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Lands Committee)

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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE LAND (AMENDMENT) NATIONAL ASSEMBLY BILL NO.40 OF
2022

HON.SIMON KINGA'RA, MP

Published by:-

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

June, 2023

TABLE OF CONTENT

EXECUTIVE SUMMARY	3
PART I.....	4
1.0 PREFACE.....	4
1.1 Introduction.....	4
Legal Provision on Public Participation.....	4
a) Methodology used by the Committee in Public Participation	4
b) Mandate of the Committee	4
c. Membership of the Committee.....	5
Committee Secretariat	6
2.0 BRIEFING BY THE LEGAL COUNSEL ON THE LAND (AMENDMENT) BILL NATIONAL ASSEMBLY NO. 40 OF 2022 HON.SIMON KINGARA,MP	7
3.0 SUBMISSIONS BY HON.SIMON KINGARA,MP ON THE LAND AMENDMENT NATIONAL ASSEMBLY BILL NO.40 OF 2022.....	9
4.0 SUBMISSIONS BY THE STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING ON THE LAND AMENDMENT NATIONAL ASSEMBLY BILL NO.40 OF 2022 BY HON.SIMON KING'ARA,MP	12
6.0 COMMITTEE OBSERVATIONS.....	19
7.0 COMMITTEE RECOMMENDATIONS.....	20

EXECUTIVE SUMMARY

The Land (Amendment) National Assembly Bill No. 40 by Hon. Simon King'ara,MP is a Bill which seeks to provide that where public land has been allocated to a public body or public institution by the National Land Commission for a public purpose or where land set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be. As it is presently, public land and land set aside for a public purpose by land buying companies continue to be grabbed by private persons primarily because there exist no certificates of title issued in respect to such land.

The Bill therefore seeks to provide for registration of public land. Pursuant to Standing Order 127 of the National Assembly Standing Orders, the Committee received submissions from the Hon.Simon Kingara,MP, National Land Commission and the State Department for Lands and Physical Planning which are contained in this Report.

The Bill underwent first Reading on 16th February, 2023 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 23rd February,2023 inviting the public to submit memoranda on the Bill.

By close of business on 23rd February 2023, the Committee had received submissions from the Hon. Simon Kingara, MP, National Land Commission and the State Department for Lands and Physical Planning which are contained in this report. The Committee thereafter considered the report of the Bill and made various observations and recommendations as indicated in this Report.

The Committee appreciates the support accorded to it by the Offices of the Speaker and the Clerk of the National Assembly in the consideration of the Bill. I also extend my gratitude to the Committee Members for the input and commitment during Committee meetings. This report represents an analysis of the Bill pursuant to Standing Order 127.

Hon. Joash Nyamoko Nyamache,HSC, MP
Chairperson, Departmental Committee on Lands

PART I

1.0 PREFACE

1.1 Introduction

Legal Provision on Public Participation

1. Article 118 (1) (b) of the Constitution of Kenya provides as follows —
“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”
2. Standing Order 127(3) provides that —
“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—
 - (a) inviting submission of memoranda;
 - (b) holding public hearings;
 - (c) consulting relevant stakeholders in a sector; and
 - (d) Consulting experts on technical subjects.
5. Standing Order 127(3A) further provides that—
“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

a) Methodology used by the Committee in Public Participation

6. The Land (Amendment) National Assembly No.40 of 2022 was committed to the Departmental Committee on Lands for consideration having been read a First Time on Wednesday 16th February 2023.
7. Pursuant to the provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Tuesday, 23rd February, 2023 published an advertisement inviting the public to submit memoranda. Further, in a letter dated Thursday 3rd March, 2023, the Committee invited various stakeholders including to submit memorandum on the Bill.
8. The Report contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.

b) Mandate of the Committee

9. The Departmental Committee on Lands is one of the Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;

- iii. on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - iv. To study and review all legislation referred to it;
 - v. To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
 - viii. To examine treaties, agreements, and conventions.
 - ix. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
 - x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - xi. To examine any questions raised by Members on a matter within its mandate.
10. In executing its mandate, the Committee oversees the State Department for Lands and Physical Planning and the National Land Commission.
- b. Subjects under the Committee
- 11. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters in relation to the subject of lands and settlement.
 - 12. In executing its mandate, the Committee oversees the Ministry of Lands and the National Land Commission.

