or regional physical development plans; or
- (d) the environmental impacts on ecologically sensitive areas by the implementation of strategic projects.

70. There is established a County Physical Planning Liaison Committee for each county.

71. (1) The County Physical Planning Liaison Committee shall consist of—

- (a) an advocate of the High Court nominated by the Law Society of Kenya and appointed by the County Executive Committee member in charge

Functions of the National Physical Planning Liaison Committee.

Establishment of County Physical Planning Liaison Committees. Composition of the County Physical Planning Liaison Committee.

of physical planning, who shall be the chairperson;

- (b) a representative of the National Land Commission;
- (c) a registered physical planner nominated by the Kenya Institute of Planners and appointed by the County Executive Committee member in charge of physical planning;
- (d) a registered architect nominated by an association of architects in Kenya and appointed by the County Executive Committee member in charge of physical planning;
- (e) a registered surveyor nominated by the Institution of Surveyors of Kenya and appointed by the County Executive Committee member in charge of physical planning; and
- (f) two members, being one male and one female, nominated by the county chamber of commerce and appointed by the County Executive Committee member in charge of physical planning.

(2) The county physical planning liaison committee may co-opt experts to assist in its deliberations.

(3) The County Executive Committee member in charge of physical planning shall provide secretariat services to the committee.

72. The functions of the County Physical Planning Liaison Committee shall be to—

- (a) hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county;
- (b) hear appeals against decisions made by the planning authority with respect to physical development plans in the county; and
- (c) hear appeals with respect to enforcement notices.

73. (1) The County Physical Planning Liaison Committee shall, subject to this Act or any other written law, determine its own procedure.

Functions of the
County Physical
Planning Liaison
Committee

Procedure of the
County Physical
Planning Liaison
Committees.

(2) Despite sub-section (1), the quorum of the County Physical Planning Liaison Committee shall be half the members of the Liaison Committee.

(3) Every decision of a County Physical Planning Liaison Committee shall be by a majority vote of the members present and voting and where there is a tied vote, the chairperson of that committee or the person acting as the chairperson of that committee shall cast the deciding vote.

(4) Where the chairperson of a County Physical Planning Liaison Committee is unable to exercise his functions owing to illness, genuine absence or any other reason, the members present shall elect one of their own to be the chairperson of the respective Liaison Committee

(5) A County Physical Planning Liaison Committee shall meet at least four times in a year.

74. (1) A person who appeals to County Physical Planning Liaison Committee shall do so in writing in the prescribed form.

Appeal to a County Physical Planning Liaison Committee

(2) A County Physical Planning Liaison Committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.

(3) The chairperson of a County Physical Planning Liaison Committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court.

75. (1) A person who has been summoned to appear before a County Physical Planning Liaison Committee or may do so through a representative or through any form of communication that the committee may permit for the purpose and if required to produce or deliver any document that person shall produce or deliver that document in accordance with the direction of the committee.

Duty to appear before a County Physical Planning Liaison Committee.

(2) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding twenty-five thousand shillings.

76. All summons issued or notices issued, or awards or orders made, under this Act by a County Physical

Communication.

Planning Liaison Committee may be issued or made in electronic form or written form.

77. (1) A person who has made an appeal before a County Physical Planning Liaison Committee may withdraw the appeal in writing at any time before the appeal is determined by the committee.

Withdrawal of appeal and abandonment of appeal.

(2) The County Physical Planning Liaison Committee shall notify each relevant party that an appeal has been withdrawn within seven days of receiving the written notice of the withdrawal.

(3) Where a County Physical Planning Liaison Committee determines that an appeal has been abandoned by the person who filed the appeal, that committee may require the applicant to submit to the committee, within fourteen days of the committee notifying the applicant in writing, reasons why the appeal should not be regarded as having been withdrawn.

(4) The County Physical Planning Liaison Committee shall consider the submissions made under sub-section (3) and shall either allow the appeal to be finally heard and determined or shall stop all proceedings and determine that the appeal has been withdrawn.

(5) Every County Physical Planning Liaison Committee shall maintain written records of all its proceedings.

78. The provisions of sections 74, 75, 76 and 77 shall apply with the necessary modifications in the case of appeals to the National Physical Planning Liaison Committee.

Appeals to National Physical Planning Liaison Committee.

79. (1) A member of the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee who has an interest in a matter being considered by that committee shall disclose that interest at the meeting in which that matter is being considered.

Declaration of personal interest.

(2) A member of a Physical Planning Liaison Committee who makes a disclosure under sub-section (1) shall not take part in any proceedings related to that matter.

(3) A member of a physical planning liaison committee who does not disclose an interest as required under this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand

shillings or to imprisonment for a term not exceeding two months or to both.

80. (1) A person shall not disclose, without the consent of the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee, as the case may be—

Disclosure of information.

(a) any information obtained while serving on that committee; or

(b) any information obtained from the committees in the performance of its functions.

(2) A person who contravenes the provisions of sub-section (1) commits an offence and on conviction is liable to a fine not exceeding one hundred thousand shillings.

(3) Despite sub-section (1), a person may disclose information that person obtained while serving on the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee in the performance of its duties to a person authorized by any written law to be given that information or as may be required by a court of law.

81. (1) Each Physical Planning Liaison Committee shall maintain a register of each appeal filed, minutes of the meeting of the committee and the decisions of the committee.

Physical Planning Liaison Committees to keep registers.

(2) Each register maintained by Physical Planning Liaison Committees shall be made available to the public for scrutiny.

(3) An interested party may, in the prescribed form, apply to a Physical Planning Liaison Committee to examine a register maintained by that committee and that party may, after paying a prescribed fee where prescribed, make copies or take extracts from that register.

(4) The Cabinet Secretary may, by notice in the *Gazette*, make Regulations for the better implementation of the provisions of this section.

82. The remuneration of the members of the Physical Planning Liaison Committees shall be recommended by the Salaries and Remuneration Commission.

Remuneration.

83. A public officer acting under the Act shall not be liable in an action or a proceeding for or in respect of an act

Indemnity for public officers acting under this

done or omitted to be done without negligence and in good faith in the exercise of any of the functions conferred by or under this Act. Act.

PART VII—MISCELLANEOUS PROVISIONS

84. The Physical Planning Act, 1996, is hereby repealed. Repeal of No. 6 of 1996

85. (1) Any approval for development granted in accordance with the provisions of any written law in force immediately prior to the commencement of this Act shall be deemed to be a development permission granted under this Act. Transitional provisions

(2) Despite the provisions of sub-section (1), if a development for which approval was granted under the provisions of any written law in force immediately before the commencement of this Act shall not have been commenced within twenty-four months of the commencement of this Act that development approval shall lapse.

(3) Where an application for development had been made under the provisions of any written law prior to the commencement of this Act and approval has not been granted, that application shall be deemed to be an application for development permission under this Act and shall be deemed to have been made on the date of the commencement of this Act.

86. All disputes relating to physical planning, before establishment of the national and county physical planning liaison committees shall be heard and determined by the Environment and Land Court. Pending disputes.

87. (1) Section 110(3) of the County Governments Act, 2012, is amended by deleting the words “and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly”. Consequential amendments No. 17 of 2012

(2) Section 110(4) of the County Governments Act, 2012, is amended by deleting the words “ and the revisions approved by the respective county assemblies”.

FIRST SCHEDULE**PROCEDURE OF APPOINTMENT OF MEMBERS OF THE
NATIONAL PHYSICAL DEVELOPMENT CONSULTATIVE
FORUM**

1. Within twenty one days of the commencement of this Act, or the occurrence of a vacancy in the office of the Chairperson or member, the Cabinet Secretary in charge of physical planning or the Governor, as the case shall be, shall, by notice in the *Gazette* and in at least one newspaper of national circulation, declare vacancies in the Forum, inviting applications from qualified persons and competitively convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members under clause 5(2).
2. The panel shall comprise a chairperson and six members drawn from public and private sector and civil society.
3. An application in respect of a vacancy declared under paragraph 1 shall be forwarded to the panel within fourteen days of the publication of the notice and may be made by –
 - (a) Any qualified person; or
 - (b) Any person, organization or group of persons proposing the nomination of any qualified person.
4. The panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions.
5. The panel shall consider the applications and shortlist and publish the names and qualifications of all shortlisted applicants in the *Gazette* and at least one daily newspaper of national circulation within seven days from the last day of receipt of the applications under paragraph 3.
6. The panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of applicants under paragraph 5.
7. After carrying out the interviews, the panel shall select the qualified persons and forward them to the Cabinet Secretary for appointment which shall be done within fourteen days.

SECOND SCHEDULE**CONTENTS OF NATIONAL, INTER-COUNTY AND COUNTY
PHYSICAL DEVELOPMENT PLANS****PART I**

1. Introduction

- (1) Background of the Plan
- (2) Vision statement
- (3) Objectives
- (4) Scope of the Plan
- (5) principles of the Plan
- (6) Methodology
- (7) Outline of the Plan

2. Planning Context

- (1) Location-national, regional, local context
- (2) Legal and policy context
- (3) Stakeholder concerns

PART II

3. Situational Analysis

- (1) population and demographic
- (2) physiographic dynamic
- (3) land analysis
- (4) economy- industry, agriculture, commerce, mining and quarrying, fisheries
- (5) transportation and communication
- (6) infrastructure services
- (7) urbanization
- (8) rural developments
- (9) Housing
- (10) Environments
- (11) Governance

4. Synthesis

PART III

- (1) Development challenges, opportunities and alternative interventions

5. Plan Proposals

- (1) County Structure Plan
- (2) Strategies, measures, Actions

6. Action Plans

PART IV

7. Implementation

8. Maps and graphics.

1. Spatially present the existing situation and Plan proposals for purposes of clarity in—

9. Communication.

- (1) Contextual Aspects.

National, Regional and Local context maps: These maps indicate relative location and position of the county. These are to the scale of 1: 250,000 for national context, regional context ranges between, 1:50,000 and 1: 100,000 and local context is 1: 25,000.

(2) Situation Analysis Context maps to illustrate features and aspects of various thematic areas. The scale depends on level of detail required to be illustrated or presented. The recommended scales range from 1: 10,000, and 1: 25,000.

- (3) Plan Proposals

These maps indicate location of various Plan proposals. The scale depends on level of detail required to be illustrated or presented. The recommended scales range from 1: 10,000 and 1: 25,000.

- (4) Action Plans

These maps indicate areas for detail treatment. The scale of the maps depends on area to be covered and particular aspects to be captured. The recommended scales range from 1: 5,000 and 1: 10,000.

10. Content of the Maps

- (1) Key features to be captured in a Base map include:
 - (a) physiographic and natural features such as rivers, wetland, lakes, forests and hills among others

(b) contours

(c) Main man-made features such as trunk roads, railway lines, water reticulation facilities, terminus, way leaves, and human settlements, urban nodes among others.

(2) Contents of Plan Proposal Maps

(a) Selected existing features and elaborated presentation of the proposals. The maps should be geo-referenced and in layers.

11. Purpose of the survey report

The survey report shall provide for;

(1) matters that may be expected to affect development of the County;

(2) an inventory of the principal physical, economic, environmental, and social characteristics;

(3) a statement on national policies on economic, social, physical and environmental management and conservation;

(4) the principal and expected land use effects on the County;

(5) population size, composition, structure, quality, distribution and trends;

(6) communications, transport system, and traffic flow

(7) Inter and intra county linkages and relations

(8) Projected changes on all sectoral aspects and effects that the projected changes are likely to have on development, or the Planning of the county.

(9) any other matter that may be prescribed

12. Adoption of the survey report

(1) The County Executive Committee Member shall submit the survey report to the Executive Committee for adoption.

(2) If the County Assembly disapprove the survey report it shall state the reasons for its refusal and refer it to the county Director for review.

(3) Submission of a reviewed survey report shall be undertaken as provided in the manner provided in sub-paragraph (1).

THIRD SCHEDULE

CONTENTS OF LOCAL PHYSICAL DEVELOPMENT PLANS

**PART A – MATTERS WHICH MAY BE DEALT WITH IN A
LOCAL PHYSICAL DEVELOPMENT PLAN**

1. Vision
2. Objectives
3. Statements of the problem
 - (a) Aspects of housing, unemployment, traffic congestion, pollution, land tenure, lack of services, terrain, soils
 - (b) Opportunities in tourism, fishing, manufacturing, etc.
4. Objectives Statement
 - (a) Ways of alleviating the problems
 - (b) Ways of maximization of utility and opportunities.
5. Analysis
 - (a) Spatial analysis accompanied by physical and suitability maps and charts focusing on;
 - (i) the terrain, soils and climate
 - (ii) Existing land uses and development
 - (iii) Potential pattern of development,
 - (iv) Land tenure system and
 - (v) Cadastral outlay of all development.
 - (b) Population analysis;
 - (i) Population growth
 - (ii) Migration,
 - (iii) Density,
 - (iv) Distribution, age and sex structure,
 - (v) Household sizes
 - (vi) Rates of household formation;
 - (c) Economic analysis focusing on;
 - (i) Employment and incomes and places of work
 - (ii) Development trends and

- (iii) Problems of service delivery;
- (iv) Agricultural potential of the urban region
- (v) Problems of transforming the agricultural land into urban use;
- (d) Contextual analysis
 - (i) Peri-urban slum settlements and problems they pose
 - (ii) Potential, distribution and size of service centres within and outside the urban boundary
 - (iii) Evaluation of urban boundary extension;
 - (iv) Evaluation of the importance of such factors as commerce and tourism within extended areas
 - (v) Historical patterns and conditions
- (e) Housing and infrastructure analysis
 - (i) Housing occupancy rates, accommodation density, housing requirements, type of residential areas and industrial locations;
 - (ii) Education
 - (iii) Recreation areas and other public purpose land uses.
 - (iv) Power lines and way leaves
 - (v) Water and sewerage networks
 - (vi) Housing and infrastructure programmes.
- (f) Transportation and communication analysis
 - (i) Roads networks, footpaths, cycle ways, railway lines, depots, water ways, docks, etc.
 - (ii) Telephone lines
- 6. Projections
 - (a) Land Use Projection Tables
- 7. Maps and Modeling
 - (a) Existing land use map
 - (b) Sieve maps of the physical constraints or thresholds to development
 - (c) Development model map indicating land use designation and distribution as well as a clear transport and communication network

(i) Any other as the Planning authority may prescribe from time to time

2. The Planning Authority shall, when considering a development application submitted—

Consideration of development application.

- (a) be bound by approved physical Plans
- (b) have regard to relevant national and county policies
- (c) have regard to the health, safety, amenity, efficiency, aesthetics and conveniences of the community generally and to the proper Planning and density of development and land use in the area;
- (d) have regard to any comments received from the officers or authorities and or relevant stakeholders as referred to in Clause (71) :
- (e) in the case of a leasehold, have regard to any special conditions stipulated in the lease.

3. If any development application requires subdivision or change of user of any agricultural land, the Planning Authority shall require the applicant to obtain consent from the relevant Board.

4. Planning authorities shall require applications for major

5. The following factors shall be considered in the determination of change and extension of user—

Consideration of change/extension of user

- (a) Provisions of an approved physical development Plan
- (b) Probable effects on the character of the neighborhood
- (c) Effects on vehicular and pedestrian safety
- (d) Visual impact
- (e) Effect on the right to a view
- (f) Defined location and size of the land
- (g) Current user
- (h) Area zoning regulations
- (i) Infrastructure availability and adequacy

6. Extension of Lease—

Consideration of extension of

- (a) Whether the land is required for public purpose lease.
- (b) Whether special conditions in the lease were adhered to
- (c) Whether the land is developed
- (d) Whether the buildings on the land have been well maintained (e) Provisions of relevant approved physical development Plans (f) Defined location and size of the land

- (g) Current user of the land
- (h) Infrastructure availability and adequacy

7. Sub division and Amalgamation Proposals—

Considerations
for subdivision
and amalgamation

- (a) The design of the Plan
- (b) Provisions of relevant approved physical development Plans
- (c) Land reference number, Size and shape of land
- (d) The location Plan/inset
- (e) Resultant subplots, their access and adequate truncations.
- (f) The owner of the property, name, signature, identification and telephone number
- (g) Linkage and indication of classified roads, and other Infrastructure availability and adequacy
- (h) Surrender of land for public utilities
- (i) Change of user considering the minimum size of sub-plots
- (j) Consent from the relevant agency in case of agricultural land

8. Where the development involves the erection of a building, the Planning authority will consider the following—

- (a) The use of the building
- (b) The sitting of the building within the plot
- (c) The elevations of the building, plinth area, canopies and height of buildings

- (d) The design, shape, civic design and facade and appearance of the building;
- (e) the set back and the building line;
- (f) Access to and parking on land which the building is to be erected;
- (g) Loading bay
- (h) Density
- (i) Plot coverage
- (j) Provision for rainwater harvesting facilities and water storage tanks in every building
- (k) Landscaping
- (l) Character
- (m) Ventilation and lighting
- (n) Infrastructure adequacy
- (o) Environmental, health and cultural considerations
- (p) Any other matter that the planning authority considers necessary for purposes of planning.

9. Where the building plans submitted do not meet the required standard, the Planning authority shall communicate the areas of improvement to the applicant

10. The applicant to whom any written directions are given shall amend the buildings Plans or drawings accordingly and resubmit within such a period as the Planning authority may specify.

11. The building Plans or drawings to be submitted include—

- (a) Development Plan and drawings;
- (b) Architectural drawings and specifications;
- (c) Civil and Structural engineer's drawings and specifications;
- (d) Electrical engineer's drawings and specifications;
- (e) Mechanical and Plumbing drawings & specifications; and

13. The following services require easements and ways leaves—

Considerations for
Easements and
Way-leaves

- (a) Telecommunications
- (b) Electrical power supply
- (c) water and sewerage networks
- (d) oil Pipeline
- (e) Fibre optic
- (f) Base transmission stations
- (g) And any othe. service as may require easement and or way leave

14. The National Land Commission shall not grant a way leave as in Clause 144 of the Land Act without approval from the relevant Planning authorities

15. The owner of a building may display the following illustrated advertisements without the prior consent of the Planning authority—

Consideration in
approving
advertisements

(1) In the case of shops: the name and occupation of the occupier:

Provided that the letters are not greater than 0.3 metre. (12 inches) in depth and contains not more than 6 words

(2) in the case of offices: a notice Board displayed at the ground floor entrance to the premises not exceeding 0.3 sq.metre. (1 sq. ft.) total for all occupiers;

(3) Any advertisement displayed within a building or on land or building not visible from a street;

16. The display of advertisements not mentioned in (1) shall require permission from the Planning authority

(1) The grant of permission under paragraph (I) shall depend on:

(2) The location, size and colours of the billboard ;

(3) Traffic and pedestrian safety;

(4) Religious, cultural and moral character of the advertisements;

(5) preservation of the natural environment;

(6) scenic beauty;

(7) The preservation of natural monuments and archeological sites;

(8) General amenity; and

(9) Any other factor that the Planning authority may consider necessary.

17. A Planning authority may by notice in writing, require any person who displays an advertisement without permission to remove such advertisement within the time specified in the notice.

18. Authorities responsible for licensing educational facilities shall not issue licenses without advice from the relevant Planning authorities.

19. In processing the applications the following planning considerations are taken into account –

(1) The adequacy of the physical facilities,

(2) Land use conformity, and

(3) Size of land.

MEMORANDUM OF OBJECTS AND REASONS

Statements of the Objects and Reasons for the Bill

The Physical Planning Bill, 2017 gives effect to Article 66 (1) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

Towards this end the Bill seeks to repeal and replace the Physical Planning Act, No. 6 of 1996. It intends to provide for the planning, use, regulation and development of land in Kenya. It is divided into seven Parts and four Schedules.

Part I deals with preliminary matters including objects of the Bill which include providing for the preparation and implementation of physical development plans at all levels of government, the administration and management of physical planning in Kenya, the procedures and standards for development control and regulation of land use and physical planning, the co-ordination of physical planning between the two levels of government, dispute resolution, and the functions of and relationships among planning authorities.

Part II deals with the establishment, functions and powers of planning institutions. These are the National Physical Planning Consultative Forum, the Cabinet Secretary, the National Land Commission, the National Director of Physical Planning, and the County Physical Planning Consultative Forums.

Part III deals with the types of physical development plans, their contents, the process of their preparation, revision, modification or withdrawal, resolution of disputes in relation to physical plans and uses of physical plans. These include the National Physical Development Plans, the Regional Physical Development Plans, the County Physical Development Plans, the Local Physical Development Plans and Special Area Plans.

Part IV deals with development control. It sets out the objectives of development control, the authority of planning authorities to undertake development control, the procedures for obtaining planning permission by developers, offences in relation to development control and the preservation of heritage sites during development, among other matters.

Part V deals with the enforcement of development control permits or licences and makes provisions for enforcement notices and requisition notices.

Part VI deals with the liaison committees, their powers and functions at both national and local level. These are the National Physical

Planning Liaison Committee and the County Physical Planning Liaison Committees. It also makes provisions for the procedures of the liaison committees and appeals from their decisions.

Part VII provides for miscellaneous matters, including the repeal of the Physical Planning Act, 1996, and transitional provisions relating to planning permissions granted under the repealed Act. It also makes provisions for dealing with pending disputes under the repealed Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers but it does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(4) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 11th September, 2017.

ADEN DUALE,
Leader of the Majority Party.

██
██
██

██
██
██
██

Autopsy > Body had no physical injuries, pathologist reveals, as more tests to be done

Don's wife had blood clot in the heart

Fluid found in the lungs, while left atrium had a blood clot — findings from exam conducted on body

BY STELLA CHERONO
scherono@ke.nationmedia.com

A postmortem exam on the body of the wife of a university lecturer arrested over her death has revealed that she had no physical injuries.

Chief Government Pathologist Johansen Oduor, who examined the body of Rebecca Gobi Mwachongo said the 27-year-old had fluid in the lungs.

"She also had a blood clot in the left atrium (in the heart) ... but we cannot attribute this to anything at the moment," Dr Oduor said, adding that samples from her body have been taken for further analysis.

Rebecca's husband, Dr Fredrick Ogola — a Strathmore University lecturer — was arrested following her death on New Year's Day.

He said in an interview yesterday that he was just playing with his wife and denied there was a fight between them.

He is detained at the Kabete Police Station after the court granted the police a 10-day custodial order to allow them to complete investigations into the death of his wife — Rebecca Gobi Mwachongo.

During an interview at the Dagoretti Police Station where he was initially detained, Dr Ogola denied killing the woman he said "I have loved her very



An undated photo of Dr Fredrick Ogola, a Strathmore University lecturer, and his wife, Rebecca Gobi Mwachongo.

much". He termed the death as "very unfortunate".

"There was no fight. This was a play, she had asked me what my programme was and I told her that my plan was to drop the letters. She told me that I would not be going and I asked her what she would do to stop me," Dr Ogola said adding that after that, his wife pushed him and he fell on their matrimonial bed.

"When a woman pushes you, you do not resist. She sat on me and tried to remove the phone

from my pocket and I told her 'Sweetheart you are going to tear my pocket,' he said of the deceased, whom he said, was determined to confiscate the phone from him.

Dr Ogola said during the "play", his wife suddenly exclaimed and fell back on the edge of the bed.

"I thought this was a joke because we had been playing. I left the bedroom and rushed to deliver the letter and then I called the house help to ask her whether Becky was up taking care

More info

POSTS 'SHOWED A HAPPY COUPLE'

The couple got married in August 2014, after years of dating when Rebecca was Dr Ogola's student at the Strathmore University.

Friends and relatives close to the couple said the two always seemed happily married, mostly went on trips together and constantly posted their pictures that portrayed a happy couple on social media.

of the baby and she said 'No', so I rushed back and found her still down where she had fallen," Dr Ogola said.

Dr Ogola took her to the MP Shah Hospital and later to the Aga Khan University Hospital, where she was pronounced dead.

The don was arrested on Tuesday evening at his home in Lavington, and was taken to court on Wednesday, but did not take plea following a request by the Directorate of Criminal Investigations to have him detained.

Dagoretti OCPD Rashid Mohammed said several people had been interrogated. He, however, refused to name them or give details of their accounts, saying that would jeopardize investigations.

Witness in poll case tel court of the

BY SAM KIPLAGAT

A witness yesterday narrated an election court how she was bribed voters on of former Kitui Governor Malombe.

Ms Florence Mbuvi told the court she was bribed to vote for Pauline Nyamwaya at a Secondary School polling station when she was attacked by more than 10 men. She said she was using the money voters. She said she was at Mwembe Tayari where she parked her vehicle.

The witness said she had reported the matter to the Police Station and identified the main attacker as Mr Mosyalo. However, since she was arrested in August last year, the matter has been made or charged with assault.

When cross-examined by the witness Charity Ngilu' Kioko Kilukumi, the witness was yet to pursue the matter independently. Another witness Benson Muniyao told the court he was an agent appointed Party to be in-charge of a Kitui Boys High School but to sign Form 37A because he did not agree with the results continues.

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FIRST SESSION

In the Matter of consideration by the National Assembly of the Building Surveyors Bill, 2017 and the Physical Planning Bill, 2017

SUBMISSION OF MEMORANDA

The Constitution (Art. 118(1)(b)) requires Parliament to facilitate public participation and involvement in the legislative, other business, and business of its committees. National Assembly Standing Order (S.O.) 127(3) further requires a Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

The above Bills have undergone First Reading in accordance with the provisions of S.O.127(3) and are now committed to the Departmental Committee on Lands for consideration.

The particulars of the Bills are as follows:-

1. The Building Surveyors Bill, 2017, seeks to regulate the activities and conduct of building surveyors; and
2. The Physical Planning Bill, 2017 seeks to repeal and replace the Physical Planning Act, No.6 of 1996 and intends to provide for the planning, use, regulation and development of land in Kenya. It further gives effect to Article 66 (1) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

Both Bills are sponsored by Hon. Aden Duale, MP Leader of the Majority Party in the National Assembly

The Committee therefore, in compliance with the provisions of Article 118(1)(b) of the Constitution and S.O. 127(3), invites interested members of the public to submit any representations that they may have on the two Bills.

The representations may be forwarded to the Clerk of the National Assembly, P. O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi, or emailed to clerk@parliament.go.ke, to be received on or before Friday 12th January, 2018 at 5:00pm.

Copies of the Bills may be downloaded from <http://kenyalaw.org>. Follow the link on Bills/Bill tracker/ National Assembly Bills/2017.

MICHAEL R. SIALAI, ERS
CLERK OF THE NATIONAL ASSEMBLY

Britam
With you every step of the way

Public Notice

Britam Holdings Plc – Profit Warning Announcement

Pursuant to the provisions of the Paragraph G.05 (1) (f) and (2) of the Fifth Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, the Board of Directors of Britam Holdings Plc wishes to inform the shareholders of the Company, potential investors and the general public, that based on the preliminary assessment of the forecast financial results of the Company for the period 31 December 2017, the earnings of the Company for the current financial year are expected to decrease by at least 25% compared to the earnings reported for the same period in 2016.

The expected decline in earnings is mainly due to a change, in 2016, of the valuation methodology from the long term liabilities to Gross Premium Valuation (GPV) methodology from the previously applied Net Premium Valuation (NPV) in compliance with requirements of the Insurance Act amended by the Finance Act 2015. This one-off change positively impacted the earnings in 2016 by ShS 5.2 billion. Without the impact of the one-off change, the company's performance improved in 2017.

The Company is on track in executing its 2016-2020 strategy on the backdrop of which, the Board and the Management are optimistic that the business will continue to perform well in 2018.

By order of the Board

Nancy K. Kiruki
Company Secretary



Annex ~~III~~ V



THE KENYA INSTITUTE OF PLANNERS

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PHYSICAL PLANNING BILL 2017

MEMORANDUM TO THE NATIONAL ASSEMBLY

NAIROBI, 15TH FEBRUARY 2018

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A. THE KENYA INSTITUTE OF PLANNERS

The *Kenya Institute of Planners (KIP)*, was formed in the year 2001, following the commencement of the *Physical Planners Registration Act (PPRA)*. The Institute was formed pursuant to *Section 12 (b) of the Act*, which had anticipated the formation and approval of a professional institute for planners. The *Physical Planners Registration Board (PPRB)*, on the 4th of April 2001, and pursuant to *Section 12(1)b of the Act*, recognized and approved the Institute as a learned society for the legitimate professional discipline and practice of Planning in Kenya, and the sole national body for purposes of planners representation.

Furtherance, the PPRB, on the 16th of May 2001, appointed KIP to conduct professional examinations on its behalf, pursuant to *Section 3(4)b of the Act*. Consequently, the Institute also doubles up as a professional body, and regulates the activities of its members in the public interest and the collective interest of the membership. In this latter regard, the Institute assist the Board to ascertain the good professional conduct of all planners in the country prior to registration as per *Section 12(3) of the Act*.

Since its formation, KIP has proceeded to establish itself as the foremost professional association of planners in Kenya. Its membership surpasses 1200, comprising 238 corporates, 504 graduates and over 539 students, 18 Technicians, 8 associates. Subsequently, KIP has obtained recognition, as the officially recognized body mandated to speak on behalf of the planning fraternity in Kenya, from regional and international bodies such as the *Association of Professional Societies of East Africa (APSEA)*, the *Commonwealth Association of Planners (CAP)* and the *International Society of City and Regional Planners (ISOCARP)*, all to which it subscribes as an institutional member.

The Kenya Institute of Planners is also recognized in a number of legislation where it nominates planners to various boards. They include the *Roads Act*, the *Urban Areas and Cities Act*, and the *Physical Planning Bill*.

B. BACKGROUND

This memorandum is made pursuant to Article 118(1)(b) of the Constitution of Kenya and Standing Orders No. S.O. 127(3) and in response to the advertisement that appeared in the local dailies in December 2017, inviting the public to submit representations on the Bill.

The Governing Council of The Kenya Institute of Planners (hereafter referred to as "KIP"), of behalf of the planning fraternity in Kenya, bring to the attention of the National assembly, and with respect to the Physical Planning Bill 2017 (hereafter referred to as "The Bill") currently before the house, the following;

1. That the Institute finds The Bill currently before the house to be *generally adequate* for the purposes of meeting the expectation of the transitional and consequential provision in 6th Schedule Part II (7)(1) of Constitution, which provide for existing legislation to be *construed with the alterations, adaptations, qualifications and exceptions* necessary to bring them into conformity with the Constitution.
2. It is the position of the Institute that the Bill, as drafted, is adequate only as a *Miscellaneous Amendment Bill*, and for the purposes of achieving the objective of the 6th Schedule Part II (7)(1) of Constitution.
3. The above notwithstanding, the Institute recognizes that this Bill purports to be a *Review and Repeal Bill*, should have been prepared for the purposes of capturing the spirit and letter of the new constitution and the new dispensation of devolution. In this latter regard, the Institute finds The Bill to be *mostly inadequate* for the actual purposes for which it is intended, which includes responding to;
 - a. Article 66(1) of the Constitution which envisages a role for the State to regulate the use of any land, or any interest in or right over any land, *in the interest of defense, public safety, public order, public morality, public health*, or land use planning;
 - b. The Fifth Schedule of the Constitution, which demanded *enactment, within 5 years* of the new Constitution's promulgation, new legislation in response to the above;
 - c. Article 66(2) which requires parliament shall enact legislation ensuring that investments in property *benefit local communities* and their economies;
 - d. Article 67(2)h of the Constitution, which necessitates a legal framework to enable the NLC to discharge its mandate to *monitor and have oversight responsibilities* over land use planning throughout the country.
 - e. Article 220(2)a of the Constitution which requires parliament to enact national legislation to prescribe the structure of the development plans and budgets of counties
 - f. The Fourth Schedule of the Constitution which necessitates a legal framework to provide for the *effective performance of the planning function*, and coordination of the



planning mandates allocated to both National and County Governments in Part I(9 and 21) and Part II(8), respectively. The Bill fails to adequately institute planning systems and structures that respond to the new governance dispensation and is particularly ill-equipped to assist counties to institutionalize their devolved planning mandate.

- g. Other Constitutional imperatives, whereby several national aspirations may be guaranteed through planning. A case in point is *the Bill of Rights*, specifically the rights mentioned in Articles 39, 40, 42, 43(b), 53(2), 54(1)c, 55(b), 56(e), and 57;
4. The enactment of *a more robust piece of legislation* to repeal the existing Physical Planning Act of 1996, which has for all intents and purposes served the country well, but the inadequacies which, have triggered a clarion call by the planning fraternity, for amendment or repeal. The Bill before you is much *similar to the previous one*. As a *Review and Repeal Bill* therefore, its various provisions are not progressive enough to be expected to be a *game-changer* with respect to delivering the broader aspiration to *make Kenya a planning society* and allowing Kenyans to reap the *benefits of a properly functioning, efficient and effective planning system*.
5. Besides, the Bill, although intended to serve as the *framing planning law*, has provisions that are not in harmony with those of related existing legislations (County Governments Act, Urban Areas and Cities Act, Land Acts) and likely to cause confusion and discordance in implementation.
6. The Bill, as 3 other pieces of legislation recognizes the *Kenya Institute of Planners* as the bona fide professional body for the learned profession of planners. However, the Institute seeks to bring to the attention of the National assembly that the Act that recognizes and respects the profession of planning – the *Physical Planners Registration Act (PPRA)*, does not mention the institute, this, in spite of the *Physical Planners Registration Board (PPRB)*, and pursuant to *Section 12(1)b of the Act*, recognized and approved the Institute as a learned society for the legitimate professional discipline and practice of Planning in Kenya, and the sole national body for purposes of planners representation. This has the potential of complicating the implementation of this Act, and the nomination of the Institute's members into the various bodies established by the Bill.
7. The Institute also seeks to bring to the attention of parliament, the concerns of the planning fraternity with respect to the process that was followed to formulate this Bill, and which we think, serves to render this Bill and its provisions illegitimate and fraudulent
 - a. The process lacked transparency and openness that is required to allow stakeholders effectively participate and influence the Bill's content
 - b. The process became the object and victim of the debilitating rancor, grandstanding and gerrymandering maneuvers that characterized relations between the Ministry of Lands and the National Land Commission, both state agencies seeking full ownership of the planning function, and using the process to institutionally entrench themselves.

- c. This unfortunate occurrence has also led to a split in the planning fraternity, as you might have noticed, three planning associations are now claiming the legitimacy to represent planners in institutions created by this legislation and other related laws
8. The Institute had raised all the above concerns in previous memoranda submitted to the house in 2015, when this same Bill was first introduced. In actual fact, the planning fraternity had petitioned parliament to open The Bill to proper professional scrutiny, and subsequent review, prior to debate and passage. Our hope had been that that Bill's life would lapse with the lapsing of the life of the last parliament and that subsequently, an all-inclusive process of re-drafting an all-encompassing Bill would ensue. Such hopes have however been dashed with the reintroduction and publishing of this Bill in September 2017;
9. The above notwithstanding, The Institute is of the view that the enactment of this Legislation is long overdue (see point No. 2b, above) and the continued reliance on the old law, the Physical Planning Act of 1996 may put in jeopardy, the entire planning function and practice, and this, much to *the detriment of the public interest*.
10. In view of the concern raised in point No. 5 and 6, above, The Institute seeks to suggest as follows;
 - a. That parliament proceeds to enact the Bill into law with necessary amendments to deal with perceived omissions and inadequacies;
 - b. That parliament furnish the Country with a more *comprehensive* and *robust* Bill to respond to all of the expectations listed in point No. 2, above. The planning fraternity is willing, if given a chance, and if parliament would be convinced that this is necessary, to be involved in a process of redrafting this Bill to the satisfaction of both the house and stakeholders. This however, is a *suggestion made with much humility* as the Institute believes parliament has the necessary insight to execute its legislative mandate
 - c. That Parliament exercises Solomonic wisdom to arbitrate between various interests of protagonists and factions in relation to this Bill and heal the rift for the sake of institutionalizing order in the institutionalization of the planning function and discipline in the practice of planning.
11. That this Bill is considered alongside a miscellaneous amendment Bill for the *Physical Planners Registration Act (PPRA)* to cure the concern raised in (6) and (10) above. We recommend that the National Assembly requests the sponsor of this Bill to submit the said miscellaneous amendment Bill for concurrent consideration.
12. In view of the foregoing, The Institute hereby highlights areas of concern with The Bill and suggests, for your consideration, amendments necessary to improve and strengthen its various provisions. Our suggestions are further detailed out in the attached section-by-section account.

13. The Institute however wishes to forewarn parliament that the Bill's inadequacies and shortcomings, both in terms of content and structure would necessitate amendments beyond the threshold necessary for consideration, debate and passage.

C. SUMMARY OF KEY AREAS FOR CONSIDERATION

The Institute's comments will focus majorly on the following areas;

Bill Name change

1. Adopt a name that invokes constitutional references to planning and captures the full extent of the planning function

National Planning – Fourth Schedule Part I(9)

Land planning - Fourth Schedule Part I(21)

County planning and development– Fourth Schedule Part II(8)

Land use Planning – Art. 66(1), 67(2)h

Development Planning – Art. 220(2)a

2. The defining element of the Kenya's development coordination strategy is *integration*. Adopting names like *physical planning*, *land-use planning*, or *spatial planning* fails to serve that purpose and only serves to *limit the purview* of the planning function, indeed isolating and alienating other forms of planning. The need for a framing planning legislation cannot be overstated in this regard. The Physical Planning Act review process provides an excellent opportunity to forge a Law that subsumes all forms of planning currently captured in other existing legislation including; various Land Acts, the County Government's Act and Urban Areas and Cities Act.
3. In view of the foregoing, the Institute proposes the adoption of the adoption of the generic title "planning" devoid of attributional qualifications. However, in recognition of the function of planning in regulating development, the Institute vouches for parliament to adopt the title "*Planning and Development Act*".

Bill outline and content re-structuring

4. The Institute proposes a thorough restructuring of the outline and contents of the Bill, and for the following reasons;

- a. To ease legibility, navigation and allow cross-referencing within and between parts
- b. To include all the aspects of the planning function as envisaged in the constitution
- c. The Institute proposes that Act should bear the following major parts;

PART I - PRELIMINARY

PART II - THE PLANNING CONTEXT AND FRAMEWORK

PART III - PLANNING ADMINISTRATION AND MANAGEMENT

PART IV - PLANS AND PLAN-MAKING

PART V - PLAN IMPLEMENTATION AND DEVELOPMENT FACILITATION

PART VI - THE LAND USE AND DEVELOPMENT MANAGEMENT FRAMEWORK

PART VII - PLANNING AND DEVELOPMENT CONFLICTS RESOLUTION

PART VIII - FINANCIAL PROVISIONS

PART IX - SUBSIDIARY LEGISLATION AND GUIDELINES

PART X - TRANSITIONAL PROVISIONS

PART XI – SCHEDULES

- d. The sections/clauses are detailed out in the attached memorandum

Part I - Preliminary

5. Include the following Sections

- a. Application of the Act - the scope of activities that the Act has jurisdiction
- b. Inconsistencies between Acts – need to be clear as to what happens if the provisions of this Act conflict with those of existing legislation
- c. Interpretation – a more comprehensive definition is needed to strengthen development control and enforcement

Part II - Institutionalization of Planning Mandates and Responsibilities

6. The following mandates and responsibilities need to be clearly defined and outlined to prevent overlaps and conflicts

- a. The Cabinet Secretary
- b. The County Executive Member
- c. The City, Municipal Manager and Town Administrator
- d. The Director-General of Planning
- e. The County Director of Planning
- f. Officers with Delegated Functions and Powers
- g. Parliament
- h. County Assemblies
- i. The National Land Commission
- j. The Planners Institute

7. The Act need to clearly establish and clearly define the roles of the following institutions for purposes of effectuate the performance of the planning function

- a. *A National Planning Authority* - overall planning coordination and oversight



- b. *County Planning and Development Authorities* - plan implementation and regulation of land use and development
 - c. Designate Key development agencies as *Jurisdictional Planning Authorities* – plan formulation and implementation
 - d. A *National Planning Institute* - general planning research, plans repository and archiving, practice guidelines, regulation of ethics and conduct of planning practitioners
8. In addition, the Act needs to clearly outline the qualifications of the following office bearers
- a. The Director-general of Planning
 - b. The County Director of Planning
 - c. Officers with delegated functions and powers

New Part – Planning Consultation and Liaison

9. The Act needs to clearly distinguish between *planning consultation and liaison* from *planning and development conflicts resolution* and subsequently proposes the establishment of establishment of Planning Consultative Forums at the following levels
- a. *Ward and Village Planning Consultative Forums*, to represent the lowest levels of engagement of citizens for purposes of urban and rural planning, respectively;
 - b. *City, Municipal or Town Planning Consultative Forums*, for engagement on city-wide or town-wide planning matters;
 - c. *the Sub-county Planning Consultative Forum*, for engagement on planning matters affecting a Sub-county;
 - d. *the County Planning Consultative Forum*, for engagement on County-wide planning matters;
 - e. *the Inter-county Planning Consultative Forum*, for two or more County Governments collaborating on a planning matter, including on metropolitan areas;
 - f. *the Special Areas Planning Consultative Forum*, for engagement regarding Special Planning Areas as provided for in Section 37 of this Act
 - g. *the National Planning Consultative Forum*, for engagement regarding planning matters that impact upon the whole country.

Part III – Plan-making and Types of Plans

10. The Act needs to be clear about the following;
- a. Categories and types of plans to be prepared at various levels, jurisdictions and for different thematic areas. This will assist in clearing the confusion that now exists with different Acts demanding different type plans
 - b. Qualifications of professionals to prepare plans of different complexities

- c. Procurement of planning services
- d. Processes and procedures for plan preparation need to be elaborate
- e. The Framework of stakeholder engagement at all levels needs to be elaborated
- f. Plan-making principles and norms, and standards of planning process deliverables
- g. the status and legal effect of plans

New Part – Plan Implementation and Development Facilitation

11. The Act needs a Whole part dedicated to the post-planning scenario in order to ensure that planning measures are realized. The part should elaborate the following;
- a. Resources mobilization options for plan implementation
 - b. Provision of land for planning purposes
 - c. Compensation for land acquired for planning purposes
 - d. Development Facilitation (Incentivizing private investments)

Part IV – The Land Use and Development Management Framework (*Development Control and Enforcement*)

12. The Institute finds this section, as presently outlined in the Bill, to be too limited and inadequate and subsequently proposes its broadening to include
- a. The Planning Control Regime
 - b. The Establishment of the Planning Permission Determination Panel
 - c. Application and Determination of Planning Permission
 - d. The Establishment of the County Planning Inspectorate
 - e. Enforcement of Planning Control Decisions

Part IV –Enforcement

13. The Part should be merged with Part IV (Development Control) and broadened to include 12(a) and 12(b) above

Part VI – Planning and Development Disputes Resolution (*Liaison Committees*)

14. The Act needs to clearly distinguish between *planning consultation and liaison* from *planning and development conflicts resolution*, and subsequently proposes the establishment of the following amendments;
- a. The Establishment of Planning and Development Disputes Tribunals both at the national and County level
 - b. Dispute and Conflict Resolution Procedure
 - c. Compensation arising from Dispute Resolution

d. Recourse to the Courts

Part VII – Miscellaneous

15. The Act needs to repeal sections of existing legislation whose provisions are in conflict with those of this Act



THE INSTITUTION OF SURVEYORS OF KENYA

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MEMORANDUM ON PHYSICAL PLANNING BILL, 2017

PRESENTED TO
CLERK, NATIONAL ASSEMBLY

FEBRUARY 2018

Coast Branch Office:

Institution of Surveyors of Kenya,
NSSF Building, 9th Floor, P O Box 80325-80100, Mombasa
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MEMBER CHAPTERS:

- Land Surveyors
- Engineering Surveyors
- Geospatial Information Management Surveyors
- Valuation & Estate Management Surveyors
- Building Surveyors
- Land Administration Managers



INTRODUCTION

The Institution of Surveyors of Kenya (ISK) is the Landed professional organization in this country that brings together professionals in land and real estate sector. The professionals fall within six major disciplines of the surveying profession namely the Valuation and Estate Management Surveying; Land Surveying; Building Surveying and Land Administration Management; Engineering Surveying and Geospatial Information Management Surveyors.

ISK was instrumental as a major stakeholder in the formulation of Sessional Paper No. 3 of 2009 on the National Land Policy and ensuring inclusion of Land Related Provisions in the Constitution of Kenya, 2010. ISK was also a major stakeholder during the development and subsequent enactment of the various land laws and the land laws regulations

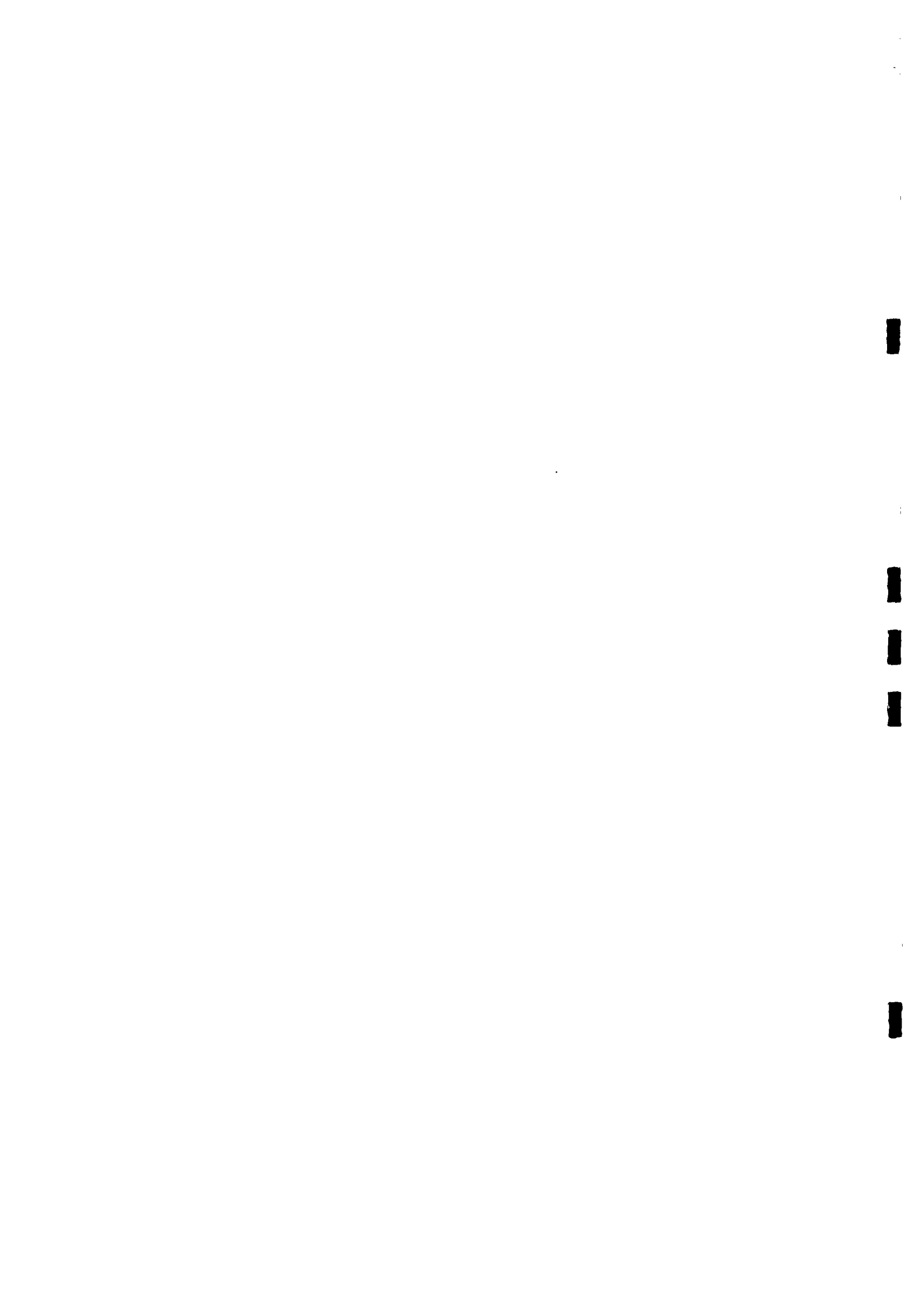
We are therefore keen as an Institution, to ensure that any land related legislations, including the physical planning bill, are in line the letter and spirit the Constitutional and the various other legal provisions in order to give true meaning to the aspirations of Kenyans

We are therefore glad to forward herein our comments with regard to the physical planning bill, 2015 together with the proposals on the various sections for consideration.

Our Comments:

i) General comments

- a) There is need for an analysis t to determine the financial implication of the bill to the overall wage bill.
- b) The bill should also seek to cushion private developers against the exorbitant fees levied by the County Government in the guise of development applications



ii) Specific Comments

Section 2	Building	It provides for the definition of building
	Proposal	The definition should exclude temporary and movable structures.
	Comment	This is to avoid bottlenecks in construction of small temporary structures including cowsheds, chicken cage, temporary tents etc
Section 3		
	Clause (c)	To provide for the procedures and standards for development control and the regulation of land use;
	Comment	Proposes to control and regulate land use, a function which is a preserve of the boards of municipals and cities as stipulated under section 20 of the Urban Areas and Cities Act, 2011
	Proposal	The bill should restrict itself to policy and oversight role with regard to the planning matters.
	Clause (e)	To provide a mechanism for dispute resolution
	Comment	Too wide and overlaps with existing Arbitration Act
	Proposal	To provide a mechanism for dispute resolution <u>related to physical planning</u>
Section 29	Proposal	Amend the section to read "Submit the same to the National Director of Physical Planning for recommendation to Cabinet Secretary for final approval since the Cabinet Secretary is the approving authority in this case."
	Comment	The Cabinet Secretary is the approving authority
Section 43 (1)	(b)	Provides for contents of a Local Physical Development Plan
	Proposal	Amend the provision by inserting "Published" after "any"
Section 54	(2)	Provide for Development application referred to relevant authorities
	Proposal	Amend by inserting "copy of the application for development permission from the planning authority, the relevant authorities or agencies shall submit their comments to the planning authority . When comments are not received within the stipulated period, the planning authority shall deem there are no adverse comments."



		After "receiving the..."
	Comment	This is to avoid undue delay and bureaucracy and promote ease of doing business
Section 58	(1)	The time given to a prospective developer after development permission has been granted, in our opinion, is too short, especially, given the fact that the resource availability is not guaranteed. This may affect low income persons who rely on Sacco loans to develop their residential houses. Further banks also issue mortgage finance in a phased manner.
	Comment	This will deter development
	Proposal	Remove the limit
Section 59	Proposal	Change the duration from five (5) years to ten (10) years to align it with the planning cycle.
	Comment	A five year period is too short for major developments and may be impractical.
Section 66	Proposal	Delete the section
	Comment	Laws should not work retrospectively. This section should be removed as the issue is well addressed under Section 85.