c. Membership of the Committee

13. The Departmental Committee on Lands comprises of the following Members-

Chairperson

Hon. Joash Nyamache Nyamoko, M.P
North Mugirango Constituency

UDA

Vice-Chairperson

Hon. Jayne Kihara, MP
Naivasha Constituency

UDA

Members

Hon. Dr. Rachael Kaki Nyamai, MP
Kitui South Constituency
Jubilee

Hon. Dr. Gideon Ochanda, MP
Bondo Constituency
ODM

Hon. Mathias Robi Nyambabe, MP
Kuria West Constituency
UDA

Hon. George Koimhuri, MP
Juja Constituency
UDA

Hon. Paul Katana, MP
Kaloleni Constituency
ODM

Hon. Josses Lelmengit, MP
Emgwen Constituency
UDA

Hon. Gachoki Gitari, MP
Kirinyaga Central Constituency
UDA

Hon. Joseph Hamisi Denar, MP
Nominated
ANC

Hon. Esther M. Passaris, MP
Women Representative
Nairobi County
ODM

Hon. Ali Wario Guyo, MP
Garsen Constituency
ODM

Hon. Omar Mwinyi, MP
Changamwe Constituency
ODM

Hon. Thaddeus Nzambia, M.P.
Kilome Constituency
WIPER

Hon. Anthony Kenga Mupe, MP
Rabai Constituency
PAA

Committee Secretariat

14. The Committee secretariat is composed of the following technical staff;

Ms. Angeline Naserian Lotuai
Clerk Assistant II

Mr. Binensa Mabungu
Clerk Assistant III

Mr. Sidney Lugaga
Senior Legal Counsel

Dr. Benjamin Ngimor
Senior Fiscal Analyst

Ms. Audrey Ogutu
Legal Counsel II

Mr. Collins Namulen
Fiscal Analyst III

Mr. Salat Abdi
Senior Serjeant-at-Arms

Ms. Noel Chelagat
Media Relations Officer II

Mr. Eugene Apaa
Research Officer II

Ms. Lydia Shalom
Research Officer III

Ms. Brenda Michira
Research Assistant III

Ms. Yasmin Hassan
Serjeant-at-Arms

PART II

2.0 BRIEFING BY THE LEGAL COUNSEL ON THE LAND (AMENDMENT) BILL NATIONAL ASSEMBLY NO. 40 OF 2022 HON.SIMON KINGARA,MP

17. The Committee was briefed by the Legal Counsel that the proposals include:

18. The Land (Amendment) Bill, 2022 is sponsored by Hon. Simon King'ara, Member of Parliament for Ruiru Constituency. The Bill was published on 21st October 2022. It seeks to amend the Land Act No. 6 of 2012 to provide for registration of public land and land set aside by persons or land buying companies for public purposes by the National Land Commission to prevent grabbing of public land.

19. The Bill is a bill published under article 114A(1)(c) and paragraph 6 of the Communication no. 002 of 2022 on *Re-introduction of Bills in the manner of initiating legislative proposals to amend the Constitution through parliamentary initiative* by Speaker of the National Assembly dated Tuesday, 4th October 2022. The Departmental Committee on Lands of the 12th Parliament considered the Bill and tabled a report on 11th March 2020. The Bill was passed on 13th May 2020 during the 12th Parliament and forwarded to the Senate for consideration on 15th May 2020.