Thank you,



Moses Kiambuthi
Chief Executive Officer





**MEMORANDUM FROM THE YOUNG PLANNERS OF
KENYA
(Y.P.K)**

PRESENTED TO

**CLERK OF THE NATIONAL ASSEMBLY
1st FLOOR, MAIN PARLIAMENT BUILDINGS
P.O BOX 41842-00100
NAIROBI, KENYA**

11TH JANUARY 2018

1. WHO WE ARE

The Young Planners of Kenya (YPK) is an association that came into being in 2014 as a forum that brings together young professional/graduates and student planners not limited by university of training and/or professional association affiliation that seeks to champion the rightful place of the planning profession in Kenya. Currently, we represent a constituent of 300 graduate planners and 600 student members. In order to achieve this mandate, YPK seeks to engage existing planning authorities and entities at National and County levels as well as existing professional association and Institutions on issues pertaining to planning and national development. The Forum also seeks to create public awareness on the products and benefits of urban and regional planning and also champion the general welfare of young planners in their practice.

2. PROPOSED AMENDMENTS

Section	Discussion and proposal
Title	<p>Provision It provides for the premise of the bill</p> <p>Our proposal Insert "pursuant to Article 66 (1) of the Constitution" after land.</p> <p>Justification It aligns the bill the provisions of the Constitution</p>
Preliminary	<p>Provision Provides for the various definitions as used in the Act</p> <p>Our proposal Insert the following definitions:</p> <p>a) Land – has the same meaning as interpreted in Article 260 of the Constitution and includes Public, Private and Community Land as classified under Article 61 of the Constitution of Kenya 2010.</p> <p>a) "development" means— (a) the making of any material change in the use or density of any buildings or land or the subdivision of any land.</p>

Section	Discussion and proposal
	<p>(b) the erection of such buildings or works and the carrying out of such building operations (c) determination of tenure on any land</p> <p>Licensed Physical Planners- means a person who is holding a certificate as a registered and licensed physical planner under relevant Physical Planners Registration law</p> <p>Proposal Change to Land Administration</p>
Section 11	<p>Provision It provides for the qualification of the National Director of Physical Planning</p> <p>Our Proposal</p> <p>a) Insert new provision (b) to read "Possess an Undergraduate degree in urban and Regional planning b) Insert a new provision after (d) to read "A Corporate Member of a recognized professional body in good standing." c)</p> <p>Proposal Delete the definition</p>
Section 15	<p>Provision It provides for the qualification of the County Director of Physical Planning</p> <p>Our Proposal Amend the section to read, qualification for appointment as a County Director of Physical shall be as follows; a) is a citizen of Kenya; b) Possess an Undergraduate degree in urban and Regional planning c) possesses a postgraduate degree in urban and regional planning or related discipline from a recognized university; d) is registered as a physical planner under the Physical Planners' Registration Act, 1996; e) has at least five years' post-qualification f) A Corporate Member of a recognized professional body in good standing g) Professional experience in physical planning; and is</p>

Section	Discussion and proposal
	not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.
Section 53	<p>Provision It provides for the plans and documents to be prepared by qualified person</p> <p>Our proposal Replace "Professionals" with "and Licensed Physical Planner"</p> <p>Justification It brings about clarity</p>
Section 55 (2)	<p>Provision It provides for decision making and communication</p> <p>Our proposal Insert a new section (c) to read "Failure by the County to give a written response with regard to a development permission, the applicant shall notify the Director in Charge of writing, copied to the Governor. Failure to receive response within 10 day s thereafter, the application will be deemed approved."</p>

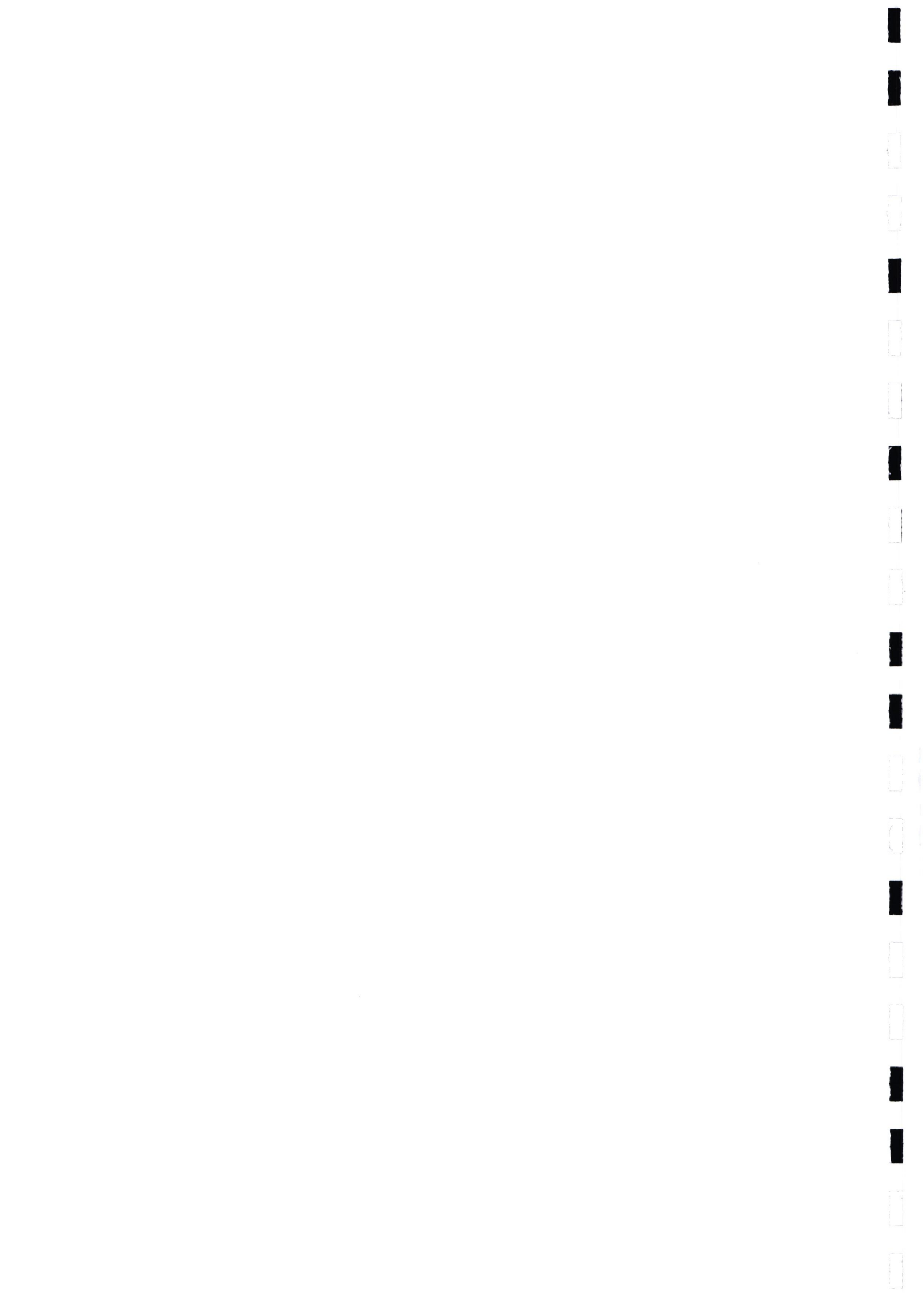
REPUBLIC OF KENYA



MINISTRY OF LANDS AND PHYSICAL PLANNING

**BRIEF ON THE BACKGROUND OF THE PHYSICAL
PLANNING BILL NO. 34 OF 2017**

FEBRUARY, 2018



1.0 Introduction

The Ministry of Lands and Physical Planning wishes to provide the historical background and process followed in the development of the Physical Planning Bill from the year 2010 to date. In addition, we seek to respond to concerns raised by various stakeholders including; The National Land Commission, The Institute for Social Accountability (TISA) and The Architectural Association of Kenya (Town Planners Chapter) on the Physical Planning Bill, No. 34 of 2015. **The main concerns raised relate to the Constitutional threshold, types of plans and public participation.**

2.0 Rationale and Purpose of the Bill

The promulgation of the Constitution of Kenya, 2010 created an urgent need to re-evaluate the Physical Planning Act, CAP 286 which is the main legislation that governs physical planning in the country. Article 68 (b) of the Constitution requires Parliament to revise sectoral land use laws in accordance with principles set out in Article 60(1). Further, Article 66(1) provides that the State may regulate the use of any land or interest in or right over land in the interest of defence, public safety, public order, public morality, public health or land use planning.

Additionally, the Fifth Schedule of the Constitution provides that Parliament shall within five (5) years enact legislation to regulate land use and property.

The Constitution introduced new governance structures, expanded definition of land and new categorisation of land tenure in Kenya. This called for recasting of the Physical Planning Act, CAP 286 to appropriately respond to the current setup and demands.

The new legislation would be aligned in a manner to facilitate the delivery of the Constitution promise. Important aspects of this realignment include- allowing planning to be undertaken at National and County levels, embedding principles and values which include; equity, social justice, citizen participation and sustainability in the planning process.

The new legislation once enacted, will provide more responsive and innovative planning approaches to address the current and emerging

developmental issues which include; rapid urbanization, urban sprawl, acute shortage of housing, rapid land fragmentation and encroachment into environmentally fragile areas.

3.0 The Process Followed in Formulating the Bill

The process of formulating the Bill started immediately after the promulgation of the Constitution in 2010. This started with the development Concept Paper in October 2010 and its finalization in August 2011. The aim of the Concept Paper was to provide a roadmap for the formulation of the Bill.

The finalization of the Concept Paper was followed by formulation of the Zero Draft Bill by the Ministry between August 2011 and April 2012. The other main steps are outlined below:

Milestone	Dates	Stakeholders	Remarks	ANNEX
1. Work session to review the Concept Paper and Zero Draft Bill	18 th -22 nd April 2012	<ul style="list-style-type: none"> • Experts in the built environment sector <ol style="list-style-type: none"> 1. Practising planners • Public universities <ol style="list-style-type: none"> 1. The University of Nairobi 2. Moi University • Professional bodies <ol style="list-style-type: none"> 1. Architectural Association of Kenya 2. Kenya Institute of Planners • City Council of Nairobi • Ministry of Nairobi Metropolitan 	<ul style="list-style-type: none"> • Invitation letters dispatched on 10th April 2012 • Stakeholders to interrogate the concept paper and the Bill in terms of consistency with the Constitution, the National Land Policy and other related statutes; indicate gaps and provide guidance in the thematic areas 	1.

Milestone	Dates	Stakeholders	Remarks	ANNEX
2. Engagement with Local Authorities	October 2012	Development • Local Authorities	<ul style="list-style-type: none"> • Visited local authorities in Marsabit, Isiolo, Laikipia, Samburu, Meru, Embu, Nyeri, Kirinyaga, Kiambu, Muranga and Nyandarua • Rolling out to the rest of the local authorities was affected by lack of funds and the general elections • However, all county governments were consulted in 2014 	2.
3. Consultation with the Kenya Law Reform Commission	September 2012	• Kenya Law Reform Commission	<ul style="list-style-type: none"> • Extensive discussion with the Kenya Law Reform Commission and benefited from their advice in shaping the Layman's draft Bill 	3.
4. Forwarding of the Layman's draft of the Bill to Attorney General	18 th November, 2013	• Attorney General	<ul style="list-style-type: none"> • To align the Bill to the required legislative standards • The Attorney General wrote to the Ministry on 27th March, 2014 forwarding the revised Bill to Cabinet Secretary for onward transmission to the Commission for Implementation of the Constitution (CIC) for round table discussion 	4.

Milestone	Dates	Stakeholders	Remarks	ANNEX
5. Circulation of the Bill to various stakeholders	28 th April 2014	<ul style="list-style-type: none"> • National Commission • Transition Authority • County governments • Kenya Institute of Planners • The University of Nairobi 	<ul style="list-style-type: none"> • Circulated the Physical Planning bill, 2014 • Responses received from various stakeholders including; <ul style="list-style-type: none"> ➢ National Land Commission ➢ Planning Students Association- University of Nairobi ➢ Law Society of Kenya ➢ Association of Professional Societies in East Africa ➢ Institute of Surveyors of Kenya ➢ Kenya Law Reform Commission ➢ County Governments through County Executive Committee Members in charge of physical planning matters 	5.
6. Stakeholder engagement on the Physical Planning Bill, 2014	June 24 th 2014	<p>CIC-convenor</p> <ul style="list-style-type: none"> • County governments • Kenya Institute of Planners • Architectural Association of Kenya (Town Planners Chapter) 	<ul style="list-style-type: none"> • CIC gathered views from stakeholders for improvement of the Bill • CIC took over the process of reviewing the Bill and oversaw its finalization to ensure that it is in line and spirit of the Constitution 	6.
7. Round table	13 th	<ul style="list-style-type: none"> • Attorney General 	<ul style="list-style-type: none"> • To discuss and review the Bill 	7.

	Milestone	Dates	Stakeholders	Remarks	ANNEX
	meeting by CIC	February 2015	<ul style="list-style-type: none"> Chairman Kenya Law Reform Commission Cabinet Secretary 	and settle any outstanding issues	
8.	Approval by Cabinet	21 st May 2015	<ul style="list-style-type: none"> Cabinet 	<ul style="list-style-type: none"> The Bill was approved for publication and tabling in Parliament 	8.
9.	Submission of the Physical Planning Bill, 2015 to the CS by the Attorney General	10 th July, 2015	<ul style="list-style-type: none"> Cabinet Secretary Attorney General 	<ul style="list-style-type: none"> The Cabinet Secretary to forward the approved Bill to Parliament for debate and enactment 	9.
10.	Engagement with the Departmental Committee on Lands	15 th to 20 th September 2015	<p>The National Assembly Cabinet Secretary</p> <ul style="list-style-type: none"> National Land Commission Kenya Institute of Planners Architectural Association of Kenya Institution of Surveyors of Kenya 	<p>To discuss:</p> <ul style="list-style-type: none"> Physical Planning Bill, 2015 The Community Lands Bill, 2015 The Land Laws (Amendments) Bill, 2015 	10.
11.	The Senate Subjected the Physical	6 th July 2016.	<p>The Public</p> <ul style="list-style-type: none"> National Land Commission 	<ul style="list-style-type: none"> The Director of Physical Planning and the Chief State Counsel made a presentation 	11.

Milestone	Dates	Stakeholders	Remarks	ANNEX
Planning Bill, 2015 to a public hearing		<ul style="list-style-type: none"> • Kenya Institute of Planners • Architectural Association of Kenya • Institution of Surveyors of Kenya 	during the hearing	

4.0 The Title of the Bill

There has been contention on the appropriate title of the Bill. Some stakeholders have proposed the use of "Land Use" while others have suggested "Spatial Planning" Bill. The title "Physical Planning" has been viewed as unconstitutional as it is not expressly mentioned in the Constitution.

Does the Constitution prescribe the title of the Bill envisaged in the Fifth Schedule to regulate land use and property?

It is worth noting that the Constitution and relevant Statutes variously use the terms land use, land planning, county planning and physical planning interchangeably to mean the same thing as indicated below:

- **Article 66 (1),67,68** - land use planning
- **Section 21 of Part 1** – land planning
- **Section 8 of Part 2** – county planning
- **Section 12(7) of the Land Act No. 6 of 2012** – planning
- **Section 17 (4) of the Land Act No. 6 of 2012** – relevant Law relating to development control
 - **Section 8 (1) (d) of the Land Registration Act , No. 3 of 2012** – user of the land
 - **Section 8 (1)(b)(v) of the National Land Commission Act No. 5 of 2012-** spatial planning
 - **Section 18 (1)(9)(a) of the National Land Commission Act No. 5 of 2012** – physical planning
 - **The First Schedule of the Urban Areas and Cities Act No. 13 of 2011** – Planning
 - **Section 20(1) (d) of the Urban Areas and Cities Act No. 13 of 2011** – land use, master plans
 - **Sections 103 and 110 of the County Governments Act No.17 of 2012** – spatial planning
 - **Sections 103 of the County Governments Act No.17 of 2012** – county planning
 - **Section 111 of the County Governments Act No.17 of 2012** – land use planning

4.1 Conceptual Definitions

a) Physical planning

Physical Planning is concerned with the general pattern of land use, the character and location of public buildings and structures, the design of streets, the location of transit and transportation systems and all other physical faculties which are necessary and desirable to promote economic betterment, comfort, convenience and general welfare.

In the context of time and space, some of the elemental principles of land use, spatial planning, land planning, county planning and physical planning are equitable, efficient, productive and sustainable use of land(Articles 60 and 260) .

The Physical Planning function entails provision of spatial frameworks for arrangement and organization of socio-economic activities on and space at the National, Regional, county and Local levels to achieve optimal use and sustainable development for the well-being of the society. **In the case of Kenya, Physical Planning is a concurrent function undertaken at the national and county levels in order to achieve optimal use of land and sustainable development of the country.**

b) Land Use Planning

Refers to the process of zoning a specified geographical space, to indicate the best present and future uses of land. The zones form the basis of regulating use and development of land. Land Use Planning allocates available space among competing user groups/activities.

c) Spatial Planning

Is a multi - disciplinary approach of organizing and utilizing space. Spatial Planning as an approach to organizing space integrates policies for the development and use of land with other policies and programmes which influence the nature of places and how they function. It ensures linkages between sectors and agencies at various levels of governance, in order to accommodate multiple aspirations and respond to emerging challenges with a focus on the common good and respect for future generations.

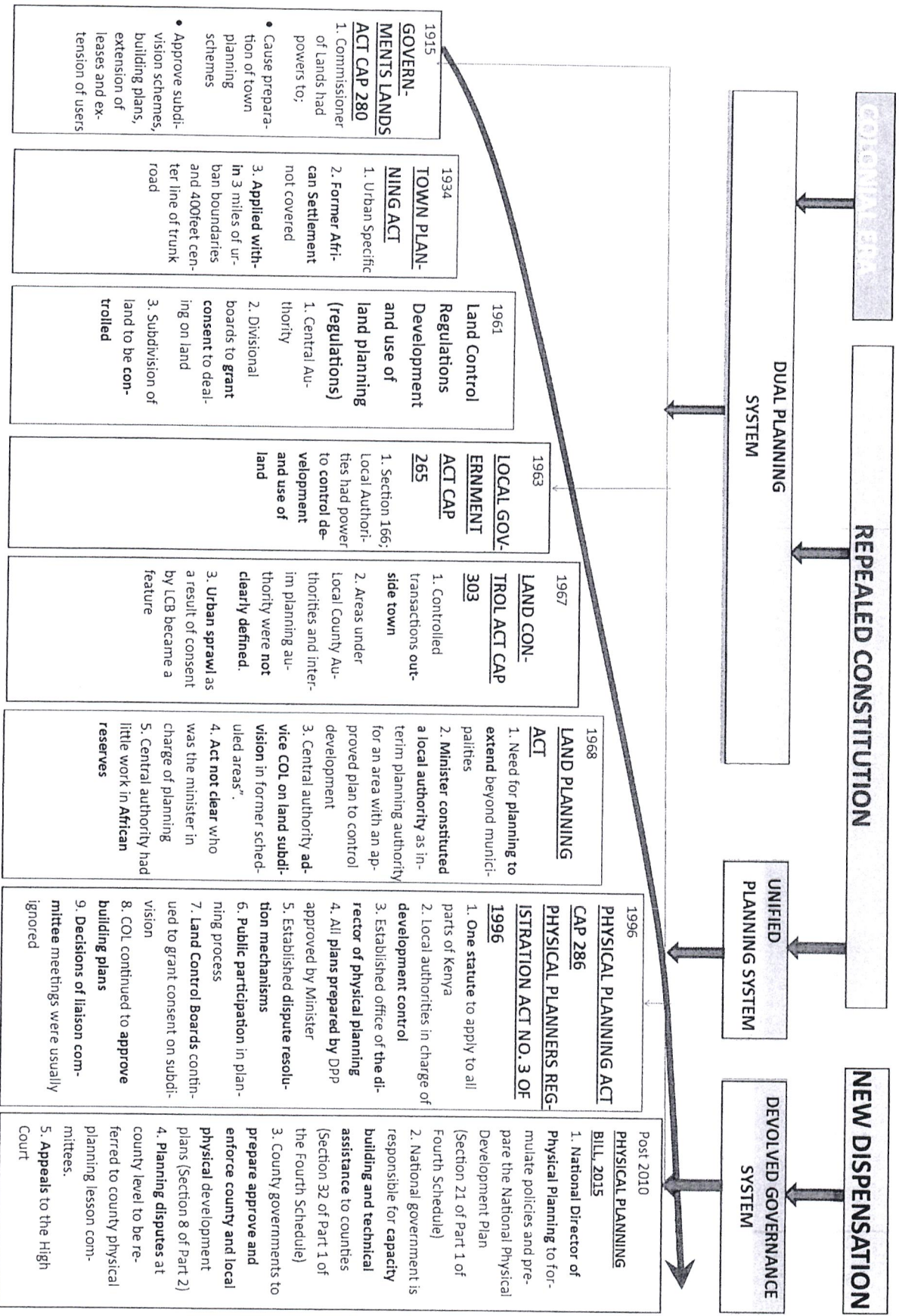
Physical Planning as a practice is therefore an amalgam of Land Use and Spatial Planning aspects. The use of Land Use or Spatial Planning would be too limiting in scope and practice.

A careful reading of the **Constitution** and bearing in mind the definition of Physical Planning above and relevant Statutes, we can infer that Physical Planning has both a Constitutional and Statutory basis. **The term "Physical Planning" therefore is an all-inclusive term and as a practice it incorporates land planning, land use planning, spatial planning, town and country planning, urban and regional planning, rural planning, as well as integrated urban and county planning.** It therefore, meets the spirit and letter of the Constitution in as far as Articles 60, 66, 67 and 68 and the Fourth and Fifth Schedules.

4.2 History of Planning Legislation in Kenya

Since the colonial era, Kenya has had six (7) legislations that have guided the planning practice. These include; Town Planning Act Cap 134, Land Control Regulations Development and Use of Land (Planning) Regulations 1961, Local Government Act CAP 265, The Land Act CAP 303, Land Planning Act Cap 302 and Government's Land Act CAP 280. The planning regimes can be classified into three namely the dual system, the unified and the devolved systems as illustrated below. The Physical Planning Act Cap 286 harmonized the planning system by repealing the Town Planning Act CAP 134 and the Land Planning Act CAP 303. The Act applies to all parts of Kenya. The diagram below depicts evolution of planning legislation in the country.







4.3 Benchmarking of Titles Relating to Organization of Space

Courses offered in local Universities

A review of course titles in institutions offering physical planning related training revealed use of different terms. These include:

	Title	University
1.	Urban and Regional planning	Maseno University, Technical University of Kenya and The University of Nairobi
2.	Spatial Planning	Kenyatta University and Jaramogi Oginga University of Science and Technology

The term "Physical Planning" therefore would provide an all-inclusive description of the planning profession.

Titles of legislation in select countries

From benchmarking with other planning jurisdictions, it is evident that the planning legislation of majority of countries, especially Commonwealth nations has tended to stick to derivatives of Physical Planning which include Town and Country Planning, Planning and Development and Urban and Rural Planning. It is worth noting that only Tanzania has adopted the term Land Use Planning as evidenced on **ANNEXE 12.1**

Therefore, the Ministry's view is that the Title "**The Physical Planning Bill, 2017**" should be maintained." However, the Bill will incorporate new concepts in organization of space which includes Spatial Planning.

5.0 Constitutional Threshold

The Commission of the Implementation of the Constitution, the Hon. Attorney General and the Kenya Law Reform Commission were mandated to determine the Constitutionality of a Bill before submission to Parliament for debate. These institutions reviewed the Physical Planning Bill and determined that it met the Constitutional threshold.

On assessment of the Bill CIC determined that the Bill meets the Constitutional threshold and on account of that, requested the Cabinet Secretary to submit the Bill to the Cabinet for approval.

5.1 Assignment of the Physical Planning Functions in the Constitution

Physical Planning is a concurrent function of the National and county governments as provided for by Article 186 as read with the Fourth Schedule of the Constitution. Under Article 67(2)(h), the National Land Commission has the mandate to exercise oversight and monitoring of land use planning in the country.

5.1.1 Functions of the National Government

The National Government is broadly responsible for formulation of policies, standards and regulations. **In addition, it is responsible for residual planning functions that include; preparation and approval of regional physical development plans, preparation of plans for strategic government installations and infrastructure of national significance.**

Sections 21 and 32 of Part 1 the Fourth Schedule of the Constitution, outlines the Functions of the National Government as follows:

- (a) Formulation of general principles of land planning and coordination of planning by the counties (Section 21)
- (b) Capacity building and providing technical assistance to counties (Section 32)

Specifically, the National Government is constitutionally mandated to:

1. Formulate general principles of land planning including Policies, standards and guidelines.
2. Coordinate planning by the counties to ensure uniformity and quality in delivery of planning services in all parts of the country
3. Formulate National Spatial Plan and National Land Use Policy
4. Capacity building and technical assistance to counties to ensure adequate and appropriate competence for delivery of physical planning services

Further to provisions of Sections 21 and 32 of Part 1 the Fourth Schedule, Article 186 (3) assigns residual functions, which are

not assigned by the Constitution or national legislation to a county, to the original level of government that existed before creation of county governments. Imperatively, this means such functions are vested with the national government. With regard to physical planning, the national government shall:

- Coordinate Preparation of physical development plans which cover more than one county
- Coordinate the preparation of special area plans e.g. SEZ, Transport Corridor Development Plans e.g. Northern Corridor, Resource management plans e.g. Amboseli Ecosystem Resource Management Plan
- Undertake planning activities whose impact spreads beyond the national borders
- Research and disseminate information on physical planning matters that cut across counties and have implications beyond national borders.
- Regulate the Physical Planning profession

5.1.2 Functions of the County Governments

Section 8 of Part 2 of the Fourth Schedule mandates County Governments to be in charge of Planning and Development.

Section 103 of the County Governments Act, 2012 states that some of the Objects of County Planning are:

- To ensure harmony between national, county and sub county spatial planning requirements
- Facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land
 - **Section 104(1)** of the Act obligates county governments to plan without which they will not appropriate public funds. **Section 106 (2)** states that County Plans shall be based on the functions of county governments as specified in the Fourth Schedule to the Constitution and on **relevant national policies.**

Section 20 of the Urban Areas and Cities Act 2011 provide wide planning responsibilities to Cities and Municipalities which include *inter alia*:

- Develop and adopt policies
- Develop and adopt plans
- Formulate and implement Master Plans for Urban and Physical Planning
- Exercise Control and land use, land subdivision, land development and zoning by Public and Private Sectors.
- Ensure integrated development planning.
- Implementation of applicable national and county legislation

It is evident that under the **Constitution, County Governments Act, 2012 and the Urban Areas and Cities Act, 2011** the day to day Physical Planning functions are conferred to County Governments.

Specifically, the county governments shall:

- Prepare, approve and implement County plans (County Integrated Plans, County Spatial Plans, Integrated Urban Development Plans)
- Prepare, approve and implement local physical development plans/integrated development plans
- Implement national physical planning policies, strategies and standards
- Undertake development control and enforcement
- Facilitate conflict resolution on matters arising from county planning
- Advise the National Land Commission on land reservation, alienation and acquisition on county specific projects
- Undertake research on county planning matters
- Prepare annual reports on the state of county planning

5.1.3 Functions of the National Land Commission

The National Land Commission (The Commission) is established under **Article 67** of the **Constitution**. The Commission's functions with regard to Physical Planning are:

- To monitor and have oversight responsibilities over land use planning throughout the country.

- To advise and recommend to National and County government on the most appropriate use of land and natural resources.
- To Regulate the use of public land on behalf of National and County Governments (Section 18 (9) (a) of the National Land Commission Act, 2012 and Sections 17 and 18 of the Land Act, 2012).

5.1.4 Meaning of Monitoring and Oversight Function

The Commission's oversight function entails an overarching responsibility which entails being in charge and watching over planning activities (at the National and County levels), to make sure that they operate in harmony, are transparent, fair and legal. **The oversight function of the Commission therefore is a governance function to ensure proper operation of the planning system at the national and county levels.** It is to ensure that the responsible Planning authorities deliver their mandates through approved policies, standards and procedures. Planning authorities are therefore accountable to the Commission. The Commission should ensure integrity of the Planning System in the country. The monitoring function entails, checking the quality of the planning practice, the efficiency and effectiveness of the Planning Systems (at the national and county levels) and initiating systematic reviews to ensure that the Physical Planning Practice remains effective throughout the country.

In the context of the Constitution, these responsibilities would mean ensuring that planning promotes principles of Land Policy under Article 60 as well as National Values under Article 10 particularly Sub-Article 10(2) (d). For instance the Commission has the Constitutional mandate to ensure that the National Government formulates Policies, Standards and Regulations on Physical Planning, coordinates planning by the counties and provides technical support to counties. On the other hand the Commission should ensure that county governments prepare the statutory plans defined by various Statutes, implement applicable national and county legislation (Section 20 (i) of the Urban Areas and Cities Act 1011) and monitor county governments to ascertain that there is harmony between national, county and sub- county spatial planning requirements (Section 103 (a) of the County Governments Act, 2012) .

In order to avoid conflicts with National and County Governments:

- a) **The Commission should not perform day to day planning function for this will be in conflict with its monitoring and oversight responsibility.** If the Commission performed a day to day planning activity, it would submit reports to the National and County Governments. This would be most undesirable for an agency with an oversight responsibility.
- b) The performance by Commission of day to day planning functions would be in conflict with the Constitutional mandate of County Governments, Corporate Cities and Municipalities.
- c) The Commission cannot perform planning functions on behalf of both levels of governments; because its oversight function mandates it to ensure that the two levels of government are accountable to the people of Kenya in performing their Planning functions.

In exercising its oversight role the Commission should ensure that National and County Governments adhere to Constitutional principles, policies guidelines as well as approved physical development plans. It is worth noting that in executing its functions (which include oversight over land use planning throughout the country), Section 6 (1) and (3) of the National Land Commission Act, 2012 gives the Commission **powers** to execute its functions including taking any measures necessary to ensure compliance with the Principles of Land Policy set **in Article 60.**

The Bill has been drafted in a manner that it separates functions of the national government, county government and the National Land Commission and as such the concerns raised by a few of the stakeholders regarding the possibility of encroachment on functional areas assigned to either of the two levels of government or the Commission does not have any basis at all.

5.2 Support to Devolution

The Bill promotes devolution by assigning duties and responsibilities to counties in plan preparation, review, approval and implementation as demonstrated below:

5.2.1 Institutional Framework

- **Clause 13** -The County Executive Committee member responsible for physical planning shall be responsible for:
 - formulating a county policy on physical planning;
 - approving county physical development plans;
 - monitoring and overseeing the planning function;
 - Promoting the integration of county physical planning functions and sectoral planning levels.
- **Clause 14** - (1) there is established the office of the County Director of Physical Planning which shall be an office in the county public service.
 - (2) The County Director of Physical Planning shall advise and be responsible to the County Executive Committee Member in charge of physical planning.
- **Clause 16**- The County Director of Physical Planning shall be responsible for:
 - advising the county government on physical Planning matters that impact on the whole country;
 - formulating county physical planning policies, guidelines and standards;
 - preparation of county physical development plans;
 - preparation of local physical development plans;
 - participating in the preparation of regional physical development plans;
 - undertaking research on matters relating to physical development planning at the county level;
 - And recommending to the county government the establishment of planning units as may be necessary.
- **Clause 25**-establishes Regional Joint Physical Planning Development Committees responsible for preparing Regional Physical Development by mutual agreement between two or more counties. This encourages counties to cooperate in the process of planning utilization of resources whose location cuts across more than one county.

5.2.2 Types of Plans

- **Clauses 32- 39- County Physical Development Plans**

The county Physical Development Plan shall be prepared, approved and revised by respective county governments

- **Clauses 40- 46- Local Physical Development Plan**

The local physical development plan shall be prepared, approved and revised by respective county governments

- **Clause 47** – The declaration of a special planning area is the responsibility of respective county governments.

5.2.3 Development Control and Enforcement

- **Clauses 49 – 66;** Development control and enforcement are responsibilities of county governments.

5.2.4 Dispute Resolution

- **Clause 68 (1) (g)** - A representative of the council of governors is a member of the National Physical Planning Liaison Committee
- **Clauses 70-83** – Establishes county physical planning liaison committees. In line with the distinctiveness of the two levels of government - Article 6 (2), appeals against decisions of the county physical planning liaison committees will be heard and determined by the Environment and Land Court and not the National Physical Planning Liaison Committee.

6.0 Regional planning Vis a Vis Inter County Planning

6.1 Regional Planning

It is planning for a homogeneous area transcending more than one county and includes planning for metropolitan areas, drainage basins, national transport corridors, conservation areas and wildlife migratory corridors

6.2 Inter- County Planning

The term inter county planning is limiting since it only defines a scope which is majorly administrative.

7.0 Physical Planning Bill as the Framework Law for Planning

In spite of the County Government Act, 2012 providing for preparation of various plans at the county level, **it does not provide the framework for preparation of these plans and thus it is not a physical planning law.**

The physical planning law will guide the preparation of physical development plans at the two levels of physical planning without creating two parallel regimes of physical planning.

8.0 Justification for the Proposed Institutional Structure at the National and County Levels

It is important to retain the proposed offices of the National and County Directors of Physical Planning under Clause 10 and 14 respectively for ease of coordination of the planning function at the two levels of government. By establishment of the office of the County Director of Physical Planning, the Bill seeks to establish and strengthen the counties for effective execution of their planning function.

The planning functions at the two levels of government are distinct as already explained above. Therefore, they do not overlap in any way with those of the National Land Commission.

The proposed National Physical Planning Consultative Forum under Clause 5 should be sustained for purposes of resource mobilization and awareness creation on planning matters. The functions of the Forum not in contradiction with those of the National Land Commission

9.0 Consistency with Existing Legislation

The preamble to the County Governments Act, 2012 states; *"An Act of Parliament to give effect to Chapter Eleven of the Constitution; to provide for county governments' powers, functions and responsibilities to deliver services and for connected purposes"*

The Preamble to the Urban Areas and Cities Act, 2011 states; *"An Act of Parliament to give effect to Article 184 of the Constitution; to provide for*

the, classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes”

The County Governments Act, 2012 deals with the powers, functions and responsibilities of county government to provide services while the Urban Areas and Cities Act, 2011 deals with classification and management of urban areas. Therefore, the two statutes do not deal with physical planning matters and should be aligned to the Bill.

The Bill is the principal law with regards to physical planning and provides for uniformity in standards, norms and policies across the nation as required by Article 191 (3) (a) and (b) of the Constitution.

Does the Bill resonate with the Environment and Land Court Act, 2011?

Stakeholders assert that the Bill does not resonate with Section 13 (2) (a) of the Environment and Land Court Act 2011. In **Petition Number 13 of 2016**, the Environment and Land Court was invited to determine a dispute on development permission granted under the Physical Planning Act, Cap 286². At paragraph 30 of the judgment, the Court pronounced itself thus *“The dispute herein is related to land use planning, or land administration and management, or is otherwise a dispute relating to environment and land. **It follows that this court has jurisdiction to try the subject matter of this suit.” (Emphasis added)***. Environment and Land Court has jurisdiction to hear and determine disputes on physical planning. The Commission’s position that because physical planning is not mentioned in section 13(2)(a) of the Environment and Land Court Act, 2011 the Court should down its tools is a jurisprudential oddity not supported by any legal authority.

10.0 Response to Land Reform Agenda

In response to land reform agenda:

- **The County physical development plans-** Clauses 33, 35 and the Second Schedule of the Bill adequately addresses the challenges of

rapid urbanization characterized by informality in urban development, uncontrolled urban growth and sprawl food insecurity and land use conflicts.

- **The Local physical development plans** – Clause 41 and the Third Schedule addresses issues of acute shortage of housing, land use conflicts and informality.

11.0 Progressive and Value Addition

Contrary to the assertion that the content and scope of the Bill is limited to urban areas and does not cover new areas of concern like rural areas, marine, mining, transport planning, environmentally fragile areas and trans-national areas under **Clause 33** the bill provides for a framework to:

- guide for rural development and settlement
- guide rural development and settlement;
- provide a basis for infrastructure and services delivery;
- guide the use and management of natural resources;
- enhance environmental protection and conservation;
- identify the proper zones for industrial, commercial, residential and social developments;
- improve transport and communication networks and linkages

Further, **Clause 47** of the Bill provides for declaration of special planning areas to address unique development and environmental potential or challenges.

12.0 Conclusion

In conclusion, the Bill meets the Constitutional threshold of public participation, accords to the devolved system of governance, relates with other existing relevant legislation, respects sound planning theory and is consistent with global best practices. The allegation that relevant stakeholders were not adequately involved is incorrect.

The Bill addresses both the broad and specific subject areas of Physical Planning which includes land planning, land use planning, spatial planning, urban and regional planning and town and country planning.

12.0 SPECIFIC COMMENTS ON THE PHYSICAL PLANNING BILL NO. 34 OF 2017

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTER'S RESPONSE	JUSTIFICATION
<p>Long Title</p> <p>Clause 1 Short Title: Physical Planning Bill</p>	<p>Area of Contention The Long Title "An Act of parliament to make provision for the planning, use, regulation and development of land and for connected purposes".</p> <p>Proposed Amendment The long title should read "An Act of Parliament to give effect to Article 66(1) of the Constitution to make provisions for the planning, use regulation and development of land and for connected purposes."</p> <p>Justification Reason for legislation should be drawn from the Constitution. The Long Title is at variance with the Statement of Objects and Reasons.</p> <p>Areas of Contention Naming of the bill as "Physical Planning Act".</p> <p>Proposed Amendments</p>	<p>Maintain the Title in the Bill</p>	<ul style="list-style-type: none"> The Bill is not restricted to Article 66(1), but gives effect to Articles 10(2d), 42, 43, 60, 186, 191(3)(a)(b), Section 21 of Part I and Section 8 of Part II of the Fourth Schedule of the Constitution
		<p>Sustain the title of the bill.</p>	<ul style="list-style-type: none"> Refer to 4.0 above

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p>The short title should read: "Land Use Planning Act, 2015".</p> <p><u>Justification</u></p> <ol style="list-style-type: none"> 1. The term has no reference in the Constitution and the title "Physical Planning bill" flouts Articles 66(1) and 67(2) (h), 68(b) and the fifth schedule of the Constitution. 2. The title is inconsistent with the planning framework envisaged under sections 104(2), 107-111 of the County governments Act 2012 and sections 36-42 of the Urban Areas and Cities Act 2011. 3. The National Land Policy at paragraphs 101-143, provides for "Land Use Planning" and not "Physical Planning". <p>4. The Constitution Article 260 interprets "Land" to include:-</p> <ol style="list-style-type: none"> a) The surface of the earth and the subsurface rock; b) Any body of water on or under surface; 		

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
<p>Interpretation</p>	<p>c) Marine water in the territorial sea and exclusive economic zone. d) Natural resources completely contained on or under the surface; and e) The air space above the surface;</p> <p>Land cannot therefore be adequately planned within the context of physical planning.</p> <p>Interpretation is inadequate. Planning authority. <u>Delete</u> (b) and replace with the county Government. Justification This contravenes section 104 (1) & (3) of the County government Act, 2012.</p>	<p>Sustain the County Executive Committee Member responsible for matters relating to physical planning as a planning authority</p>	<ul style="list-style-type: none"> Section 104 (1) & (3) refers to the planning function of county governments as provided by Section 8 of Part 2 of the Fourth Schedule to the Constitution however, the responsibility falls on the county executive committee member responsible for physical planning matters. Within the county government responsibility

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
Clause 5-7 National Physical Planning Consultative Forum	<p>Areas of Contention Establishment of National Physical Planning Consultative Forum Proposed Amendments Delete the Sections 5-7</p> <p>Justification</p> <ol style="list-style-type: none"> Its functions are akin to oversight, therefore duplicates the functions assigned to the National land Commission Act Section5 (1) (h) and to Cabinet Secretary at Section9 of the Bill. The membership of the forum is bloated at more than 63 members. The large membership renders if dysfunctional Sec 6 (c) & (d) ambiguous on who the advice is directed and the purpose. <p>Sec 7 (3) implies the forum will be a planning authority by itself.</p>	Sustain Clauses 5,6 & 7	<p>with regard to physical planning should be vested in an office.</p> <ul style="list-style-type: none"> The forum is neither a planning authority nor has it usurped NLCs mandate of monitoring and exercising oversight over land use in Kenya
Clause 8	<p>Areas of Contention</p>	Sustain Clause	<ul style="list-style-type: none"> The distinct functions of the

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
<p>Functions of the National Land Commission</p>	<ul style="list-style-type: none"> The proposed Bill limits and distorts the functions of the National Land Commission provided for in the Constitution. <p>Proposed Amendments</p> <p>a) Functions of the Commission should be stated as in Article 67(2) (h) of the Constitution "monitor and have oversight responsibilities over land use planning throughout the country".</p> <p>b) Prepare reports on the status of land use planning and forward to the President and Parliament as provided for at Article 254 of the Constitution.</p> <p>c) Recommend a national land use policy to the national government.</p>	<p>8 while incorporating amendments (a), (b) & (e).</p> <p>Agree with the amendment</p> <p>Agree with the amendment</p> <p>Reject the amendment</p>	<p>various planning entities has been justified in the introductory section of the write up</p> <ul style="list-style-type: none"> The proposed amendments (c), (d) and (g) are contradictory to the distinct functions of the National Land Commission This is a function of the National Land Commission This is a function of the National Land Commission The proposed amendments (c) is contradictory to the

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p>d) Publish and publicize the state of national land use planning report as per Article 35(3) of the constitution.</p> <p>e) Encourage use of traditional dispute resolution mechanisms in land use planning.</p> <p>f) Conduct research related to land use planning and natural resources.</p>	<p>Agree with the amendment</p> <p>Agree with the amendment</p> <p>Reject the amendment</p>	<p>distinct functions of the National Land Commission</p> <ul style="list-style-type: none"> • This is a function of the National Land Commission • This is a function of the National Land Commission • The proposed amendments (f) is contradictory to the distinct functions of the National Land Commission

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTER'S RESPONSE	JUSTIFICATION
<p>Clause 9 Cabinet Secretary</p>	<p>g) Prepare guidelines that are them, concept or user specific for land use planning to be used by the county.</p> <p><u>Justification</u> The Bill should observe fidelity to the Constitution with regard to the wording and use of terminologies introduction of new terminologies as "Physical planning" blurs the intention of the Constitution. The Bill should unbundle and elaborate what constitutes monitoring and oversight as anticipated in the constitution, provide a framework for coordination of planning by national government as envisaged in the 4th schedule.</p> <p><u>Areas of contention</u> Monitor and oversee technical arm at the national level in performance of their functions. <u>Proposed Amendments..</u> Delete section 9(d) <u>Justification</u></p>	<p>Reject the amendment</p> <p>Reword clause 9 (d) to clarify that the Cabinet Secretary's supervision on the Director of</p>	<ul style="list-style-type: none"> The proposed amendments (g) is contradictory to the distinct functions of the National Land Commission

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
<p>Clause 10-12 National Director of Physical Planning</p>	<p>Monitoring and oversight is a function given to National Land commission at Article 67 (2) (h) and section 5(h) of National Land Commission Act.</p> <p>Areas of Contention National Director of Physical Planning – Establishment, qualifications and responsibilities. Proposed Amendments Delete Sections 10-12. Justification The functions assigned to the national director are already assigned to the cabinet Secretary and the National Land Commission. The office of the Director can be created administratively in the office of the</p>	<p>Physical Planning is administrative. Under Article 67(2)(h) the Commission exercises monitoring and oversight over land use planning</p> <p>Sustain Clauses 10, 11 & 12</p>	<ul style="list-style-type: none"> The office of the National Director of Physical Planning is the technical arm of the National Executive

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
<p>Clause 13 County Executive Committee Member</p>	<p>Cabinet Secretary and therefore not necessary to legislate.</p> <p>Areas of Contention Responsibilities of CEC. Delete Sec. (b) & (c) (b) approving county Physical development plans; (c) monitoring and overseeing the planning function; Legislating CECM is at variance with collective responsibility of CEC envisaged under Sections 36, 37 and 110 (3) of the County government Act 2012.</p> <p>Justification (b) Conflicts with County governments Act 2012 Sec.109 (1) (c), 110(3) 11(6) 112 (2) (a) approval of county plans is the responsibility of county assemblies. Conflicts with Article 185 (3) of the Constitution. Approval of plans is a function of the County Assemblies. Conflicts with Article 185 (3) of the constitution. Approval of plans is a function of the county Assemblies.</p>	<p>Sustain Clause 13 (b) approving Reword Clause 13 (c) to clarify the CESS specific role in monitoring and overseeing the planning function</p>	<ul style="list-style-type: none"> The County Government Act is not a framework for physical planning. We are not establishing two parallel physical planning regimes.

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p>© Conflicts with Article 67 (2) (h) Monitoring and oversight of planning is function of the National Land Commission.</p>		
<p>Clause 16 (c) Types of Physical Development Plans</p>	<p>Delete. Justification is as in section 13</p>	<p>Retain</p>	
<p>Section 17-46 Types of Physical Development Plans</p>	<p>Areas of Contention Types of Plans (Physical Development Plans) Proposed Amendments Delete Physical Development Plans and replace with land use plans. Justification a) The Planning framework established through the plans disregards the integrated framework established under the County governments Act Section 102-115 and the integrated development planning framework provided under Section 36-41 of the Urban Areas and Cities act 2011. This is likely to create confusion.</p>	<p>Retain</p>	<ul style="list-style-type: none"> The use of the term "physical Planning" has been justified in the introductory section of this write up. Land use planning is a sub-set of physical planning The Bill is the principal law with regard to physical planning as contemplated in Article 191(3)(a)(b) and the Fifth Schedule to the Constitution. The principal law in physical planning should provide for types,

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p>b) The Bill creates contradiction in the names of the plans to be prepared which are not aligned to the plans provided for in County Governments Act, 2012 at Section 107 (1) (a-c) and Section 111 (1) namely</p> <ul style="list-style-type: none"> c) City/Municipal land use plans, d) City /Municipal building and zoning plans e) City /urban areas building and zoning plans f) Location of recreation areas and public facilities. <ul style="list-style-type: none"> • The naming of the plans is an attempt to sustain the status quo of the Physical Planning Act Cap 286 which has been ineffective and limited in scope. • These plans are duplication and or contradict the plans provided for under sections 107-111 of the County governments Act 2012 and section 36-42 of the Urban Areas and Cities Act 2011. This creates 		<p>contents, process of preparation, approval and revision of plans.</p> <ul style="list-style-type: none"> • Clause 32(1) and (4) and the Second Schedule provides for the contents of the County Spatial Plan provide in Section 110 of the County Governments Act • Clause 41 and the Third Schedule Part C provides for the contents for renewal and redevelopment plans • Clause 41(e) and (f) addresses the issue of integrated development plans and municipal, building and zoning plans • County Governments Act, 2012 and the Urban Areas and Cities Act, 2011 are not physical planning statutes and cannot prescribe types,

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p>confusion, duplication and unnecessary additional expenditure for counties.</p>		<p>contents, and process of preparation, approval and revision of plans.</p> <ul style="list-style-type: none"> • The County Integrated Development Plans are prepared to guide appropriation of funds
<p>Clause 21 (2) Preparation of National Physical Development Plan</p>	<p>Areas of Contention The preparatory authority is unclear and inconsistent. The authority keeps changing form the cabinet Secretary, the Cabinet and the National Physical Planning Consultative Forum. <u>Proposed Amendments</u> The Cabinet Secretary should be the preparatory authority. Justification The preparatory authority is unclear. It keeps changing from Cabinet Secretary at Section 21(1), the Cabinet at Section 21(2), and National Physical Planning Consultative Forum at Section 22 (1).</p>	<p>Insert the word "Secretary" after Cabinet</p>	<ul style="list-style-type: none"> • The National Assembly only approves policies and therefore cannot approve the National Physical Development Plan which provides a spatial context to sectoral policies approved by Parliament • Plan preparation, approval and execution is the function of the executive arm of government
<p>Clause 22 Approval of</p>	<p>Areas of Contention Approval of National Plan by the Cabinet</p>	<p>Retain</p>	<ul style="list-style-type: none"> • The function of Parliament is to legislate as provided

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
national Physical Development Plan	<p>Proposed Amendments Approval should be done by Parliament</p> <p>Justification Is not in line with approval procedures for public policies binding the entire nation. The Cabinet endorses the plan and its approval should rest with the Parliament. In furtherance of separation of powers.</p>		for by Article 94 (1).
Clause 25(3) and (5) Establishment Regional Joint Physical Planning Committee	<p>Areas of Contention The National director of Physical Planning to chair Regional Joint Physical Planning Committee.</p> <p>Proposed Amendments</p> <ul style="list-style-type: none"> Regional Plans to be prepared under the framework provided for in Inter-governmental Relations Act Section 23 and Articles 189 (2) of the constitution. The Plans should be called inter county land use plans. <p>Justification</p> <ul style="list-style-type: none"> The section contradicts Inter-governmental Relations Act Section 23. 	Retain Clause 25 (3) and (5)	<ul style="list-style-type: none"> The Clause does not contradict Section 23 of the Intergovernmental Relations Act, 2012 which provides that; "The national or a county government may establish a joint committee with a specific mandate -----" The Bill proposes the National Government to initiate establishment of the Committee. Hence, the clause is within the four corners of Section 23 of the Inter-governmental

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<ul style="list-style-type: none"> Pre-determining the membership and assigning National Director as chair goes against and undermines the spirit of devolution in Article 189 (2). Cooperating counties should have a freehand to determine how their matters are addressed. 		Relations Act
Clause 29 Approval of Regional Physical Development Plans	<p>Areas of Contention</p> <ul style="list-style-type: none"> Approval of regional Physical Development Plans by CECMs and submitted to National Director for final approval. <p>Proposed Amendments</p> <p>Delete Section and insert regional plans to be approved by the respective county assemblies.</p> <p>Justification</p> <p>Contravenes the spirit of Devolution and takes away the approval powers of County assemblies provided for under Article 185 (3) and (4) of the Constitution.</p>	<ul style="list-style-type: none"> Clause 29 (1) delete "final approval" and insert "processing and certification" Sustain 29 (2) (3) (4) be retained. 	<ul style="list-style-type: none"> Approval of regional development plans is a residual function of the National Government – Article 186 (3) The recommendation that respective county assemblies approve regional plans offends the principle of "separation of powers" in Article 185 (3)
Clauses 32 (4)	Delete Sec32(4)		<ul style="list-style-type: none"> The scope and framework