20. Clause by Clause Analysis

21. The amendments proposed in the Land (Amendment) Bill are outlined below.

- (a) Clause 2 of the Bill proposes to amend section 2 of the Land Act by inserting a definition of a Registrar from the Land Registration Act, 2012. The Land Registration Act defines a "Registrar" to mean the Chief Land Registrar, the Deputy Land Registrar, County Land Registrars and Land Registrars.
- (b) Clause 3 of the Bill proposes to amend section 12 of the Land Act by inserting new the following provisions:
1. That a public body or institution to apply to the Registrar for registration of public land allocated to the National Land Commission. Page 9 of the *Report on consideration of the land (Amendment) Bill, 2019 (National Assembly Bill No.54) of the Departmental Committee on Lands of the 4th Session, 12th Parliament* provides that the justification for this proposal is that the onus of applying for registration of public land should be placed on a public body.
 2. That the Registrar to issue a certificate of registration in the name of an entity that is incorporated by law and in the name of the Cabinet Secretary to the National Treasury as a trustee in a case where the entity is not incorporated. Paragraph (c) of Page 9 of the *Report on consideration of the land (Amendment) Bill, 2019 (National Assembly Bill No.54) of the Departmental Committee on Lands of the 4th Session, 12th Parliament* provides that the justification for this proposal is to ensure that the proposal aligns with Article 62(2) of the Constitution and the Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101.
 - (a) Article 62(2) of the Constitution provides that public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under: (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date; land in respect of which no individual or community ownership can be established by any legal process; land in respect of which no heir can be identified by any legal process; or (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 other than land held, used land transferred to the State by way of sale, reversion or surrender or occupied by a national State organ.
 - (b) The Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101 is an Act of Parliament providing that the officer for the time being discharging the duties of Cabinet Secretary to the Treasury of Kenya, and his successors in

office, shall be a body corporate under the name of "Cabinet Secretary to the Treasury of Kenya".

3. That the Registrar to register land set aside by persons or a land buying company for a public purpose consequent upon a proposed development pursuant to section 58 and paragraph 7 of the third schedule to the Physical and Land Use Planning Act, 2019. Paragraph (b) of Page 9 of the *Report on consideration of the land (Amendment) Bill, 2019 (National Assembly Bill No.54) of the Departmental Committee on Lands of the 4th Session, 12th Parliament* provides that the justification for this proposal is to align the proposal with the Physical and Land use Planning Act, 2019. The Physical and Land use Planning Act, 2019 is an Act of Parliament to make provision for the planning, use, regulation and development of land.
22. Standing order 127(3) provides that a Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including: (a) inviting submission of memoranda; (b) holding public hearings; (c) consulting relevant stakeholders in a sector; and (d) consulting experts on technical subjects. The Committee may proceed to facilitate public participation in accordance with the requirements of standing order 127(3).

3.0 SUBMISSIONS BY HON.SIMON KING'ARA, MP ON THE LAND AMENDMENT NATIONAL ASSEMBLY BILL NO.40 OF 2022

23. The Honorable Member Simon King'ara ,MP appeared before the Committee Thursday 8th March,2023 and made the following submissions: That
24. The 2009 National Land Policy and the 2010 Constitution specify that land in Kenya be designated as public land, private land, and community land. It is such land that is proposed to be vested in the national government in trust for the people of Kenya and administered on their behalf by the NLC.
25. The principle behind public land is that it is held in trust for the people by the government. Public land is therefore, to be used for the benefit of the citizens of the country to serve the public interest.
26. For infrastructure investments such as roads, railways, schools, sewage, and water treatment plants and dams, serve a public purpose. There should be a ready supply of public land on which to construct these projects, particularly in urban areas where the need is greatest.

27. With a projected urbanization of 50% by 2030, Kenya's urban areas must provide key urban services and infrastructure all which require public land.
28. The bill seeks to ensure that all public land is established and titled accordingly. The principal objective of this Bill is to amend the Land Act No. 6 of 2012 in order to provide that where public land has been allocated to public body or public institution by the National Land Commission for public purpose or where land set aside by persons or land buying companies for public purpose, the registrar of lands under the land registration act 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be.
29. The Government should identify all public land and separate from private land and make it mandatory to issue titles first of the public land before any establishments are made.
30. Justification on registration of public land: Poor land management practices since independence, particularly in Kenya today, public land is not readily available, mainly due to Poor public land management practices since independence and lack of registration and clear database. Most of the public land has thus been lost to individuals. Historically, all land in Kenya used to be unregistered.
31. Increased population: With the increase in population, there is high demand of acquisition of land especially those close to cities. If these public lands are not registered, they are more likely to be grabbed or sold to innocent Kenyans by fraudsters.
32. Lack of a clear register: Lack of a clear register has acted as a loophole for land grabbers. Cases of land grabbing and faking of land registration documents has become very rampant in Kenya today. These fraudsters leave little or no land for public purposes and community development projects such as schools, hospitals, police stations, Huduma centers, ICT hubs, etc.
33. Examples of land grabbing cases in Ruiru: In Ruiru for example we have only two public schools that are titled one of which had 74 acres of land and has since been diminishing to now only 24 acres. So many cases of land grabbing have been reported, some that we have managed to recover, and others are in the processes. The Mwiki primary school land, which is the most populated primary school in Kenya, now with over 5,000 pupils, is an example of lands that have been grabbed. Others include *Kwihota primary*, *Githunguri primary/secondary*, *Ruiru Boys secondary school*.
- 35 Land grabbing has left Kenyans homeless and in great poverty: Land grabbing has also left millions of innocent Kenyans homeless and in great poverty during government attempts to recover grabbed lands. An example of the Ruai demolition that left 1,500 homeless and 5,000 residents in Kariobangi North estate who were also left homeless after the government

flattened the homes they lived in for 12 years to repose the grabbed Dandora Estate Waste Sewerage Plant land.

- 36 At least 20,000 families in Nairobi's Langata area risk losing their homes. The property owners say they did due diligence and are there legally after the state announced plans to seize land it says was grabbed from Ngong forest. The Nakumatt Ukay supermarket that saw the loss of 125M, if the public land is registered, all these can be avoided.
- 37 Delay in setting up public institutions: Failure of registration of public land has also led to delay in setting up public institutions while trying to solve land ownership disputes which sometimes take so long in the land courts before settlement. In such cases the public is more likely to lose especially when the cases involve prominent people or individuals who have genuine title deeds but fraudulently obtained due to their influence.
- 38 Land grabbing cripples the development of a place: Grabbing of public land cripples, the development of a place, since with the high population, there is need for more public projects/institutions, factories to create employment, schools etc. Registering of public land will go a long way to help the national and county governments set up priority projects.
- 39 Countries like Malawi, Cambodia, Swaziland and Namibia the Ministry of lands are the ones responsible in registration of title deed for public land and private state land, while in countries like Kenya, Tanzania, Uganda, Rwanda have a land commission that are responsible for the management of public and private land on behalf of the government and the nation at large.
- 40 Importance of public title deed and other property ownership documents. Title deed is the most sought-after property document as it informs the whole world about the ownership of the land.
- 41 Protects the government against other claimants. Holding a clear title to the property will protect the government against other claimants. It is proof of ownership and helps the owner assert and exercise his property rights.
- 42 The benefits of registration include: Security – unregistered land is at a higher risk of fraud. Fraudsters can assume your identity and attempt to sell or mortgage your property without your knowledge. Registration helps you to protect your property from fraud and resist any third-party applications for adverse possession, commonly referred to as “squatter's rights”.
- 43 Evidence of ownership – registration makes it easier to buy and sell property as all the title information necessary for conveyancing will be in the Land Register, which is available online for everyone to see. The Land Registry will collect all the relevant information that they need

from the historic deeds and will then recite only the relevant information within the registers which form part of the registered title.

- 44 Clarity – Registration makes it easier for conveyancers to ascertain who owns the property and what benefits and burdens are attached to the land. If land is unregistered, the conveyancer must review the original deeds. Deeds can be lengthy handwritten documents, which can be difficult to read and interpret. Reviewing the deeds can increase the time the transaction takes to complete because the conveyancer will need to wait for the deeds, check the chain of ownership is correct and then draft the contract.
- 45 Certainty – In addition to the registered title to the property, the Land Registry will also provide a title plan which provides evidence of the extent of the property. This makes it easier for a buyer to identify the boundaries of their property and check that their understanding of the extent of the property is the same as shown on the title plan. Registration also provides a state-backed guarantee securing the title to the property, meaning that the state guarantees that the legal estate is vested in the registered owner. The bill seeks to amend the land act so as to provide for the registration of public land and set aside for a public purpose.

4.0 SUBMISSIONS BY THE STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING ON THE LAND AMENDMENT NATIONAL ASSEMBLY BILL NO.40 OF 2022 BY HON.SIMON KING'ARA, MP

46. Having appeared before the Committee on Saturday 11th March, 2023 the Principal Secretary State Department for Lands and Physical Planning made the following presentations:

Clause 2 *insertion of a new definition*

47. That the Land Act, 2012 hereinafter referred to as the 'Principal Act' is amended in section 2 by inserting the following new definition in proper alphabetical sequence 'Registrar' has the meaning assigned to it under section 2 of the Land Registration Act.