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p><u>Justification</u> The scope and framework of the county physical development plan varies from the scope and framework of the county spatial plan in sec 110 of the county governments Act 2012.</p>		<p>of the County Physical Development Plans in Clause 35 and the Second Schedule of the Bill are similar to the provisions in Section 110 of the County Governments Act, 2012</p>
Clauses 33-39	<p><u>Areas of Contention</u> Duplicates provision of section 110 of the County governments Act 2012. <u>Proposed Amendments</u> Delete the Section <u>Justification</u> Since this has been legislated in the County governments Act 2012, the procedural aspects should be detailed in regulations accompanying county governments Act 2012.</p>	Retain the clauses	<ul style="list-style-type: none"> The Bill clarifies procedures of preparation, approval, review and modification of county physical development plans which is omitted in the County Governments Act, 2012
Clauses 41-45	<p><u>Areas of Contention</u> Preparation and approval procedure for local physical development plan <u>Proposed Amendments</u> Delete sections. <u>Justification</u></p>	Retain	<ul style="list-style-type: none"> The Bill clarifies procedures of preparation, approval, review and modification of county physical development plans which is omitted in the Urban Areas

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
Clauses 67-81	<p>Refer Section 38-41 of Urban Areas and Cities Act 2011.</p> <p><u>Areas of Contention</u> Establishment of National and County Physical Planning Committees, composition and functions.</p> <p><u>Proposed Amendments</u></p> <ul style="list-style-type: none"> • Delete sections 67-81 <p><u>Justification</u></p> <ul style="list-style-type: none"> • Section 68(4) opens the chairmanship of the committee to non-planners, a planning matter should be adjudicated by professional planners. The body that regulates the Planning profession should nominate the chair. • Committee bloated and not cost effective and inefficient • The proposal does not provide departure from the old framework to make them more functional or effective. 	Retain	<p>and Cities Act, 2011.</p> <ul style="list-style-type: none"> • The chairman of the physical planning liaison committee need not be a physical planner • The recommendation that "a planning matter should be adjudicated by professional planners" may result in "inbreeding". By having various the professionals the committees will benefit from various expertise. • National Environment Tribunal consists of a chairman who shall be an advocate of the High Court, another advocate and three other members with demonstrated competence in environmental matters including but not limited to

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
			<p>land, energy, mining, water , forestry, wildlife, maritime affairs</p> <ul style="list-style-type: none"> • The assertion that the composition, function and effectiveness of physical planning liaison committees is not a departure from the old framework is incorrect. <p>➤ The old order was heavily represented with officers from the central government. The Bill draws membership from National Government, county governments, relevant State Corporations, relevant professional</p>

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
			<p>association, chamber of commerce and industry.</p> <ul style="list-style-type: none"> In the old order these committees had challenges in enforcing decisions. Under Clause 74 (3) the Bill recommends that the chairperson of the committee "shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court."
Clause 87 Consequential amendment of County	<u>Areas of Contention</u> Amendment to Section 110 (3) and (4) on approval of plans by County Assemblies.	Retain	<ul style="list-style-type: none"> The Bill is the principal law with regard to Physical Planning. County Government Act, 2012 is

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
Governments Act 2012.	<p><u>Proposed Amendments</u> Delete the entire Section 87</p> <p><u>Justification</u></p> <ul style="list-style-type: none"> • The Bill amends Sec 110 (3) of the County Governments Act 2012 essentially taking away the approval powers of the county assemblies thereby flouting Article 174 I, (i) and 185 (4), of the Constitution. • Renders the County governments Act 2012 ineffective and defective. • Renders the County Assemblies powerless. • Denies the county Assemblies their primary responsibility in development of the counties. 		<ul style="list-style-type: none"> • not a planning legislation • The Bill does not render the County Governments Act ineffective. • The county assemblies are not rendered powerless by the Bill. • The Bill does not deny county assemblies their primary responsibility of legislating on planning and development as envisaged under section 2 of Part 2 to the Fourth Schedule of the Constitution within the context of the national legislation contemplated in Art. 191(3)(b)

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
Schedules	<p>First schedule: procedure of appointment of members of the National Physical Planning Consultative Forum. Schedule is unnecessary since the membership to the forum is predetermined.</p> <p>Second Schedule: Contents of National, Inter-county and County Physical Development Plans cannot be lumped together since they are different types of plans.</p> <p>The schedule introduces the Inter-county Physical Development Plans which are not provided for in the body of the Bill.</p> <p>Third Schedule part C: contents for Local Physical Development Plans renewal and redevelopment plans are not mentioned in the body of Bill hence the schedule introduces a new types of plan.</p> <p>Fourth Schedule: matters which may be dealt with under Development, This should be development control.</p>	<p>Retain</p> <p>Delete inter county physical development plans</p> <p>Retain</p>	<ul style="list-style-type: none"> Whereas members prescribed under clause 5(a) (b),(d),(e) (f) (g) (h) (i) and (j) are predetermined, those members under clause (c) (k) (l) (m) (n) (o) and (q) are not, hence the need for the cabinet secretary to prescribe procedure and qualifications for nominees Under clauses 40 and 41(a)(b), zoning, urban renewal and redevelopment plans are local physical development plans. Contents are clarified in the Third Schedule

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
Memorandum of Objects and Reason	<p>Areas of Contention</p> <p>Statement of Objects and Reasons for the Bill</p> <ul style="list-style-type: none"> • Statement of objects and reasons is at variance with the long Title of the Bill since it does not explicitly indicate that it is bringing to effect Article 66 of the constitution. • Fails to disclose major and significant amendments to existing legislation (County governments Act 2012) and a claw back on the Inter-governmental Relations Act. <p>Proposed Amendments</p> <ul style="list-style-type: none"> • Delete "Physical Planning Bill" 2015 and replace with "Land Use Planning Bill" 2017. • All other reference to "physical Planning" should be replaced with "Land Use Planning". <p>Justification</p> <ul style="list-style-type: none"> • Any amendment to existing legislation must be disclosed. • It is also unconstitutional as it 	Retain	<ul style="list-style-type: none"> • Under Article 66 the state is collectively of offices that include cabinet Secretary, National Land Commission, County government and county executive committee member as defined under Article 260 of the Constitution.

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	<p>contravenes Article 185 (3).</p> <ul style="list-style-type: none"> The term "Physical Planning" is not provided for and is not in line with the letter and spirit of the Constitution. The Constitution provides for "Land Use Planning" Article 60(1), 60(2), 66(1), 67(h), 4th Schedule 1/21 and 5th Schedule (chapter 5). The National Land Policy, Paragraph 101-143 provides for "land Use Planning" and not "Physical Planning" That all enabling legislation must always be in line with the constitution and avoid confusion in use of terminologies. 		
State	<p>Areas of Contention Statement on delegation of legislative powers and limitation of fundamental rights and freedom pg.61 The bill does not delegate legislative powers instead takes away powers of</p>		<ul style="list-style-type: none"> The Bill respects the legislative powers of county assemblies- Article 185 (1) (2) and (3) of the Constitution. County governments are at liberty to enact

CLAUSE	CONCERNS RAISED BY NLC AND OTHER STAKEHOLDERS	THE MINISTRY'S RESPONSE	JUSTIFICATION
	County Assembly to approve plans as per Article 185 (3)(4) section 41(3) (b) of Urban Areas and Cities act 2011 and the County governments Act 2012 section 104 (1).		county specific laws with regard to physical planning within the context of Article 191 (3) (b) of the Constitution.

**13.0 SPECIFIC COMMENTS ON CONCERNS RAISED BY
THE KENYA INSTITUTE OF PLANNERS (KIP)**

	ISSUE	CONCERNS RAISED BY KIP	THE MINISTRY'S RESPONSE	JUSTIFICATION
1.	Title	The Planning and Regulation of Land Use and Development Bill, 2017	Sustain the Title as is "Physical Planning Bill"	<ul style="list-style-type: none"> • The proposed amendment of the title is ambiguous and limited in scope towards land use planning and regulation only. • The title "Physical Planning Bill" is all encompassing
2.	Interpretation of Development	"Development" means any land administration processes.....	Reject	<ul style="list-style-type: none"> • Development does not include land administration. • Land administration refers to the process of determining, recording and disseminating information about ownership, value and use of land • Definition of "Development" should be as indicated in section 3 of the Physical Planning Act CAP 286
3.	Public Participation	There was no adequate and effective public	There was adequate public	<ul style="list-style-type: none"> • There is evidence of stakeholder engagements,

		participation	participation in the preparation of the Bill.	public participation fora and comments from various stakeholders including KIP received. <ul style="list-style-type: none"> The relevant comments were incorporated.
4.	Jurisdictions of the Act	Include that this Act shall apply in the entire territory of the Republic as delimited in Article 5 and all land as defined in Article 260 of the Constitution of Kenya	Agree with the amendment but provide for exemptions of such areas as the Cabinet Secretary may by notice in the Gazette specify.	<ul style="list-style-type: none"> The physical planning legislation should apply to the entire territory of Kenya.
5.	Citation	A Bill for An ACT of Parliament to bring into effect article 66 of the Constitution, to make provision for the planning and the regulation of use and development of land, and for connected purposes	Sustain the citation as proposed in the Bill	<ul style="list-style-type: none"> The Bill is not restricted to Article 66 but gives effect to Articles 10(2d), 42, 43, 60, 186, 191(3)(a)(b), Section 21 of Part I and Section 8 of Part II of the Fourth Schedule of the Constitution
6.	Inconsistencies with other legislations	There is need to add the phrase " Principal law in physical planning " at the interpretation to	Agree with the proposed addition	<ul style="list-style-type: none"> The Bill is the principal law with regard to physical planning as contemplated in Article 191(3)(a)(b) and the Fifth

		<p>emphasize that this Bill is the mother physical planning law. This will help solve cases of inconsistencies for instance; The type of plans proposed by the Bill are inconsistent with plans proposed under County Government Act , 2012 and the Urban Areas and Cities Act ,2011</p>		<p>Schedule to the Constitution.</p> <ul style="list-style-type: none"> • The principal law in physical planning should provide for types, contents, process of preparation, approval and revision of plans. • Clause 32(1) and (4) and the Second Schedule provides for the contents of the County Spatial Plan provide in Section 110 of the County Governments Act • Clause 41 and the Third Schedule Part C provides for the contents for renewal and redevelopment plans • Clause 41(e) and (f) addresses the issue of integrated development plans and municipal, building and zoning plans • County Governments Act, 2012 and the Urban Areas and Cities Act, 2011 are not physical planning statutes and cannot
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				prescribe types, contents, and process of preparation, approval and revision of plans.
7.	Planning Authorities	Every Planning Authority has a duty to seek the opinion of the Kenya Institute of Planners.	Reject the amendment	<ul style="list-style-type: none"> The proposed amendment is contrary to the provisions of section 12 (1) (b) of the Physical Planners Registration Act No. 3 of 1996 which mandates the Board to recognize other planning associations without specifics. A forum for consultation has been provided in clause 5 of the Bill of which KIP is a member.
8.	Establishment and designation of Planning Authorities	The Cabinet Secretary should not be a Planning Authority	Reject the proposal	<ul style="list-style-type: none"> The Cabinet Secretary should be a Planning Authority, but may delegate certain responsibilities The physical planning units should be headed by registered physical planners
9.	Qualifications of National Director and	<ul style="list-style-type: none"> Possesses a minimum post- 	Reject the amendments on	<ul style="list-style-type: none"> The proposed amendments on qualifications of the

	County Director of physical Planning	graduate qualification that is accredited as a professional degree in urban and regional planning or any of its associated sub-domains from a university or institution chartered and recognized as offering such programmes ; <ul style="list-style-type: none"> • Has knowledge or working experience in either of the following fields – <ul style="list-style-type: none"> a) natural resource management; b) environmental science; c) public administration 	qualifications of the holder of the national and county physical planning offices	holders of the national and county physical planning offices contradict with the provisions of section 12 (1) as read with section 21 of the Physical Planners Registration Act No. 3 of 1996 <ul style="list-style-type: none"> • Allowing professionals with qualifications other than urban/regional planning or both will result in a profession with pseudo professionals.
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		<p>tion and governanc e;</p> <p>d) urban managem ent;</p> <p>e) planning law;</p> <p>f) social and community developme nt;</p> <p>g) Economic planning.</p>		
10	Principles and norms	<ul style="list-style-type: none"> The plan making principles and norms should be made clearer 	<ul style="list-style-type: none"> Agree 	<ul style="list-style-type: none"> Clause 4 provides for principles and norms Insert sub-clause 4(e) to read "Principles and guidelines in the National Land Use Policy"



14.0 PLANNING LEGISLATION IN DIFFERENT COUNTRIES

Continent/region	Country	Title of legislation	Year of enactment
South Asia	Malaysia	The Town and Country Planning Act 1976	1976
	Singapore	Planning Act, 1998	1998
	Philippines	National Land Use Act 2010	2010
	Thailand	The Land Development Act of 1983	1983
Oceania Countries	Australia	Planning and Development Act 2007	2007
	New Zealand	Town and Country Planning Act , 1977	1977
	Canada	Urban and Rural Planning Act, 2000	2000
	Haiti	Physical Planning Act	2003
	Trinidad/Tobago	Town and Country Planning Act	1982
	Barbados	Town and Country Planning Act Cap. 240	Amendments done in 2007
Europe	UK	Town and Country Planning Act, 1990	1947
	Ireland	Planning and Development Act 2000	2000
	Germany	Spatial Planning Act – Raumordnungsgesetz ROG	1997
	Sweden	Planning and Building Act ,1989	1989
	Spain	Land use Act	1956
	Serbia/Austria	Planning and Building Act	2009
	Scotland	Town and Country Planning Act, 1997	1972

Continent/region	Country	Title of legislation	Year of enactment
Continental Asia	India	Town and Country Act	1960
	Nepal	Land Survey and Measurement Act 1976	1976
	Sri Lanka	Land use Planning and Approvals Act	1993
Africa	Uganda	Physical Planning Act	2010
	Tanzania	Land Use Planning Act	2007
	Botswana	Town and Country Act	1978
	South Africa	The Spatial Planning and Land Use Management Act, 2013	2013
	Namibia	Land Ordinance 11 of 1963	1963
	Nigeria	Urban and regional Planning Decree	1992
	Rwanda	Organic Land law Land use and Development and Planning Law	2004 2011
	Ghana	Town and Country Planning Ordinance	1945
	Zimbabwe	Regional, Town and Planning Act – Cap 29	1976
	Zambia	Town and Country Planning Act	

15.0 ENACTMENT AND REVIEW OF PLANNING STATUTES IN SELECTED COUNTRIES

Country	Title of legislation
England	Housing and Town Planning Act, 1909 Housing and Town Planning Act 1919 Town planning Act, 1925 Town and Country Planning Act, 1932 Town and Country Planning 1947 Town and Country Planning 1954 Town and Country Planning 1990
Malaysia	Town Planning Bill 1923 Town and Country Planning Act, 1976 Reprinted in 1998, 2001 & 2005
Scotland	Town Country Planning Act, 1997 Amended by Planning etc (Scotland) Act, 2006
Denmark	Planning Act 1991 Planning Act, 2007
Nigeria	Land Use Act, 1978 Nigerian Urban and Regional Planning Act, 1992
Singapore	Planning Act. Cap 232 of 1998 – statute not reviewed
Israel	Planning and Building Law 1965 Planning and Building Law 1991
Uganda	Town and Country Planning Act Cap 246 Physical Planning Act, 2010
South Africa	Physical Planning Act, 1967 Physical Planning Act, 1991 Development Facilitation Act, 1995 Spatial Planning and Land use Management Act, 2013

Note that titles to planning statutes are rarely amended following parliamentary review



Our Reference

NA/ Y18/ F02

Your Reference

Date

20 February 2018

Clerk of the National Assembly

Main Parliament Buildings
Nairobi

Dear Sir,

**PHYSICAL PLANNING BILL 2017 - MEMORANDA TO THE ^{NATIONAL ASSEMBLY} ~~PARLIAMENT~~
BY TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA (TCPAK)**

The Town and County Planners Association of Kenya (TCPAK) is registered and approved professional association in Kenya for town planners, land user planners or physical planners. In line with the Constitution of Kenya 2010, TCPAK motto is "Better Towns, Counties and Country". The association is a member of the International Society of City and Regional Planners (The Hague/Netherlands). As a member of the international community, TCPAK promotes the United Nations sustainable development goals (SDG) and the New Urban Agenda.

At the national level, TCPAK works closely with both national and county government departments, the private sector, NGOs and the academia. TCPAK is a member of Kenya Private Sector Alliance (KEPSA) and also Kenya Property Developers Association (KPDA). TCPAK has working partnership with Kenya Green Building Society and the Royal Institute of Chartered Surveyors (RICS, UK) among other institutions.

Please receive memoranda on the Physical Planning Bill 2017 that is presently before the National Assembly. Outlined below is a summary of the main concerns and recommendations. Attached is also specific comments on and recommendations on each of the clauses/sections of the Bill.

SUMMARY OF MAIN CONCERNS ON THE BILL

1. Supremacy of the Constitution

According to Article 2(1), the **Constitution is the supreme law** of the Republic and binds all persons and all State organs at both levels of government.

-Article 2(1) The **validity or legality of this Constitution is not subject to challenge** by or before any court or other State organ;

-Article 2(4) **Any law, including customary law, that is inconsistent with this Constitution is void** to the extent of the inconsistency, and any act or omission in contravention of this Constitution is **invalid**.

2. **The name and title of "Physical Planning" Bill** contravenes fundamental Constitution Article 2 on the Supremacy of the Constitution – Article 2(1), Article 2(3) and Article 2(4) of Constitution as it challenges the supremacy, validity or legality of the Constitution, inconsistent with the Constitution and the title of the Bill is thus void and invalid.



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3. The Constitution **Article 66 and the Fifth Schedule** requires specific legislation by such name and style - **Regulation of Land Use and Property**. The Bill before Parliament/National Assembly is "**Physical Planning Bill**". This title and name of the Bill is totally not contemplated and not at all provided for in Constitution Article 66 and the Fifth Schedule on regulation of land use and property. This name and title of the Bill is not provided for or at all contemplated anywhere in the Constitution.

4. The Title "**Physical Planning**" and the continued use of the term "physical planning" in the body of the Bill intentionally confuses, distorts, contravenes and is inconsistent with the Constitution provisions - Articles 60, 66, 67(2h), 68(b), 162(2b), Fourth Schedule Part 1/21, and Fifth Schedule/Article 66 and also as read together with both the National Land Policy and the National Land Use Policy 2017.

5. **Land Use Planning and Property Regulation Bill** - That we advise the name and title of the be guided by and be consistent with the letter and spirit of the Constitution as provided for in Article 66 and the Fifth Schedule and also Articles 60, 67 and 68. We there recommend the name "**Land Use Planning and Property Regulation**" Bill.

6. Where "Physical planning" appears in the Bill the same be replaced with "land use planning".

7. **The Bill and the continued use of the term "Physical Planning" in the Bill is inconsistency with, contravenes and causes more confusion and conflict with other existing legislation-** County Governments Act 2012; Urban Areas and Cities Act 2011; National Land Commission Act 2012; and Environment and Land Court Act.

8. **Section 87 of the Bill contravenes and is inconsistent with the Constitution Article 185(4)**

-Section 87 of the Bill be deleted as it attempts to sneak in a constitutional amendment and amendment to Sections 110(3) and 110(4) of the County Governments Act as the same is not disclosed in the Objects and Memoranda of the Bill and this is against Parliament Standing Orders;

-Section 87 of the Bill is in conflict with the Constitution Article 185 (4) - the county assembly to receive and approve county plans and policies;

-This proposed amendment is unconstitutional as it offends the Constitution Article 185(4);

-The direct stakeholders/county assemblies have not been consulted at all on this matter. This is against the Constitution Articles 10(2a, 2c) on public participation and transparency and 35(Access to information).

9. **Many and Bloated-Member Size National Institutions and Offices in contravention of the Constitution Article 189 and Inter-Governmental Relations Act**

The Bill creates many bloated-member size institutions and offices at national level with unclear/duplicated/conflicting, superfluous and competing functions and contravenes the Inter-Governmental Relations Act. These include - Cabinet Secretary, National Land Commission, National Physical planning consultative forum; National Director of Physical Planning; National Physical Planning Liaison committee, and regional joint physical planning development committees.

-For example, the National Physical Planning consultative forum and National Physical Planning Liaison Committee have over 60 members and many of these members have limited technical input in land use planning and property regulation. Past experience has shown that such bloated size institutions are inefficient and not effective and a drain on limited public resources.



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-The National physical planning consultative forum duplicates functions that can best be handled by joint intergovernmental committee established by national and county governments under section 23 of the Intergovernmental relations Act,

-Land use planning and county planning are functions fully devolved to the county governments and therefore there should be only be one or two national institutions to formulate policy and general guidelines, coordinate and oversee planning by the counties- Constitution 4th Schedule, part 1 paragraph 8.

10. The Bill falls short of addressing fully and comprehensively all "land elements" as defined in Article 260 of the Constitution – Land includes: the surface of the earth and sub-surface rocks; any body of water on or under the surface; marine waters in territorial sea and exclusive economic zone; natural resources completely contained on or under the surface; air space above the surface. This means the Bill fails to address vast regions of the country and key economic sectors – waters, marine resources, forests, parks and wildlife, biodiversity, rocks, minerals, petroleum oil etc.

10. The Bill fails to fully include rural, agriculture, livestock, wildlife parks and reserves, mining land use planning and development control.

This means that about 90% of the country area and 75% of Kenya population remains unplanned and uncontrolled. Already the issue of land sub-division in rural areas is a matter of national concern and a threat to national food security and environmental conservation. The omission of rural area planning and regulation contravenes Articles 39, 40, 42, 43, 60, 68 and 69 of the Constitution.

11. The Bill fails to fully address the complex land use issues in urban areas- housing, industries, commerce, recreation and green open spaces, riparian areas, infrastructure and utilities, transport(roads, rail, airports, ports and waterways, Non-motorised transport etc

12. **Property:** The Bill fails to totally cover Property regulation as required in the Constitution Article 66 , 260 and the Fifth Schedule on regulation of Land Use and Property.

13. The Bill fails to recognise the unique land use and property regulation requirements for different land tenure systems as contained in the Constitution Articles 61, 62(Public Land), 63(Community Land) and 64(Private Land).

14. The Bill is of limited scope, internally inconsistent, contradictory, mixed-up and has too many errors of flow and content and cannot be implemented

-**For example**, Section 5 of the Bill and the First Schedule are openly contradictory;

-The Bill has no provision for registration of service providers; training institutions; role of the public/private sectors; and rationalisation of staff presently in national/county governments.

15. In line with the Supreme Court Advisory Opinion Reference (No 2 of 2014. Clause 312 and 316), we recommend that the Bill be withdrawn from Parliament/National Assembly and forwarded to the AG and the Law Reform Commission for review and with fully participation of stakeholders.

16. Key Stakeholder Institutions not in the Bill: The Bill has failed to include key stakeholder institutions in land use planning and property/building development. We recommend that the institutions below be included in all institutions at the national, county and town level –



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"Better Towns, Counties and Country"

**-Town and County Planners Association of Kenya
-Institution of Engineers of Kenya**

Yours faithfully,

Mairura Omwenga
Chairman,
Town and County Planners Association of Kenya (TCPAK)



COMMENTS ON SPECIFIC CLAUSES OF THE BILL

SECTION	EXISTING/PROPOSED AMENDMENT/JUSTIFICATION
<p>MEMORANDUM OF OBJECTS AND REASONS</p>	<p>Existing: Statement of the Objects and Reasons for the Bill; Part I; Part II; Part III.....Part VII.</p>
	<p>PROPOSED AMENDMENT: Delete entire part</p>
	<p>Justification: -Memorandum of Objects and reasons falls far short of the scope and requirements of the Constitution Article 66 and the 5th Schedule(Regulation of land use and property); -The Memorandum also attempts to challenge the validity, letter and spirit of the Constitution and is contrary to Article 2(3) of the Constitution</p>

<p>THE OPENING PARAGRAPH</p>	<p>EXISTING: A Bill for AN ACT of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes.</p>
	<p>PROPOSEDAMENDMENT: A Bill for AN ACT of Parliament to give effect to Article 66 of the Constitution and make provision for the state to regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning and ensure investments in properties benefit local communities and their economies.</p>
	<p>JUSTIFICATION: To capture accurately the precise provisions and the letter and the spirit of the Constitution.</p>

<p>1. SHORT TITLE</p>	<p>EXISTING: Physical Planning Act</p>
	<p>PROPOSEDAMENDMENT: Delete "Physical Planning Act" and replace with "Land Use Planning and Property Regulation Act"</p>
	<p>JUSTIFICATION: -The term "Land use" is in line with the Constitution- Articles 2(3), 2(4), 60, 66, 67, 68, 260, Fourth Schedule Part 1/21 and Fifth Schedule (Regulation of land use and property).</p>



	<p>-The term "Physical planning" is not at all provided for or recognized at all in the Constitution of Kenya 2010.</p> <p>-The term "Physical planning" is intentionally causing confusion and not in line with the letter and spirit of the Constitution in Articles 60,66, 67, 68, 4th Schedule 1/21 and 5th Schedule.</p>
<p>2. INTERPRETATION</p>	<p>EXISTING:</p> <p>-Development; "development" means carrying out any works on land or making any material change in the use of any structures on the land;</p> <p>-Land use planning; "land use planning" refers to a branch of physical planning encompassing various disciplines which seek to order and regulate land use in an efficient and ethical way;</p> <p>-Physical planning; "physical planning" refers to the active process of organizing the structures and function to ensure orderly and effective siting or location of land uses, and it encompasses deliberate determination of spatial plans with an aim of achieving the most optimum level of land utilization in a sustainable manner.</p> <p>-Spatial planning; "spatial planning" means a plan that outlines the spatial expression to national and county development policies and integrates proposals from various sectors and includes identified priority investments.</p> <p>PROPOSED AMENDMENT:</p> <p>-“architect” is a professional registered under relevant legislation of architects;</p> <p>-“agriculture use” includes land under crop farming and as defined in relevant agriculture legislation;</p> <p>-“building line/setbacks” means the required separation between a lot line (and/or right-of-way line) and a building or structure within which building is prohibited;</p> <p>-“building height” is the vertical distance from the lowest existing grade at the wall of the building to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitch or hip roof;</p> <p>-“cities” are as defined under the Urban Areas and Cities Act;</p> <p>-“community land” means land as defined in Article 63 of the Constitution;</p>



-“contractor” is that person or firm undertaking any building or civil works and registered under relevant legislation on construction works;

-“County” means the division of the territory of Kenya specified in the First Schedule as provided for in Article 6(1) of the Constitution;

-“County Executive Committee Member” means the CECM responsible for land use planning by which the executive authority of the county is vested in, and exercised by, a county executive committee as provided for in the Constitution Article 179;

-“County Government” The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation as provided for in Article 6(2) of the Constitution;

-“development” (a) the making of any material change in the use or density of any buildings or land or the subdivision of any land which for the purpose of this Act is classified as Class “A” development; and

(b) the erection of such buildings or works and the carrying out of such building operations, as the Cabinet Secretary may from time to time determine, which for the purposes of this Act is classified as Class “B” development: Provided that—

(i) the carrying out of works for the maintenance or improvement or other alteration, of or addition to, any building where such alteration or addition does not exceed 10 per cent of the floor area of the building measured on the date this Act becomes applicable to the area in which that building or land is situated;

(ii) the carrying out by a competent authority of any works required for the construction, maintenance or improvement of a road, if the works are carried out on land within the road reserves;

(iii) the carrying out by any County Government or statutory body of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including breaking-open of any street for that purpose and the installation of services by such County Government or statutory body, shall not constitute development for the purposes of this Act:

Provided further that any County Government or statutory body shall within seven days, after completion of works carried out as in subparagraph (iii), restore the site to conditions that would not be injurious to users and the environment; For the avoidance of doubt, it is hereby declared that, for the purposes of this Act—

(a) the deposit of refuse, scrap or waste materials on land involves a change of use thereof;

(b) the use as two or more dwellings of a building previously used as one dwelling constitutes Class “A” development;

(c) the erection of more than one dwelling or shop or of both dwelling and shop on one plot constitutes Class “A” development;





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(d) the display of any advertisement constitutes Class "A" development;
(e) the use of any buildings or land within the curtilage of a dwelling for any purpose incidental to the enjoyment of the dwelling constitutes Class "A" development; "as in the existing Physical Planning Act of 1996";

-“development application” means an application to develop land;

-“development permission” means a development permission granted by a county to an applicant to develop land;

-“education use” includes formal schools(pre-primary, primary, secondary), colleges, university, research institutions, village polytechnics, special education institutions;

-“energy generation plant” includes hydro power, geothermal, thermal, wind, solar, nuclear plants;

-“enforcement notice” means a notice served by a local authority under section 38 on the owner, occupier or developer of the land requiring that owner, occupier or developer to comply with provisions of that section;

-“engineer” is that person or firm providing engineering services and registered under relevant legislation on engineering;

-“Environmental Impact Assessment expert” is that environmental expert registered under relevant legislation on environment;

-“floor area”, is the building total floor area;

-“forests” are those public and private forest areas as defined in relevant legislation on forestry;

“function” includes power and duties;

-“health facilities” includes hospitals, health centres, dispensaries and clinics or as defined in relevant health legislation;

-“information and communication technology infrastructure” includes post offices, base stations, radio/TV stations;

-“infrastructure land use development plan” means a land use plan showing the location, corridor network, wayleave, land budget and integrated land use for trunk infrastructure- electricity, oil/gas pipeline; water supply, sewerage, ICT cables etc. and in relation to fronting land uses;

-“land” includes—





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- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;
- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface; as defined in the Constitution Article 260;

-“land surveyor” is that person or firm providing land surveying services and registered under relevant legislation on land surveying;

-“land use planning”; is the systematic process by which land and water potential, alternatives for land use, and economic and social conditions are assessed in order to select and adopt the best land use options whose purpose is to select and put into practice those land uses that will best meet the needs of the people while safeguarding resources for the future;

-“land valuer” is a person whose job is to estimate the value of land that is to be purchased.

-“livestock use” includes land under livestock keeping and ranches;

-“marine and fishing area” is a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values relating to marine life;

-“mining” includes extraction of petroleum oil and gas, minerals etc. and as defined in relevant mining legislation;

-“National Government” is the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation as provided for in Article 6(2) of the Constitution;

-“natural resources” means the physical non-human factors and components, whether renewable or non-renewable, including— (a) sunlight; (b) surface and groundwater; (c) forests, biodiversity and genetic resources; and (d) rocks, minerals, fossil fuels and other sources of energy; as defined in Article 260 of Constitution and includes water bodies, marine waters and exclusive economic zone, rocks, minerals, fossil fuel and other sources of energy, airspace;

-“owner”, in the case of freehold land means the person owning such land, and in the case of any land held under a lease for a period of not less than ten years, or for the natural life of any person or which is renewable from time to time at the will of the lessee indefinitely, or for periods which together with the first period thereof amount in all to not less than ten years, and includes any agent



who receives rents or profits from any such persons and also any superintendent, overseer, or manager or any such owner of the freehold or lessee in respect of the holding on which he resides as such superintendent, overseer or manager;

-“Physical Planning Liaison Committee” DELETE

-“Planning Authority” means The County Government as provided for in the 4th Schedule Part 1/21 of the Constitution and County planning and development, including-

- (a) statistics;
- (b) land survey and mapping;
- (c) boundaries and fencing;
- (d) housing; and
- (e) electricity and gas reticulation and energy regulation as provided in Part 2/8 of the Constitution;

-“plinth”; is the lowest part of the wall of a building that appears above ground level, especially one that is formed of a course of stone or brick;

-“plot coverage” is the ratio of building covered ground area to total plot area;

-“plot ratio”, is the ratio of the building total floor area to total plot area;

-“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 as defined in Article 64 of the Constitution;

-“property” is defined as in the Constitution Article 260 and includes any vested or contingent right to, or interest in or arising from land, or permanent fixtures on, or improvements to, land;

-“public land” is—

- (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
- (b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;
- (c) land transferred to the State by way of sale, reversion or surrender; (d) land in respect of which no individual or community ownership can be established by any legal process;
- (e) land in respect of which no heir can be identified by any legal process;
- (f) all minerals and mineral oils as defined by law;
- (g) government forests other than forests to which Article 63 (2) (d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas; (h) all roads and



thoroughfares provided for by an Act of Parliament; (i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament— (i) in force at the effective date; or (ii) enacted after the effective date as defined in Article 62 of the Constitution;

-“quantity surveyor” is that person or firm providing quantity surveying services and registered under relevant legislation on quantity surveying;

-“quarry” means an area as defined in the relevant mining legislation

-“ rates”; is as defined in relevant legislation on rates and rating

-“residential use” means housing or a home place for family occupation;

-“riparian reserve” is that defined area of land around a water body that constitutes its larger ecosystem and as defined in relevant riparian legislation;

-“road” means any road whether public or private and includes any street, square, court, alley, bridge, footway, path, passage or highway whether a thoroughfare or not;

-“rural land use development plans” includes land use plans for sub-county, ward, village, individual farm holding and farmer homestead;

-“site development master plan” means a detailed plan or blueprint used to guide development of particular plot of land through determination of the detailed layout of an area in relation to the natural environment and human requirements;

-“safeguarding area” means any area adjoining any land owned or occupied by the armed forces of the Republic and which is declared by the Cabinet Secretary by notice in the Gazette to be a safeguarding area for the purposes of this Act;

-“short-term plan” means a local land use development plan which elaborates in detail policies and proposals in relation to precise areas of land, and which provides the basis for both positive and regulatory planning to be realized within a specified period of time not exceeding 10 years and includes—

(a) an action plan for comprehensive planning of areas selected for intensive change, which is to commence within a specified period, by improvement, re-development or new development, restoration and reuse of derelict land;

(b) an advisory plan indicating permitted subdivision and use of land specified in such plan;



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(c) a subject plan for detailed treatment of a particular aspect of planning in relation to a part or the whole of a local physical development plan;

(d) a part development plan indicating precise sites for immediate implementation of specific projects or for alienation purposes;

-“special planning area” means an area that cuts across the boundaries of two or more county or sub county governments and which has land use development problems and declared as such;

-“subdivision” in relation to land means the division of any land, other than buildings held under single ownership, into two or more parts whether the subdivision is by conveyance, transfer or partition or for the purpose of sale, gift, lease or any other purpose;

-“the Kenya National Highways Authority” means the Authority of that name established under the Kenya Roads Act, 2007;

-“the Kenya Rural Roads Authority” means the Authority of that name established under the Kenya Roads Act, 2007;

-“the Kenya Urban Roads Authority” means the Authority of that name established under the Kenya Roads Act, 2007;

-“town planner” is a person holding of professional degree in town planning; or town and country planning; or urban and regional planning or such equivalent from recognized university.

-“transport land use development plan” means a land use plan showing location, corridor network, wayleave, land budget and integrated land use for street, road, railway, airport and water way or harbour and in relation to fronting land uses;

-“urban centre” include municipalities, towns, markets and local centres as provided for under the Urban Areas and Cities Act;

-“unalienated Government land” means Government land which is not for the time being leased to any person, or in respect of which the Commissioner of Lands has not issued any letter of allotment or reservation;

-“urban land use development plan”- includes long term land use plan, zone land use development plan, site land use development plan;

-“valuation roll” is as defined in relevant legislation on valuation roll;

-“water bodies” include springs, wells, boreholes, streams, rivers, dam, lake and sea;

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	<p>-“wetlands” are water areas as defined in relevant legislation on environment and wetlands;</p> <p>-“wildlife sanctuaries” includes national parks, game reserves, conservancies and as defined in relevant legislation on wildlife.</p> <p>JUSTIFICATION:</p> <p>-Many key terms on land use and property regulation are not provided in current Bill,</p> <p>-Many other terms are provided but not expressed accurately and comprehensively in current Bill</p>
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<p>3. OBJECTIVES OF THE ACT</p>	<p>EXISTING: OBJECTIVES OF THE ACT</p>
	<p>PROPOSED AMENDMENT:</p> <p>-Delete “ Physical planning” wherever it appears and replace with “land use planning”</p>
	<p>JUSTIFICATION: OBJECTIVES</p> <p>-To be revise and focused on Regulation of land use and Property as required by Articles 60, 66, 67, 68 and the 5th Schedule of the Constitution</p>

<p>4. PRINCIPLES AND NORMS</p>	<p>EXISTING:</p>
	<p>PROPOSED AMENDMENT :</p>
	<p>JUSTIFICATION:</p>

<p>5. NATIONAL PHYSICAL PLANNING CONSULTATIVE FORUM</p>	<p>EXISTING:</p> <p>-National Physical Planning Consultative Forum</p>
	<p>PROPOSED AMENDMENT</p> <p>-Delete entire section</p>
	<p>JUSTIFICATION:</p> <p>-The establishment of the Forum contravenes Article 6, 189(2) as read together with Intergovernmental Relations Act Sections 8(j), 8(l), 13(1) and 13(2) and generally sections 3-23;</p> <p>-This forum is too bloated (over 60 members) and no special knowledge on land use and property development and no capacity to deliver efficiently and effectively and a drain on public resources;</p>



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	<ul style="list-style-type: none"> -The forum is full of Cabinet Secretaries and appointees of CS -NLC, as independent and oversight Commission, cannot be part of the Forum -Functions of the Forum are duplication of functions that are already best done by Cabinet Secretary/Land, Cabinet Secretary/National Treasury, NLC, National and County Government Summit and related committees under Intergovernmental Relations Act; -No details on internal operations, meetings, decision making and voting is given - Section 5(2) of the Bill totally contradicts and in conflict with the First Schedule of Bill; -Establishment of Forum causes more confusion and conflicts in the Land Sector and is contrary to Supreme Court Advisory Opinion No 2 of 2014
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6.FUNCTIONS OF THE NATIONAL PHYSICAL CONSULTATIVE FORUM	EXISTING: <ul style="list-style-type: none"> -provide forum for consultation on national -promote effective coordination..... -advise on the mobilization of adequate resources.... -advise on strategic....
	PROPOSED AMENDMENT : <ul style="list-style-type: none"> -Delete entire section
	JUSTIFICATION: <ul style="list-style-type: none"> -Functions of Forum is duplication of functions of other existing institutions and offices (The Cabinet/Principal Secretary/Land; SC National Treasury; NLC; the Summit and Committees under Intergovernmental Relations Act; National Director;

7. NATIONAL PHYSICAL PLANNING CONSULTATIVE FORUM MEETINGS	EXISTING:
	PROPOSED AMENDMENT : <ul style="list-style-type: none"> -Delete entire section
	JUSTIFICATION: <ul style="list-style-type: none"> -same as those given in Sections 5 and 6 above

8. FUNCTIONS OF THE NATIONAL LAND COMMISSION	EXISTING: <ul style="list-style-type: none"> -To monitor and oversee physical planning -Prepare status report on Physical plans ... -develop monitoring physical planning
	PROPOSED AMENDMENT:





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	<p>Delete word " Physical Planning" wherever it appears in the section and replace with " land use planning"</p> <p>a-To monitor and oversee land use planning in Kenya</p> <p>b-Prepare status reports on the preparation and implementation of land use plans in Kenya</p> <p>c -develop monitoring framework and formulate oversight parameters relating to land use planning;</p>
	<p>JUSTIFICATION: National Land Commission</p> <p>-Physical planning functions assigned are outside the constitutional provisions of NLC as in Article 67 and in National Land Commission Act; and thus Bill causes conflict with the Constitution and NLC Act;</p> <p>-NLC functions be revised to read land use planning;</p> <p>-NLC functions in the Constitution be included- recommend national land use policy to national government/CS; conduct research on land use planning and development; dispute resolution in land use planning; assess land tax based on approved land use plans; monitor and oversight over land use planning throughout the country</p>

<p>9. FUNCTIONS OF THE CABINET SECRETARY</p>	<p>EXISTING:</p> <p>-At various points makes reference to "Physical Planning"</p> <p>a)Formulating national policy on Physical Planning;</p> <p>c)Approval of national physical development plans;</p> <p>e) coordinating the national and county levels of planning</p>
	<p>PROPOSED AMENDMENT:</p> <p>- Delete "physical planning" and replace with" land use"</p> <p>9c. Delete "Approval of national plan" and replace with" Approval by the Summit/Committee and Parliament as provided under Article 95(2) of Constitution and Intergovernmental Relations Act</p>
	<p>JUSTIFICATION: Functions of CS and Director</p> <p>-The functions of CS) and Director are duplicated; (Section 9a is duplicate of Section 12b; also section 9e and 12d)</p> <p>-Functions of CS and Director be merged as functions of CS;</p> <p>-As an item of great public interest, the national land use policy and plan be submitted to the Summit/committee and approved by Parliament(NA/Senate)</p>

<p>10. NATIONAL DIRECTOR OF PHYSICAL PLANNING</p>	<p>EXISTING:</p>
	<p>PROPOSED AMENDMENT: Delete "physical planning" and replace with "land use planning"</p> <p>-Delete 12(b) and 12(d) as duplicated in 9(a) and 9(e)</p>

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	<p>JUSTIFICATION: National Director of Physical Planning</p> <ul style="list-style-type: none"> -This office, as Physical Planning Department, has failed to deliver in the last 20 years(See National Land Policy, Section 103); -In the Constitution, Planning function has been devolved to the counties, Fourth Schedule Part 1/21 and Part 2/8; -There is no regional level government; delete regional physical development plan; provide for joint county land use plan; -In the Constitution, 4th Schedule Part 1/21, national government function is limited to general principles on land planning and coordination of planning by counties; -Director of Physical Planning should remain advisory and administrative office under CS. <p>-The office of Director be deleted</p>
<p>11. QUALIFICATIONS OF THE NATIONAL DIRECTOR OF PHYSICAL PLANNING</p>	<p>EXISTING:</p> <ul style="list-style-type: none"> -b) possess a post-graduate degree in urban and regional planning or related discipline <p>PROPOSED AMENDMENT:</p> <ul style="list-style-type: none"> -Delete " post graduate degree" and replace with "professional undergraduate degree in urban and Regional planning or equivalent" -Delete "Related discipline" <p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -This is a professional and technical appointment and must possess correct qualifications
<p>12. RESPONSIBILITIES OF THE NATIONAL DIRECTOR OF PHYSICAL PLANNING</p>	<p>EXISTING:</p> <ul style="list-style-type: none"> a) Advising the government on b) Formulating national d) Coordinating <p>PROPOSED AMENDMENT:</p> <ul style="list-style-type: none"> -Delete (a) -Delete (b) -Delete (d) <p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -12(a) is duplication of 6(d) -12(b) is duplication of 9(a) -12(d) is duplication of 9(e)
<p>13. RESPONSIBILITIES OF THE COUNTY</p>	<p>EXISTING:</p> <ul style="list-style-type: none"> -Several reference is made to "Physical Planning"

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EXECUTIVE COMMITTEE MEMBER RESPONSIBLE FOR PHYSICAL PLANNING	PROPOSED AMENDMENT: -Delete any reference to "Physical planning" and replace with "Land use planning"
	JUSTIFICATION: -To conform to Articles 60, 66, 67, 68 of the Constitution

14. COUNTY DIRECTOR OF PHYSICAL PLANNING	EXISTING: -Reference is made to term "Physical Planning"
	PROPOSED AMENDMENT: -Delete reference to "Physical Planning" and replace with "Land Use Planning"
	JUSTIFICATION: -Same as 13 above

15. QUALIFICATIONS OF THE COUNTY DIRECTOR OF PHYSICAL PLANNING	EXISTING:
	PROPOSED AMENDMENT: -Professional Degree in urban and Regional Planning or equivalent
	JUSTIFICATION: -Same as Section 11 above

16. RESPONSIBILITIES OF THE COUNTY DIRECTOR OF PHYSICAL PLANNING	EXISTING: -Reference to "Physical Planning"
	PROPOSED AMENDMENT: -Delete reference to "Physical planning" and replace with "land use planning"
	JUSTIFICATION: -Same as above

17. THE NATIONAL PHYSICAL	EXISTING: Section 17.National Physical Development Plan;
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DEVELOPMENT PLAN	PROPOSED AMENDMENT: -Delete term "Physical development plan" and replace with "land use plan".
	JUSTIFICATION: -The Constitution does not provide for preparation of Physical Development Plans but "land use" or "land use plan"

18. PURPOSE AND OBJECTIVES OF THE NATIONAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete "Physical Planning" and replace with "Land use planning"
	JUSTIFICATION: -As above

19. PROCEDURE FOR PREPARATION OF THE NATIONAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete "Physical planning" and replace with "land use planning"
	JUSTIFICATION: -As explained above

20. CONTENT OF THE NATIONAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete "Physical Planning" and replace with "Land use planning"
	JUSTIFICATION: -As explained above

21. NOTICE OF PREPARATION OF NATIONAL PHYSICAL	EXISTING: 21(2). The cabinet shall consider development plan and may or may not incorporate the comments ... 21(3) Any person dissatisfied with....apply to cabinet secretary for review ...



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<p>DEVELOPMENT PLAN</p>	<p>PROPOSED AMENDMENT: -21(2)Delete " may not" -Delete " apply to "Cabinet Secretary" and replace with "apply to the "Summit" and if not satisfied appeal to "National Land Use Tribunal" and if not satisfied appeal to "Land and Environment Court" -</p> <p>JUSTIFICATION: -To conform with Articles 1and 10, Chapter 6 and Chapter 13 of the Constitution -The CS cannot be a judge in own case</p>
<p>22. APROVAL OF NATIONAL PHYSICAL DEVELOPMENT PLAN</p>	<p>EXISTING: 21(1).national development plan to national PPC Forum for comments 21(3) national PPC forumCabinet for approval. 21(4) The Cabinet Publish... at least two newspapers of national circulation...</p> <p>PROPOSED AMENDMENT: -21(1) delete PPC forum -21(3) delete PPC forum and cabinet approval and replace with approval by the Summit and Parliament 21(4).Delete two newspapers of national circulation</p> <p>JUSTIFICATION: -PPC Forum has no Constitutional mandate or capacity -Cabinet cannot approve a national plan that affects both national and county Governments. This contrary to Article 1,6,10,189 and 95 and Intergovernmental Relations Act -Publication of National Plan in 2 National dailies is too expensive and not tenable</p>
<p>23. IMPLEMENTATION OF A NATIONAL PHYSICAL DEVELOPMENT PLAN</p>	<p>EXISTING:</p> <p>PROPOSED AMENDMENT: -Delete reference to "Physical development plan" and replace with National "Land use" development plan;</p> <p>JUSTIFICATION: - Constitution Articles 60, 66, 67, 68 only recognize land use and not physical planning;</p>

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24. STATUS REPORTS	EXISTING: -Reference to "Physical Planning"
	PROPOSED AMENDMENT: -Delete "Physical Planning" and replace with "land use planning"
	JUSTIFICATION: -Explained above

25. ESTABLISHMENT OF REGIONAL JOINT DEVELOPMENT PLANNING COMMITTEES.	EXISTING: - 25(2)Regional Joint Physical Planning Committee -25(3a)National Director to be Chairman of county joint committee; -25(5)National Director to provide secretariat of county joint committee;
	PROPOSED AMENDMENT: -25(2)Delete "Regional Joint Physical Planning Committee" and replace with "Inter-County Land Use Planning Joint Committee" - 25(3a)Delete "National Director of Physical Planning" and replace with "joint County Chair" -25(5) Delete " national Director of Physical Planning" and replace with "joint county secretariat"
	JUSTIFICATION: - To be in line with Articles 6 and 189 of the Constitution and Section 23 of Inter-governmental Relations Act -The Constitution recognizes only 2 –level of government -National and county governments and does not provide for regional level government- Article 1(4), 6(2) and 189(1/2) - National Director of Physical Planning cannot be chairman and secretary for county committee as this contravenes Article 6 and 189 of the Constitution

26. SCOPE OF THE REGIONAL PHYSICAL DEVELOPMENT PLAN.	EXISTING: -Regional Physical Development Plan
	PROPOSED AMENDMENT: -Delete "Regional Physical Development Plan" and replace with" inter-county land use plan -Delete "regional physical development plan" wherever it appears in section and replace with "land use plan".
	JUSTIFICATION: - Constitution Article 189(2) provides for joint county plan; -Constitution does not provide for regional level government plan



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27. COMMENCEMENT OF REGIONAL PHYSICAL DEVELOPMENT PLANNING PROCESS.	EXISTING: -Regional Physical development plan
	PROPOSED AMENDMENT: -Delete "Regional Physical development plan" and replace with "inter-county land use plan"
	JUSTIFICATION: -As explained above

28. NOTICE OF AND OBJECTIONS TO A REGIONAL PHYSICAL DEVELOPMENT PLAN	EXISTING: -28(2) ... may or may not incorporate the comments on the plan -28(3) ... appeal to national physical planning liaison committee...
	PROPOSED AMENDMENT: -Delete "physical" and replace with "Land use" in entire section -Delete "or may not" -Delete appeal to "liaison committee" and replace with appeal to "Land Use Tribunal", under Article 67(2f), 67(2h) and 252(3c) of the Constitution
	JUSTIFICATION: -Appeal is submitted to the Land Tribunal under National Land Commission as provided for in Article 67(2f)/2(h) and National Land Commission Act. -Tribunal has more legal and enforceable powers than liaison committee

28(4)	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION: -Environment and Land Court under ELC S.13 (2h) has appeal mandate over Land Use Planning and not Physical Planning.

29. APPROVAL OF A REGIONAL PHYSICAL DEVELOPMENT PLAN	EXISTING: - 29(1/2) Approval of Regional Physical Development Plan by CEC, National Director and CS - Publication of plan in 2 national dailies
	PROPOSED AMENDMENT: - Delete "approval by CEC, National Director" and approval by "Cabinet Secretary" and replace with approval by "respective county assemblies" - Delete publication of plan in 2 national dailies

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	<p>JUSTIFICATION:</p> <ul style="list-style-type: none"> - Inter-County Plan be submitted and approved by respective county assemblies as provided in Article 185(4), 189, 1(4), 6(2), of the Constitution, - Multiple approval of the plan by county executive, national director and cabinet secretary is contravenes Article 6, 185(4) and 189(1a) of the Constitution. County plans are not subject to approval by national government - Publication of the plan in 2 national dailies is too expensive and not tenable.
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30.IMPLEMENTATION OF THE REGIONAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

31.STATUS REPORTS ON REGIONAL PHYSICAL DEVELOPMENT PLANS	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

32. COUNTY PHYSICAL DEVELOPMENT PLAN.	EXISTING: -County Physical Development Plan
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.