Committee's observation

47. There is no harm to have the term 'registrar' defined under the Land Act.

Insertion of new 13

48. That the process of allocation of public land and eventual registration of the same is provided under the Land (Allocation of public land) Regulations) 2017 whereby a mechanism is provided right from allocation to surveying of the land and eventual handing over of all the documentation needed to the Chief land Registrar for registration.

Regulation 36 of the Land (Allocation of Public Land) Regulations) 2017 provides-

Clause 36. (1)

The Commission shall prepare and execute leases emanating from allocation of public land”.

Clause 36 (2)

To facilitate preparation of leases the Commission shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the Schedule from the office or authority responsible for surveys.

Clause 36 (3)

Upon receipt of the sealed cadastral plan and cadastral map, a lease document in Form LA 13 set out in the Schedule shall be executed by designated officers of the Commission duly designated by notice in the Gazette, on behalf of the national government or county government.

Clause 36 (4)

The executed Lease document and the cadastral map and plan shall be forwarded to the Chief Land Registrar for registration and issuance of Certificate of Lease to the proprietor.

Clause 36 (5)

The Commission shall forward the documents in paragraph (4) to the Chief Land Registrar in Form LA 14 set out in the Schedule”.

Note: There is an amendment of Section 23 of the Land Act by the Statute Law (Miscellaneous Amendments) Act, 2019 vested the mandate of preparing and issuing leases on the Cabinet Secretary. This amendment will necessitate amendment to the Regulation 36 to align with Section 23 of the Land Act.

49. For a minor modification that is required to be made on the said Regulations so as to capture the above amendment of section 23 of the Land Registration Act which now solely vest the issuance of leases on the Cabinet Secretary as opposed to the National Land Commission, this process sits well in the Regulations than it is in the Land Act.

Committee’s observation

50 .From the foregoing, the proposal for amendment to the Land Act is not necessary.

Clause 15

51. Pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon a proposed development.

- a) All parcels that are a resultant of sub-division including public utility parcels of land are supposed to be registered by the registrar if and only when the requisite documents (cadastral map and plan, transfer, surrender are presented to the registrar.
- b) This proposed amendment as it is does not appreciate the fact that the development control is a process having many players where the registrar is not one of them and to require him to register without exactly mentioning when he first encounters with this process will not serve the purpose of the amendment.
- c) For purpose of emphasis and protection to the public utility parcels of land, we are of the view that the proposal for amendment can be included as an additional clause to both Regulations 16 and 17 of the Land Regulations, 2017. We propose that the additional clause after clause (5) of regulation 16 can read as follows-
- d) The Chief Land Registrar shall, upon receipt of a cadastral map and plan containing parcels of land set aside or surrendered to government for public purpose, ensure that such parcels of land are registered, and certificates of title or certificates of leases are issued in –
 - i. the name of the public entity if the public entity is incorporated.
 - ii. the name of the cabinet Secretary to the National Treasury as trustee in case of an unincorporated public entity; and
 - iii. the name of the county government if it is a county government.

52. In the alternative, we propose that the amendment be anchored in the Land Registration Act to capture both the aspects of land allocated to public entities and land set aside or surrendered to government during development control process such as sub-division. A proposed a new section to be inserted between section 30 and 31 of the Land Registration Act to appear as follows-

Section 30(A) Provides Registration of public utility land/public land

- (1) The Chief Land Registrar shall, upon receipt of a cadastral map and plan from the authority responsible for survey, containing parcels of land set aside or surrendered to government for public purpose, ensure that priority in registration of such parcels of land is given and certificates of title or certificates of leases are issued in –
 - a) the name of the public entity if the public entity is incorporated;
 - b) the name of the cabinet Secretary to the National Treasury as trustee in case of an unincorporated public entity; and
 - c) the name of the county government if it is a County Government.”

- (2) the Chief Land Registrar shall require any person carrying out sub-division or any development on land resulting to surrender or setting aside of land for public purpose to provide a transfer or surrender in respect of public purpose parcels of land as apparent on the cadastral map and plan to enable registration and issuing of certificates of title or certificates of leases under subsection (1) above.
- (3) The Chief Land Registrar shall decline to register any parcel of land contained in the cadastral map and plan where the person carrying out sub-division or any development has failed or refused to provide the transfer or surrender in respect of public purpose parcels of land.
- (4) The Chief Land Registrar shall upon receipt of a lease from the Cabinet Secretary, together with the cadastral map and plan in respect of a parcel of land allocated to a public entity, register, and issue a certificate of lease in-
 - a) the name of the public entity if the public entity is incorporated;
 - b) the name of the cabinet Secretary to the National Treasury as trustee in case of an unincorporated public entity; and
 - c) the name of the county government if it is a county government”
- (5) the Chief Land Registrar shall require the public entity in respect of which a lease has issued to produce any documents that may be required to complete registration and issuance of a certificate of lease under sub-section (4) above.