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33. PURPOSE AND OBJECTS OF A COUNTY PHYSICAL DEVELOPMENT PLAN.	EXISTING: -Reference to Physical planning
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
34. NOTICE OF INTENTION TO PREPARE A COUNTY PHYSICAL DEVELOPMENT PLAN.	EXISTING -Physical planning:
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
35. CONTENTS OF A COUNTY PHYSICAL DEVELOPMENT PLAN.	EXISTING: -Physical planning
	PROPOSED AMENDMENT: - Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
36. PUBLIC PARTICIPATION IN THE PREPARATION OF A COUNTY PHYSICAL DEVELOPMENT PLAN.	EXISTING: -36(7) – Reference to Physical planning
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.





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37.COMPLETION AND APPROVAL OF A COUNTY PHYSICAL DEVELOPMENT PLAN	EXISTING: 37(2)plan ... placed before the county assembly
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
38 (3).MODIFICATION OF A COUNTY PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
39. REVISION OF A COUNTY PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete entire section 35 of the Bill
	JUSTIFICATION: -The Bill is in conflict with Section 110 of the County Governments Act -Conflict County Physical Development Plan /County Spatial Plan.
40. LOCAL PHYSICAL DEVELOPMENT PLAN.	EXISTING: -Reference to "Local Physical Development Plan"
	PROPOSED AMENDMENT: -Delete the entire section
	JUSTIFICATION: -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?



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41. PURPOSE OF A LOCAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: - Delete the entire section
	JUSTIFICATION: -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?

42. INITIATION AND PREPARATION OF A LOCAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete the entire section
	JUSTIFICATION: -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?

43. CONTENTS OF A LOCAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete the entire section
	JUSTIFICATION: -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?

44. NOTICE AND OBJECTIONS TO A LOCAL PHYSICAL DEVELOPMENT PLAN	EXISTING:
	PROPOSED AMENDMENT: -Delete the entire section



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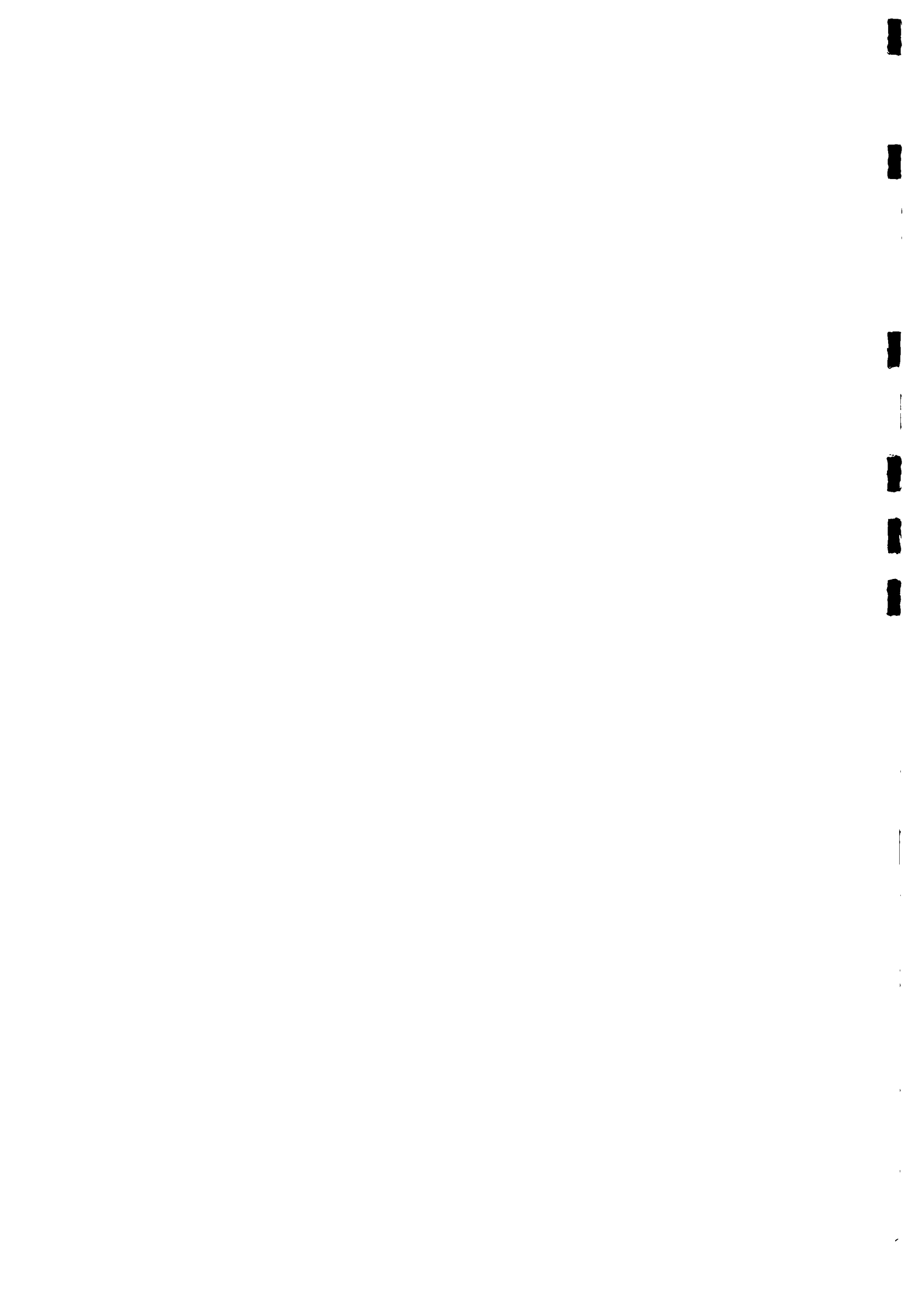
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	<p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?
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<p>45. APPROVAL OF LOCAL PHYSICAL DEVELOPMENT PLANS.</p>	<p>EXISTING:</p>
	<p>PROPOSED AMENDMENT:</p> <ul style="list-style-type: none"> -Delete the entire section
	<p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?

<p>46. AMENDMENT OR REVISION OF LOCAL PHYSICAL DEVELOPMENT PLANS.</p>	<p>EXISTING:</p>
	<p>PROPOSED AMENDMENT:</p> <ul style="list-style-type: none"> -Delete the entire section
	<p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -Bill causes conflict with County Governments Act (S.111) -Bill causes conflict with Urban Act and Cities Act (Section 36-42) -Conflict: Local Physical Development Plan/Integrated City /Municipal/Urban Development Plan?

<p>47. DECLARATION OF A SPECIAL PLANNING AREA.</p>	<p>EXISTING:</p> <p>47(1) A county government may, on its own motion or as requested by the national government or the NPPC forum, declare an area as a special planning area</p> <p>47(2) suspend for a period of not more than two years....</p>
	<p>PROPOSED AMENDMENT:</p> <p>-47(1)Delete ...” on its own motion or as requested by the national government or NPPC Forum” ... and replace with, “County government, after adequate public participation and consultation with NLC”</p> <p>47(2). Delete “suspend for a period of not more than to year” and replace with “ give appropriate guideline on development in the area after adequate public participation, hearing and consultation with national government and NLC</p>





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	JUSTIFICATION: -To conform with Article 40 of Constitution -Bill has failed to conform to Senate Standing Order No 124 on Limitation of Fundamental Rights and Freedom and also National Assembly S/O on the same
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48. CONTENTS OF A SPECIAL AREA PLAN.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

49. OBJECTIVES OF DEVELOPMENT CONTROL.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

50. POWER TO UNDERTAKE DEVELOPMENT CONTROL.	EXISTING:
	PROPOSED AMENDMENT: -52(1). Delete ..." planning authority" and replace with "County Government"
	JUSTIFICATION: -Development Control and granting of development permissions is the mandate of the County government and not planning authorities. -Provision of the bill contravenes the Constitution, 4 th Schedule Part 2/8.

51. DEVELOPMENT PERMISSION.	EXISTING:
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	PROPOSED AMENDMENT: -Delete " planning authority" and replace with "County Government"
	JUSTIFICATION: -Development Control and granting of development permissions is the mandate of the County government and not planning authorities. -Provision of the bill contravenes the Constitution, 4 th Schedule Part 2/8.

52. APPLICATION FOR DEVELOPMENT PERMISSION.	EXISTING:
	PROPOSED AMENDMENT: -Delete " Planning authority" and replace with "County Government"
	JUSTIFICATION: - The bill causes confusion (Section52).

53. PLANS AND DOCUMENTS TO BE PREPARED BY QUALIFIED PERSON.	EXISTING:
	PROPOSED AMENDMENT: -Delete " relevant qualified and registered professional" and replace with qualified and registered town planner, architect, engineer, QS, and EIA expert, or contractor
	JUSTIFICATION: -This section of Bill cannot be implemented as it is not clear and not specific on the registered professional.

54. DEVELOPMENT APPLICATION REFERRED TO RELEVANT AUTHORITIES.	EXISTING: -52(2) "Development permission" and "development authority"
	PROPOSED AMENDMENT: -Delete " Development permission" and replace with " Development Application" -Delete " development authority" and replace with "county government"
	JUSTIFICATION: -This is the professional practice -This is in line with Article 186 and 4 th Schedule Part 2/8 of Constitution





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55. DECISION MAKING AND COMMUNICATION	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

56. REGISTERS.	EXISTING: -Planning Authority
	PROPOSED AMENDMENT: -Delete planning authority and replace with County Government
	JUSTIFICATION: -The County Government is the Planning Authority -Constitution, Forth Schedule Part 2/8

57. DEVELOPMENT FEES.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

58. LAPSE OF DEVELOPMENT PERMISSION.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

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59. COMMENCEMENT AND COMPLETION OF BUILDING.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

60. PROHIBITION OF GRANT OF LINCENCE FOR DEVELOPMENT OF A COMMERCIAL OR INDUSTRIAL NATURE.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

61. OFFENCES RELATING TO DEVELOPMENT PERMISSION.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

62. ACCESSSS TO INFORMATION.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:





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63. STRATEGIC NATIONAL OR INTER-COUNTY PROJECTS.	EXISTING:
	PROPOSED AMENDMENT: -63(1) add ... national importance and in consultation with affected county governments, NLC
	JUSTIFICATION: -In line with Article 1, 6,10, 67, 189 and Chapter 6 of the Constitution
64. PRESERVATION OF HERITAGE SITES.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:
65. ENFORCEMENT NOTICE.	EXISTING:
	PROPOSED AMENDMENT: -Delete "planning authority" and replace with "County government"
	JUSTIFICATION: -There is confusion over development control enforcement mandate by County Government/ Cabinet Secretary. -Enforcement is the mandate of the County Government. -In line with Constitution Article 186 and 4 th Schedule Part 2/8
66. REQUIREMENT TO PRESENT DEVELOPMENT APPLICATION.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:



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67. ESTABLISHMENT OF NATIONAL PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT: -Delete establishment of National Physical Planning Liaison Committee -Replace with Land Use Tribunal
	JUSTIFICATION: -In line with the Constitution Article 67 and 252(3) of the Constitution

68. COMPOSITION OF THE NATIONAL PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT: -Delete entire Committee - Replace with Land Use Tribunal under Article 67 and 252(3) of the Constitution -Tribunal to have 8 members 1. Advocate of High Court as Chair and nominated by LSK 2. One person nominated by the National Land Commission 3. One person nominated by Kenya Institute of Planners 4. One person nominate by Town and County Planners Association of Kenya 5. One person nominated by Architectural Association of Kenya 6. One person nominated by Engineers Institution of Kenya 7. One person nominated by Institution of Surveyors of Kenya 8. A representative of Attorney General - The relevant legislation on Tribunals to be applied
	JUSTIFICATION: -Membership composition is too large (15 members per governmental structure), not sustainable/ discriminatory. -Membership structure contravenes Article 10 (national values), 60 (principles of land policy), 232 (values and principles of public land). -Heavily loaded with Cabinet Secretary influence and appointees -Committee will not be independent as many complaints will be against decisions by the State/CS or court Government

69. FUNCTIONS OF THE NATIONAL PHYSICAL	EXISTING:
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PLANNING LIAISON COMMITTEE.	PROPOSED AMENDMENT: Delete the entire Section 69
	JUSTIFICATION: -Functions duplication of function of national forum, national -Functions/forces of Liaison committee not clear- Advisory dispute resolution? -No checks and balances and separation of powers- Cabinet secretary sitting in own case. -Raises conflicts with NEMA- S. 69(d). -Appointment of chairman, procedures of meetings, voting not specified in the Bill
70. ESTABLISHMENT OF COUNTY PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT: -Same as section 67
	JUSTIFICATION: -Same to apply
71. COMPOSITION OF THE COUNTY PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT: -Same as 68 above
	JUSTIFICATION: -This is supposed to be an appeal tribunal/dispute resolution. -Membership and functions of the committee are in conflict. -There are no checks and balances are separation of powers. -The County Executive Committee member is sitting in own case. -Environment and Land Government has no mandate over physical planning matters but land use planning matters.
72. FUNCTIONS OF THE COUNTY PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT:





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	JUSTIFICATION: -Same as 70 above
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73. PROCEDURE OF THE COUNTY PHYSICAL PLANNING LIAISON COMMITTEES.	EXISTING:
	PROPOSED AMENDMENT: -Same as 72 above
	JUSTIFICATION: -Same as 72 above

74. APPEAL TO A COUNTY PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT: -Rules as provided under relevant legislation on Tribunals
	JUSTIFICATION: -Same to apply

75. DUTY TO APPEAR BEFORE A COUNTY PHYSICAL PLANNING LIAISON COMMITTEE.	EXISTING:
	PROPOSED AMENDMENT: -Tribunal legislation rules to apply
	JUSTIFICATION:

76. COMMUNICATION.	EXISTING:
	PROPOSED AMENDMENT: -Rules as contained in relevant legislation on Tribunal





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	JUSTIFICATION:
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77. WITHDRAWAL OF APPEAL AND ABANDONMENT OF APPEAL.	EXISTING:
	PROPOSED AMENDMENT: -Rules under relevant legislation on Tribunals to apply
	JUSTIFICATION:

78. APPEALS TO NATIONAL PHYSICAL PLANNING LIAISON COMMITTEES.	EXISTING:
	PROPOSED AMENDMENT: -Rules under relevant legislation on Tribunals to apply
	JUSTIFICATION:

79. DECLARATION OF PERSONAL INTEREST.	EXISTING:
	PROPOSED AMENDMENT: - Rules under relevant legislation on Tribunals to apply
	JUSTIFICATION:

80. DISCLOSURE OF INFORMATION.	EXISTING:
	PROPOSED AMENDMENT: -Rules under relevant legislation on Tribunals to apply



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	JUSTIFICATION:
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81. PHYSICAL PLANNING LIAISON COMMITTEES TO KEEP REGISTERS.	EXISTING:
	PROPOSED AMENDMENT: - Rules under relevant legislation on Tribunals to apply
	JUSTIFICATION:

82. REMUNERATION.	EXISTING:
	PROPOSED AMENDMENT: -Rules under relevant legislation on Tribunals to apply
	JUSTIFICATION:

83. INDEMNITY FOR PUBLIC OFFICERS ACTING UNDER THIS ACT.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION: -This section contravenes Article 10 and 27bof the Constitution. -This provision is discriminatory against other persons exercising any of the functions in the Act.

84. REPEAL OF NO. 6 OF 1996.	EXISTING:
	PROPOSED AMENDMENT:



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	JUSTIFICATION:
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85. TRANSITIONAL PROVISIONS.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

86. PENDING DISPUTES.	EXISTING:
	PROPOSED AMENDMENT:
	JUSTIFICATION:

87. CONSEQUENTIAL AMENDMENTS.	EXISTING: - 87(1): Section 110(3) of the county Governments Act, 2012, is amended by deleting the words "and approved by the respective county assemblies in accordance with the procedures approved by the respective count assemblies". - 87(2): Section 110(4) of the County Governments Act, 2012, is amended by deleting the words "and the revisions approved by the respective county assemblies".
	PROPOSED AMENDMENT: -87(1):Delete all -87(2): Delete all
	JUSTIFICATION: - Article 185(4) of the Constitution gives the county assembly powers to receive and approve plans and policies; -This amendment is unconstitutional and contravenes Article 185(4) of the Constitution. -Proposed amendment of the County Governments Acts is not contained in the Memorandum of Objects and Reasons to the Bill and this is against the Constitution Article 10(2a) and 10(2c) and Parliament Standing Orders.



<p>FIRST SCHEDULE- PROCEDURE OF APPOINTMENT OF MEMBERS OF THE NATIONAL PHYSICAL DEVELOPMENT CONSULTATIVE FORUM</p>	<p>EXISTING:</p> <ol style="list-style-type: none"> 1. Within twenty one days of the commencement of this Act ... 2. The Panel shall comprise a chairperson 3. An application 4. The panel shall 5. The panel shall, subject to this section 6. The panel shall interview 7. After carrying out the interviews
	<p>PROPOSED AMENDMENT:</p> <p>-The entire First Schedule be deleted</p>
	<p>JUSTIFICATION:</p> <p>-The entire First Schedule totally contradicts Section 5(2) of the Bill on appointment of members of the National Physical Planning Consultative Forum</p>

<p>SECOND SCHEDULE CONTENTS OF NATIONAL, INTER- COUNTY AND COUNTY PHYSICAL DEVELOPMENT PLANS.</p>	<p>EXISTING:</p> <p>-All items listed as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 and the contents therein</p>
	<p>PROPOSED AMENDMENT:</p> <p>-Delete entire items listed as 1, 2, 3,4,5,6, 7, 8, 9, 10, 11 and 12 and the contents therein and replace as below;</p> <p>Contents of National, Inter-County and County Land Use Plans</p> <ol style="list-style-type: none"> 1. Introduction 2. Methodology 3. Legal and Policy Issues 4. Natural Physical and Climatic Features 5. Settlement and Land Use Pattern 6. Population and Demography 7. Housing Development 8. Education Sector 9. Community and Social Services 10. Water Supply and Sanitation 11. Agriculture and Irrigation 12. Livestock 13. Marine and Fishery 14. Forestry and Wildlife 15. Mining 16. Energy Sector 17. Communication sector. 18. Transport Sector



	19. Development Options 20. Implementation Schedule Reference Appendix
	JUSTIFICATION: - There presentation and content are totally mixed and lack logical numbering, flow of content and with hanging statements - The presentation does not conform to known professional practice; -Items listed as 9, 10, 11 and 12 are not contents of a plan report -Finer details of such schedules are normally outlined in regulations to the Act

THIRD SCHEDULE: CONTENTS OF LOCAL PHYSICAL DEVELOPMENT PLANS.	EXISTING: -Items listed as 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20, 21 and Part A, Part B, and Part C and the contents therein;
	PROPOSED AMENDMENT: -Delete all items listed as 1,2,3,4,5,....., 21, Part A, Part B and Part C and the contents therein; -Replace with items listed below: -CONTENTS OF URBAN LAND USE PLAN 1. Introduction 2. Methodology 3. Legal and Policy Issues 4. Natural Physical and Climatic Features 5. Population and Demography 6. Housing 7. Education Sector 8. Community and Social Services 9. Commerce and Retail Activities 10. Manufacturing and Industry 11. Mining Sector 12. Green and Open Spaces 13. Agriculture and Livestock; 14. Water Supply and Waste Water Drainage 15. Solid Waste Management



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	<p>16. Communication Sector</p> <p>17. Energy Sector</p> <p>18. Transport Sector</p> <p>19. Development Projects and Options</p> <p>20. Implementation Schedule</p> <p>Reference</p> <p>Appendix</p>
	<p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -Contents do not tally with the Bill- Section 40(2). -Content and presentation are totally mixed up, no logic numbering and flows of issues. -Contents and flow do not conform to known town planning practice;

<p>FOURTH SCHEDULE: MATTERS WHICH MAY BE DEALT WITH UNDER DEVELOPMENT CONTROL.</p>	<p>EXISTING:</p> <ul style="list-style-type: none"> -Provides for "planning authority or authorities" at several places in the text
	<p>PROPOSED AMENDMENT:</p> <ul style="list-style-type: none"> - Delete and replace with: MATTERS WHICH MAY BE DEALT WITH UNDER DEVELOPMENT CONTROL - Delete "Planning Authority" wherever it occurs in the text and replace with "County Government"
	<p>JUSTIFICATION:</p> <ul style="list-style-type: none"> -As presently drafted, application to development permission will go to both County government and cabinet secretary and this will cause confusion; -Development control is a function of county government/local government; -Application for development permission is to the county government -Grant of development permission is by county government





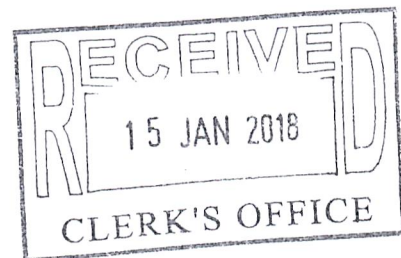
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Memorandum on the Physical Planning Bill 2017

**To: Michael R. Sialai, EBS,
Clerk of the National Assembly,
Office of the Clerk, Main Parliament Building,
P. O. Box 41842 – 00100,
Nairobi.**

Handwritten: (15/1/18)

**Cc: Chairperson,
Departmental Committee on Lands,
National Assembly
P. O. Box 41842 – 00100,
Nairobi.**



12th January 2018

About TISA

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya.

General Remarks

We commend the National Assembly in its efforts to align physical planning¹ legislation with the *Constitution 2010*. The *Physical Planning Bill, 2017* if enacted will give effect to *Article 66 (1)* of the *Constitution 2010*, which provides that, "The State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use planning".

The *Physical Planning Bill 2017* seeks to repeal and replace the *Physical Planning Act, No. 6 of 1996*, which is outdated, not consistent with the Constitution. The Act is not in line with the devolved government system that is central in the *Constitution* design. Devolution in Kenya is regarded as part of the exercise of sovereign power of the people, national values and principles of governance and the basic structure of the *Constitution 2010*.² The administration of the *Physical Planning Act 1996* is centralized in the office of the National Director of Physical Planning. It does not clearly classify land use, especially mixed developments in residential areas. Further, it does not provide clear guidelines on urban renewal, urban conservation and heritage. It is not flexible and does not address the dynamics of development. It does not promote undertaking of studies to inform formulation of planning policy.³ Some of the main

¹Physical Planning is the discipline that organizes activities on space in urban and rural areas to ensure public health, morality, efficiency, economy, suitability and aesthetics.

² John Mutakha Kangu, *Constitutional Law on Kenyan Devolution*

³ John Mativo, *The Role of Law in Urban Planning in Kenya: Towards Norm of Good Governance, 2015*

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For Consideration
by the Committee
16/1/18

challenges facing physical planning sector include general disregard for land use planning regulations. Multiple land law regimes have created gaps, conflicts and contradictions in the application of the laws and these have implications on land use planning and development. Lack of stakeholder participation in planning process, poor governance leading to wastage, political patronage and corruption have eroded public confidence, lack of clear policy on implementation and weak institutional structures, adequate technical and professional staff, problems caused by rapid urbanization, exclusion of women in land decision making processes.⁴

We note that this bill does not respond effectively to the challenges of development planning, does not adequately align itself to the constitution, nor does it adequately incorporate key provisions provided in the National Land Policy. Some broad observed gaps are;

a. Integrated planning lacking

Effective development planning brings together economic, fiscal, social and physical planning aspects. The National Land Policy and National Spatial Plan recognises that some of the shortcomings of the local physical development planning has been the lack of integration and inadequate capacity towards physical planning. **There is therefore need for an integrated approach in the preparation and implementation of Local Physical Development Plans.** To this extent physical planning bill should be integrated with land use management as provided in the land act to meet the threshold of reform envisaged under the Constitution of Kenya and the National Land Policy.

b. Public Participation provisions do not meet constitutional threshold

'Development control is the power of the State to regulate property rights in urban and rural land, and is derived from the State's responsibility to ensure that the use of land promotes the public interest.'⁵ Development control is to conform to the principles of effective land use including ensuring effective public participation in the exercise of development control and the establishment of participatory and accountable mechanisms for development planning, management and enforcement. Development planning in Kenya has suffered from absence of broad based consultation and the lack of an effective coordinating framework for preparation and implementation of the planning proposals and regulations. *For instance, the National and County Directors of physical planning should be responsible for ensuring the engagement between county government and the citizenry, other stakeholders and interest groups. The county director should be responsible for ensuring and coordinating the participation of communities and locations in physical planning and development at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in physical planning and development at the local level.*

http://erepository.uonbi.ac.ke/bitstream/handle/11295/95288/Mativo_The%20role%20of%20law%20in%20urban%20planning%20in%20Kenya.pdf?sequence=1

⁴ Ministry of Lands and Physical Planning, National Land Policy 2009

⁵ National Land Policy clause 48.

c) Civic Education is a functional prerequisite that is missing from the bill

Civic education is a functional prerequisite for effective participation. The Cabinet Secretary should be required to ensure counties provide civic education for the empowerment and enlightenment of citizens and government and continual and systemic engagement of citizens and government through sustained civic education of citizens. The bill should ensure adequate time and civic education be provided prior to the planning process.

d) Transparency provisions are inadequate - The act should provide for the provision of an inventory of all public land without which development planning is severely hampered.

e) Land planning for Special Interest groups has been entirely ignored (bill lacks equity and inclusivity)

Informal Sector: The Bill does not recognize planning for informal sector activities. According to the *National Land Policy 2009*, informal sector activities are a key feature in many parts of Kenya both in planned and unplanned areas and form a crucial part of the economy as a source of livelihood. Informal sector activities have not been accommodated in the planning of urban and rural areas. Informal sector activities have arisen spontaneously as a result of rural-urban migration without corresponding availability of formal employment opportunities and other income generating activities. It states that the government shall:⁶

- Facilitate the provision of land and land use planning to enable the development of informal commercial activities in a more ordered and sustainable manner.
- Put in place mechanisms to allow for informal activities in planned areas;
- Designate areas where informal activities can be carried out; and
- Institute mechanisms to manage rural-urban migration such as decentralizing development to rural areas and minor urban areas

Women: The Bill should ensure effective protection of women's rights to land and related resources.

Vulnerable Groups: The bill should recognize the land rights of vulnerable groups including **unskilled and low-skilled workers, unemployed youth, persons with disabilities, persons living with HIV and AIDS**. Poor and vulnerable people lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources.⁷

Effective development planning should therefore ensure it recognizes and provides for the participation of vulnerable groups and provides mechanisms for the redistribution of land and resettlement, and protection from unjust and illegal expropriation. *This should be captured in the interpretation of the act, objects, principles, norms and standards. These groups should also have representation in the National National Physical Planning Consultative Forum.*

f) Bill is not functionally aligned to the Constitution with respect to Intergovernmental Relations - The framework for development planning and control is to be expected to provide an effective coordinating mechanism for the preparation, implementation of plans and development control **and to ensure the devolution of land administration**

⁶ National Land Policy 112.

⁷ National Land Policy 171.

and management.⁸ Whereas the Constitution provides county planning as a concurrent function and assigns national government the function of

'general principles of land planning and the co-ordination of planning by the counties' this is to be implemented in accordance with article 6(2) - The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

189. (1) Government at either level shall—

(a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;

(b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and

(c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

(2) Government at each level, and different governments at the county level, shall cooperate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

The bill offends the principles of distinctness by assigning the Cabinet Secretary an implementation role in several instances and thereby re-centralising planning contrary to the Constitution. Whereas there is to be coordination between both levels of government, and counties are to conform to national development priorities the bill seeks to impose the National Development Plan upon counties which might force counties to ignore their local priorities. *For instance, at present the national government's strong focus on roads infrastructure, large scale development projects which incorporate imported technology is inimical to the development of small shareholding agriculture and informal business which is a priority for many counties. Small shareholding agriculture thrives well using low, but effective technology which can be made available locally and thus spurs the creation of jobs and does not place a borrowing burden of government.*

Planning compliance by county governments should be provided through the strict enforcement of norms and standards, coupled with a robust intergovernmental framework for dialogue and negotiation on priorities and strategies. The present consultative forum does not satisfy the requirements for an intergovernmental forum, has no linkages with the existing intergovernmental forums provided in the Intergovernmental Relations Act 2012, and instead takes us back to the era of centralised planning which has roundly failed in Kenya, and which the Constitution and National Land Policy seeks to redress. **This also applies to the proposed regional planning framework.** Further, the bill should provide for representation of residents' associations and other professional representation as well as public participation in the regional planning and implementation process.

⁸ National Land Policy.

Capacity building - The bill should expressly require the cabinet secretary to ensure adequate human, technical and financial capacity to national and county institutions to support effective development planning and control in accordance with Article 189 of the Constitution of Kenya.

REVIEW OF THE PHYSICAL PLANNING BILL 2017

PART I: PRELIMINARY

The *Physical Planning Bill 2017* intends to provide for the planning, use, regulation and development of land in Kenya.

- a) We recommend the long title to read as follows, "*to provide for the transparent, accountable and participatory planning, use, regulation and sustainable development of land in Kenya*". The long title is inadequate and should sufficiently encapsulate the aspirations of effective planning to redress inequities, poor governance, weak enforcement, fragmentation, coordination, participation, integrated land use etc.

Interpretation

The Bill should include and modify the meaning of the following words

- i. National association of residents – include meaning of National association of residents
- ii. Publish - the meaning should make it a requirement that publish of a notice to the public as required in terms of this Act or any other applicable legislation shall be done by publication in at least two daily newspapers with national circulation, publication in the official website of the Ministry responsible for Physical Planning or County Government
- iii. Stakeholder – the meaning of stakeholder should list the relevant stakeholder including representatives from registered professional bodies, resident association, women group, youth group, business community including informal traders associations.
- iv. Residents Association - meaning of resident association
- v. County Planning Authority - meaning of County Planning Authority and its composition
- vi. Public purpose – meaning to include public open spaces, waste disposal site and public market

Clause 3: Objects of the Act⁹

The objects of the *Physical Planning Bill 2017* are not wide enough and do not cover all the areas connected with integrated development planning.

⁹The objects of the Act are to:

- i. Provide the principles, procedures and standards for the preparation and implementation of physical development plans at the national, regional, county, urban, rural and cities level.
- ii. The administration and management of physical planning in Kenya;
- iii. The procedures and standards for development control and the regulation of physical planning and land use;
- iv. A framework for the co-ordination of physical planning by county governments; a mechanism for dispute resolution;
- v. A framework for equitable and sustainable use, planning and management of land; and the functions of and the relationship between planning authorities

The Bill does not incorporate in its objects constitutional principles and we recommend inclusion of principles such as public participation in the planning, use, regulation and development of land in Kenya. Transparent and accountable administration and management of physical planning, decentralized and devolution of physical planning authority and responsibility to the lowest level possible, Cooperative government and intergovernmental relations between national and county government¹⁰ in physical planning, land use that promotes social and economic inclusion.

Planning legislation needs to increase its scope and complexity as the demands of the society increase. Planning law should respond to current social, economic and political circumstances. It should aim to provide an effective and comprehensive physical planning system that is simple, flexible and easy to administrate.

Clause 4: Principles and Norms

On a positive note the bill incorporates the constitutional national values and principles of governance,¹¹ constitutional principles of land policy,¹² leadership and integrity principles¹³ under *clause 4* that are binding on every State organ, State officer, public officer and person engaged in physical planning or land use regulation. However, the bill mixes up the norms and principles which has the effect of diluting both which provide crucial basis for effective management and enforcement of land planning and development. Norms and Standards provide the basis for national government standards setting to guide county governments, standardise planning, strengthen enforcement, provide a check on executive discretion, ensure accountability of public officers, empower communities and provide protections for the vulnerable. **To this extent, this is an extremely weak bill that will do little to redress the current state of confusion in land use planning and development.**

To ensure harmony on land use planning laws, we propose the separation of values, principles, norms and standards. We also propose the inclusion of the *National Land Policy 2009 values and principles* relevant to physical planning. These include equitable access to land for subsistence, commercial productivity, settlement, and the need to achieve a sustainable balance between these uses. In addition to these, we have gender equity; secure land rights, effective regulation of land development; sustainable land use; Access to land information; efficient land management; transparent and good democratic governance of land. The *National Land Policy* comprises an overall framework and set of principles to guide sectoral, legislative and institutional reforms in land administration and management. It defines among others key measures required to address critical issues of land use planning, out-dated legal framework and institutional framework. It states the national, regional, urban, peri-urban, spontaneous settlements planning principles and guidelines to be formulated and implemented in a transparent, sustainable, comprehensive, participatory and accountable manner. Additionally, the Bill should incorporate principles of planning as provided for by other legislations including the *County Government Act 2012 Part XI* on County Planning *section 102*, which provides

¹⁰Article 6 and 189 of the Constitution

¹¹Constitution, Article 10

¹²Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with the principles of equitable access to land, security of land rights, sustainable and productive management of land resources, transparent and cost effective administration of land elimination of gender discrimination in law, Customs and practices related to land and property in land

¹³Constitution Articles 73 and 75

principles of planning and development, and the *Urban Areas and Cities Act 2011 Part V*, which provides for integrated development planning.

PART II: PHYSICAL PLANNING INSTITUTIONS

The Bill does not include principles and norms to guide physical planning institutional framework to ensure devolution of power and authority, participation and representation, justice, equity and sustainability.¹⁴

Clause 5 establishes a National Physical Planning Consultative Forum comprising of various stakeholders in physical planning. It is commendable that the forum includes representatives from the national and county government, private sector, professional associations, persons with disabilities and resident association. However, the forum should include more than one representative of resident association. The forum does not include representatives of registered civil society, women, youth, informal trade association and engineers. A wider representation ensures inclusive and broad based consultations on physical planning.

Clause 9 on the functions of the Cabinet Secretary should be limited to general principles of land planning and co-ordination of planning by counties in line with *Fourth Schedule Part 1 Paragraph 21* of the *Constitution* on the functions of the National government.

Clause 12 on the responsibilities of the National Director of Physical Planning overlaps with the functions of the Cabinet secretary of formulating national physical planning policies.

PART III: TYPES OF PHYSICAL DEVELOPMENT PLANS

National Physical Development Plan

Clause 19 (1) provides for the preparation of the National Physical Development Plan, and the National Director shall consider relevant national policies and ensure effective participation by the public and relevant stakeholders. The word stakeholder is vague and the Bill should list the relevant stakeholders including representatives of women, youth, resident associations, business community, informal sector associations and relevant professional bodies.

Clause 21 states that the Cabinet Secretary shall consider the comments of the public made about the National Physical Development Plan and may or may not incorporate the comments in the plan. The Bill should provide for adequate feedback mechanisms. The Cabinet Secretary should give reasons in writing for including or not including comments of the public. The Bill should require the Cabinet Secretary to provide evidence for public participation in the formulation of preparation of the National Physical Development Plan.

In order to address land use planning issues, the *National Land Policy 1999* recommends that the Government shall provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure that the planning process is integrated, participatory and meets stakeholder needs.

Clause 22 on approval of the National Physical Development Plan does not include a requirement for approval of the plan by Parliament before gazettelement. The Constitution states that people may exercise their sovereign power through their democratically elected

¹⁴ National Land Policy 2009

representatives. Sovereign power of the people under the Constitution is delegated to Parliament. It would be in order for Parliament to review and approve the National Physical Development Plan.

Regional Physical Development Plan

Clause 25 establishes a regional development physical planning development committee comprising of the national director physical planning, county executive committee member responsible for physical planning for each county involved and any other relevant County Executive Committee member. The regional joint physical planning committee may co-opt such other persons as may be necessary to assist it in performance of its duties. The committee needs to include representatives of the residents in the affected regions. The committee needs to be aligned to the functional mandates of the levels of government be restricting the role of the Cabinet Secretary in implementation.

Clause 21 states that the Regional Physical Planning Joint Committee shall consider the comments made about the plan and may or may not incorporate the comments in the plan. We recommend that the Regional Physical Planning Joint Committee shall incorporate relevant comments made by the public in the plan and if not give its reasons in writing.

Clause 24 requires public institutions implementing the National Physical Development Plan to prepare status report. There should be a requirement for these reports to be available to the public. The National Land Commission should upload the reports received on its website. Once approved, reports by the county government should be tabled in the County Assembly, NLP and National Parliament.

Clause 25 provides for the establishment of the regional joint physical planning committee to formulate a regional physical development plan. The committee does not include representative of residents of the affected regions, women, youth and informal traders.

Clause 29 on the approval of the regional physical development plan does not include the requirement of approval of the plan by the county assembly of the affected regions. County Assembly members

County Physical Development Plan

Clause 32 provides for a County Physical Development Plan, which shall be consistent with the national and regional physical development plan.

There is no requirement for the County Physical Development Plan to be in harmony with the County Intergrated Development Plan, County Sectoral Plan, County Spatial Plan, County or Municipal Plan provided for in the *County Government Act section 108, 109, 110 and 111*.

The clause that county physical development plan shall suffice for purposes of the provisions of *section 110* of the *County Governments Act* is not clear.

Clause 33, which provides for **purpose and objects of a county development physical plan** should be in harmony with the objectives of county planning as provided for in the *County*

*Government Act 2012 section 103,*¹⁵ particularly the objective to ensure harmony between national, county and sub county spatial planning.

Clause 35 on the **contents of a county physical development plan** should be specific, measurable, attainable, relevant and timely and include budget estimates for effective monitoring and evaluation by the public.

The Bill requires **public participation in the formulation of County Physical Development Plan**. However, the Bill does not provide a clear definition of public participation in the preparation of physical development plan. There needs to be a clear definition of "the public" and "public participation" within the context of the Bill. Physical planning requires broad based consultations, and there should be a deliberate effort to incorporate interest groups that have been left out in decision-making processes such as women, youth, and informal sector.

The *County Government Act 2012* defines the public when used in public participation means the resident of a particular county, rate payers in a particular city or municipality. Any resident civic organization or nongovernmental organization, private sector or labour organization with an interest in governance of a particular county, city or municipality and nor resident temporarily present and using services or facilities provided by the county, city or municipality.

Public participation is the involvement of individuals and groups positively or negatively affected by, or that are interested in a proposed project, program, plan, legislation or policy subject to a decision-making process in an open, accountable and inclusive process through which, individual citizen, community and interest groups, and other stakeholders can exchange views and make/influence decisions affecting their lives.¹⁶

The *National Land Policy 2009* state that one of the issues that needs to be addressed in land use planning is the establishment of an appropriate framework for public participation in the development of land use and spatial plans.

The Bill does not provide an effective feedback mechanism from the government to the public. There should be a requirement that the County Executive Committee member shall consider the comments made about the draft county physical development plan and may or may not incorporate comments of the public in the plan giving reasons for the same.

¹⁵**103. Objectives of county planning**

The objectives of county planning shall be to—

- (a) ensure harmony between national, county and sub-county spatial planning requirements;
- (b) facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county;
- (c) maintain a viable system of green and open spaces for a functioning eco-system;
- (d) harmonize the development of county communication system, infrastructure and related services;
- (e) develop urban and rural areas as integrated areas of economic and social activity;
- (f) provide the preconditions for integrating under-developed and marginalized areas to bring them to the level generally enjoyed by the rest of the county;
- (g) protect the historical and cultural heritage, artifacts and sites within the county;
- (h) make reservations for public security and other critical national infrastructure and other utilities and services;
- (i) work towards the achievement and maintenance of a tree cover of at least ten per cent of the land area of Kenya as provided in Article 69 of the Constitution; and
- (j) develop the human resource capacity of the county.

¹⁶ Nairobi City County Public Participation Act 2015

Clause 45 on the **Approval of Local Physical Development Plan** does not include the requirement for approval of the plan by the county assembly. County assembly members are representatives of the people who delegate their sovereign power to their democratically elected leaders to represent them in the county assembly (*Article 1 Constitution*).

Clause 47 (1) which provides for declaration of a special planning area states that a county government may be requested by the national government or the National Physical Planning Consultative Forum to declare an area as a special planning area. The role of the national government is restricted to formulate general principles of land planning and coordination of planning by county (*Constitution 2010, Fourth Schedule, Paragraph 21*)

PART IV: DEVELOPMENT CONTROL

Clause 49 on the **objects of development control** should include an additional object, that is, *to establish development control standards, processes and procedures that are efficient, transparent and accountable taking into account International Conventions and national policies relating to the sustainable use of land and the preservation of environmental values as recommended by National Land Policy.*

Clause 50 on **power to undertake development** should include the power to reclaim grabbed public land for the benefit of the public.

Clause 52 (1) on application for development permission does not provide for public participation in the approval process. A developer must notify the neighbouring community on proposed development, and the neighbouring community must be given an opportunity to present their objections.

Clause 61 on offences relating to development permission, the fine of Kshs. 500 000/- is too lenient for large-scale developers and punitive for small-scale developers.

Clause 62 on Access to Information is unconstitutional because it does not recognize the right of every citizen to access information held by the State, information held by another person and required for the exercise or protection of any right or fundamental freedom. The Constitution Article 35 requires State to publish and publicize any important information affecting the nation (Constitution Article 35). The Bill states that a planning authority may demand the production of, and make extracts from, all registers or other records or any deeds or instruments belonging to, or in the custody or possession of, any public officer or any person and in which are contained particulars of any land or property affected by the relevant physical development plan. The information obtained by a planning authority in accordance with subsection (1) shall be treated confidentially and shall not be disclosed to any other person except by an order of a court in connection with any legal proceedings. Any request for information shall protect the rights enshrined in Article 31¹⁷ of the Constitution.

PART VI: PHYSICAL PLANNING LIAISON COMMITTEES

¹⁷ Every person has a right to privacy which includes the right not to have their person, home or property searched, their possession seized, information relating to their private affairs unnecessarily required or revealed.

The composition of the Physical Liaison Committees, that is, the **National Physical Planning Liaison Committee and County Physical Liaison Committee** mostly comprises of State actors and only one non-State actor and there is no measure put in place to ensure gender balance. The committee should include provide representation from women, youth and resident association.

PART VII —MISCELLANEOUS PROVISIONS

Clause 87 (1) makes consequential amendments to the *County Government Act 2012* which are unlawful. The amendments remove the requirement that *each county spatial plan shall be developed by the county executive committee and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly, and that each county spatial plan shall be reviewed every five years and the revisions approved by the respective county assemblies.*

CONCLUSION

In as much as the *Physical Planning Bill 2017* is an improvement of the *Physical Planning Act 1996*, it falls short on the constitutional values and principles of transparency, accountability, public participation, self governance, subsidiarity, equity and inclusivity which are necessary for development. Further, it limits the right of citizens to access information as provide for under Article 35 of the Constitution, which is a necessity for effective public participation, enhance transparency and accountability on the part of State organs and State Officers.

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COUNCIL OF GOVERNORS

**MEMORANDUM TO THE NATIONAL ASSEMBLY ON PHYSICAL PLANNING BILL
2017**

FROM

THE COUNCIL OF GOVERNORS

4TH FEBRUARY 2018



Introduction

The Council of Governors is a non-partisan organization established under section 19 of the intergovernmental relations Act 2012. The Council of Governors comprises of the Governors of the forty seven counties.

The mandate of the Council includes: (a) consultation amongst county governments; (b) sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action; (c) considering matters of common interest to county governments; dispute resolution between counties within the framework provided under this Act; (e) facilitating capacity building for governors; (f) receiving reports and monitoring the implementation of inter-county agreements on inter-county projects; (g) consideration of matters referred to the Council by a member of the public; (h) consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and (i) performing any other function as may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate.

Considerations in reviewing the Physical Planning Bill 2017

The Council of Governors considered the following:

- Constitutional threshold
- Consistency with the existing legislation

Constitutional threshold

The proposed physical planning bill 2017 contravenes important provisions of the Constitution of Kenya 2010 including devolution as provided for in article 6 and 10.

The process of preparing the bill failed to meet the requirements of the constitution under article 232 (1) (d) (f) which requires state agencies to observe principles of Involvement of the people in the process of policy making and transparency and provision to the public of timely and accurate information.

The process of coming up with the bill did not specifically involve the County Governments and neither was information of the process of coming up with the bill made public for County Governments to access.

An attempt by the bill to Amend Section 110 (3) of the County Government Act 2012 undermines devolution and flouts Article 174 © and 185 (4) of the Constitution which gives powers to counties to approve plans and policies.

Consistency with the existing legislation

The bill conflicts with the County Governments Act 2012 and the Urban Areas and Cities Act 2011 (Amended in 2015) by introducing other plan typologies that add a lot of confusion to the county mandate to plan and approve the plans. An introduction of the County Physical Development Plan and the Local Physical Development plans only serves to create conflict and confusion with the County Spatial Plans and the Integrated development plans provided for in the County Governments Act 2012 and the Urban Areas and Cities Act 2011 (Amended in 2015) respectively.

COMMENTS PER SECTION OF THE BILL

Bill Clause	Provision in the Bill	COG's Proposal	Justification
Section 2 Interpretation	The bill does not define the "County Director of Physical Planning"	"County Director of Physical Planning" shall be the director for the time being in charge of all matters physical planning which shall be an office in the county public service	The phrase is used in the Bill but has not been defined.
	The bill does not define the "County Executive Committee Member"	"County Executive Committee Member" shall be the County Executive Committee Member in charge of Physical Planning	The phrase is used in the Bill but has not been defined.
	Definition of Development: Current Bill Definition: Means carrying out any works on land or making any material change in the use of any structures on the land;	Means carrying out any works on land or making any material change in the use or density of any structures on the land or subdivision of any land	This brings more clarity on the definition of the term to avoid abuse.
	Licensing Authority	The definition of the licensing authority to be provided	The phrase is used in the Bill but has not been defined.
	Local Physical Development plan definition	Delete the word urban council in the definition of the local physical development plan	Urban Councils no longer exist
	"Planning Authority"	Delete (a) and (b) and replace with National Government and County Governments.	Contradicts section 104 (1) and (3) of the County Government Act 2012. 104. Obligation to plan by the county

			<p>1) A county government shall plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly</p> <p>3) The County Government shall designate county departments, cities and urban areas, sub counties and wards as planning Authorities of the county.</p> <p>Page 835</p>
	"Public Purpose"	"Public Purpose"	<p>The inclusion of "settlement of squatters, the poor and landless, and the internally displaced persons" may be interpreted as allowing people to invade other people's land in the name of public purpose.</p>
Section 5	National Planning Institutions	<p>Amend 5 (2) © to read the chairman of the committee responsible for planning at the council of governors who shall be the vice chairperson</p> <p>Amend 5 (2) (e) to read The county executive committee member responsible for Physical Planning from each of the 47 County Governments.</p>	<p>This is in line with article 6 (2), and section 13 (2) of the intergovernmental relations act 2012 where a cabinet secretary can convene a consultative Sectoral forum on issues of common interest to both National and County Governments.</p>
Section 8	Functions of the National Land Commission	Align the functions of NLC to the provisions of article 62 (2) (h) of the constitution.	The proposed bill should observe fidelity to the constitution.
Section 9	Functions of the cabinet secretary	Amend 9 (a) to include in consultation with county governments.	Article 6 (2) requires the two levels to conduct their mutual relations on the basis of consultation and cooperation.

Section 10-12	National Director of Physical Planning- Establishment, Qualifications and Responsibilities	Amend section 9 (e) to read coordinating between the National and County Levels of Planning	
Section 13	Responsibilities of the county executive committee member in charge of physical planning	Delete sections 11 (d) to read has at least 15 years post qualification professional experience in physical planning Amend section 13 (b) to read implementing the county spatial plan	Approval of development plans is the function of the county assemblies under CGA 2012 Section 110 (3) <i>Each county spatial plan shall be developed by the county executive committee and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly.</i> It further contradicts Article 185 (3 and 4) of the constitution of Kenya 2010 <i>(3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.</i> <i>(4) A county assembly may receive and approve plans and policies for—</i> <i>a) the management and exploitation of the county's resources; and</i> <i>(b) The development and management of its infrastructure and institutions.</i>

<p>Section 17-46</p> <p>National Physical Development Plan</p>	<p>17 (1) The Cabinet Secretary shall initiate, and the National Director of Physical Planning shall finalize, the preparation of a National Physical Development Plan.</p>	<p>Amend any part that read Physical Development Plan to read Spatial Plan.</p> <p>Amend to read the Cabinet Secretary shall prepare in consultation with county governments a National Spatial Plan.</p> <p>Delete the word National director will finalize</p>	<p>Physical development plans are not different in terms of content with the spatial plans and therefore introducing new terminologies creates confusion on the already developed National Spatial Plan and County Spatial Plans.</p>
<p>Section 19</p>	<p>Procedure for the preparation of National Physical Development Plan</p>	<p>Amend to make the preparatory authority to be the cabinet secretary</p>	<p>The preparatory authority keeps on changing from the cabinet secretary to director creating confusion. For instance section 19 subsection 1 makes reference to the National Director while subsection 2 makes reference to the cabinet secretary.</p>
<p>Section 22 (3)</p>	<p>Approval of the national physical development plan by the cabinet</p>	<p>Approval should be done by parliament</p>	<p>This is not in line with the approvals of public policies.</p>
<p>Section 25 (3) and (5)</p>	<p>Establishment of regional joint physical planning committees</p>	<p>These plans should be called inter county spatial plans and thus the committee should be referred to as inter county joint spatial planning committees.</p> <p>The composition of the intercounty committee includes the County Executive Committee Members and</p>	<p>The section of the bill contradicts section 23 of the intergovernmental relations act 2012 and further undermines the spirit of devolution under article 189 (2)</p>

			therefore a director cannot chair but instead the cabinet secretary should chair.	
Section 29	Approval of Regional Physical Development Plans	Approval of the regional physical development plans should be made by the respective county assemblies of the participating counties	The section of the bill takes way the approval powers of county assemblies provided for under article 185 (3) and (4) of the constitution and CGA 2012 Section 110 (3).	
Section 49	Objectives of development control	Amend 49 (d) to read to protect and conserve the environment and enhance health and public safety.	Health and public safety are critical and need to be anchored in the law.	
Section 65 (5)	Enforcement	Amend the fine from Ksh. 100,000 to Ksh. 500,000	To ensure consistency in the bill	
Section 71	Composition of the County Physical Planning Liaison Committee	Amend section 71 (1) (c) (d) and (e) to read (c) a registered physical planners registration board from within the county and appointed by the county executive committee member (d) a registered architect nominated by the Board of Registration of Architects and Quantity Surveyors from within the county and appointed by the county executive committee member		

Section 87	(1) Section 110(3) of the County Governments Act, 2012, is amended by deleting the words "and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly".	<p>e) a registered surveyor nominated by the Land Surveyors Board from within the county and appointed by the county executive committee member</p> <p>Add (g) to read a registered engineer nominated by the Engineers Board of Kenya from within the county and appointed by the county executive committee member</p>	
		Delete the provision	The provision amends sec 110 (3) of the county government act 2012 taking away the approval powers of the county assemblies and therefore flouting article 174 ©,(1) and 185 (4) of the constitution