Committee’s observation

53. The development control process of sub-division of land is provided for in the Physical and Land Use Planning Act and Land Act. The Land Regulations, 2017 has provided in detail the process of sub-division as is provided under Regulations 16 and 17 for freehold and leasehold land respectively.

54. He informed that the meeting that Regulation 36 of the Land (Allocation of Public Land) Regulations) 2017 provides for function of the Commission shall prepare and execute leases emanating from allocation of public land. And to facilitate preparation of leases the Commission shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the Schedule from the office or authority responsible for surveys. Upon receipt of the sealed cadastral plan and cadastral map, a lease document in Form LA 13 set out in the Schedule shall be executed by designated officers of the Commission duly designated by notice in the Gazette, on behalf of the national government or county government.

55. He further informed the meeting that the executed Lease document and the cadastral map and plan are forwarded to the Chief Land Registrar for registration and issuance of Certificate of Lease to the proprietor. The Commission should forward the documents in paragraph (4) to the Chief Land Registrar in Form LA 14 set out in the Schedule.

56. The meeting was also informed that the Amendment of Section 23 of the Land Act by the Statute Law (Miscellaneous Amendments) Act, 2019 vested the mandate of preparing and issuing leases on the Cabinet Secretary. This amendment will necessitate amendment to the Regulation 36 to align with Section 23 of the Land Act.

57. He added that for a minor modification that is required to be made on the said Regulations to capture the amendment of section 23 of the Land Registration Act, which now solely vest the issuance of leases on the Cabinet Secretary as opposed to the National Land Commission, this process sits well in the Regulations than it is in the Land Act.

58. He stated that in conclusion, the proposal for amendment to the Land Act is not necessary.

5.0 SUBMISSIONS BY THE NATIONAL LAND COMMISSION ON THE LAND AMENDMENT NATIONAL ASSEMBLY BILL NO.40 OF 2022 BY HON.SIMON KING'ARA, MP

60. The Chairperson of the National Land Commission appeared before the Committee on Saturday 11th March, 2023 and made the following presentations:

61. He stated that the Commission supports the object and reasons of the Bill of protecting public land where such land has been allocated to a public body or public institution for a public purpose or where land is set aside by persons or land buying companies for a public purpose. Indeed, there is need to protect public land and land set aside for a public purpose by land buying companies because there has been continued grabbing and encroachment of such land by private persons.

Clause 12

62. The principal Act is amended by inserting the following new sub-sections immediately after sub-section (12) -(13) A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission in a prescribed form.

Committee's observation

63. Registrar only registers certificates of leases as title documents for allocation of public land and does not approve sub-divisions of land.

Insertion of a new clause 13(A)

64. That a public body or institution shall apply to the Commission for consent to subdivide land. Justification is that the requirement for consent for subdivision will result in surrender of public parcels at the point of approval of subdivision by the Commission.

Committees' Observation

65. The clause is in order as it is a requirement to ensure of land at the approval of subdivision.

Insertion of a new clause 13(B)

Committees' Observation

65. The clause is in order as it is a requirement to ensure of land at the approval of subdivision.

Insertion of a new clause 13(B)

66. To read upon conclusion and authentication of surveys. Where Public parcels have been created the authority responsible for survey shall submit deed plans/RMS of all parcels marked as public utilities for public purpose to the Commission for vesting to the relevant public bodies. Justification for this insertion is the Commission will require to be informed at the commencement of planning for subdivisions the portions set aside for public utility for vesting. And in accordance with this proposal, the director of surveys should be required to submit to the Commission all deed plans and RIMs for the resultant land for public purpose for vesting.

Committee's Observation

67. The clause is in order as it is a matter of procedure on vesting of public land for public use.

68. Pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act (PLUPA). 2019, the Registrar shall register land set aside by Persons or a land buying company for a public purpose consequent upon a proposed development. He stated that there is need to clarify the cross-referenced section because Section 58 of PLUPA does not address what is indicated in the proposed amendment. Also, in terms of sequence, planning that comes before registration not after. The referred section of PLUPA deals with considerations regarding subdivision of private land including surrender of land for public purposes.

Insertion of a new clause 15(A)

69. To include registration of public land set aside from public purpose arising out of Section 26 of the Community Land Act. The Commission is required to issue consent for any sub-division of Community land to protect land set aside for public purpose. This will also enhance protection of public purpose land arising from subdivision of Community Land.

Committee's observation

70. The clause is in order since section 26 of the Community Land Act provides for that function of the Commission.

Clause 16

71. states that the Registrar shall issue a certificate of title:- in the case of an incorporated public entity, the Certificate of title shall be issued in the name of the entity; in the case of unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee; and in the case of a County Government, in the name of the County Government.

That the provisions are superfluous, and it is not necessary to repeat the functions which are spelt out in the Constitution. Since the Land Act provides for a clear allocation process and the Fourth schedule to the Constitution clarifies the roles of the National and County Governments.

Committee's observation

72. A Registrar is limited to registration of title documents and does not prepare certificates of leases emanating from allocation of public land.

Other proposals of the Commission

73. Whether the Bill concerns County Government, the Bill seeks to amend the Land Act to provide for registration of public land, set aside for a public purpose. In view of this, the Bill does not concern County Governments in terms of Article (110(1) (a) of the Constitution as it does not affect the powers of the County Governments recognized in the Fourth Schedule of the Constitution. Therefore, the Bill concerns County Governments because Planning is a mandate of the Counties under the Fourth Schedule to the Constitution. Also, public utility lands are also ordinarily vested in the Counties therefore Counties would be affected. There is need to comply with Article 10 of the Constitution on enhancing accountability.

74. The Commission proposes that, in addition to gazettelement, a reservation of land for public purpose should be followed with issuance of a Certificate of Reservation. This will enhance protection of the public land from encroachment.

75. The Commission proposes that an amendment be done to the effect that where land is subdivided the mother title should not be surrendered. This is because surrender effectively extinguishes the rights of the owner of the land.

76. The Commission proposes that the alternative is to issue new allocations for the subdivided portions and entries are made on the mother title. However, a Certificate of Lease and/or Certificate of Title should only be issued where there is a long-term lease of more than 21 years. This will help to protect public purpose land. This will also enable the Government to collect more revenue arising from payments of stand premium for allocations.

77. The Commission also advises that since the Land Act provides for a clear allocation process, an emphasis should be to ensure full implementation of the existing Land Laws as they provide far reaching protection to public purpose land.

78. The Commission also recommends that professional bodies in the land sector (e.g. ISK, KIP, LSK, among others) should issue practice notes for practitioners to provide guidance and clarity for various land processes similar to practice directions issued by Courts.

PART III**6.0 COMMITTEE OBSERVATIONS**

79. The Committee made the following observations:

80. Clause 2 of the Bill proposes to amend section 2 of the Land Act by inserting a definition of a Registrar from the Land Registration Act, 2012. The Land Registration Act defines a "Registrar" to mean the Chief Land Registrar, the Deputy Land Registrar, County Land Registrars and Land Registrars.

81. Clause 3 of the Bill proposes to amend section 12 of the Land Act by inserting new subsections with the following provisions—

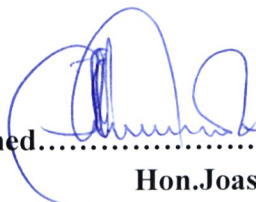
- a. Clause 3 of the Bill proposes that a public body or institution apply to the Registrar for registration of public land allocated to the National Land Commission. The justification for this proposal is that the onus of applying for registration of public land should be placed on a public body.
- b. Clause 3 of the Bill proposes that the Registrar to issue a certificate of registration in the name of an entity that is incorporated by law and in the name of the Cabinet Secretary to the National Treasury as a trustee in a case where the entity is not incorporated. The justification for this proposal is to ensure that the proposal aligns with Article 62(2) of the Constitution and the Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101.
- c. Article 62(2) of the Constitution provides that public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under: (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date; land in respect of which no individual or community ownership can be established by any legal process; land in respect of which no heir can be identified by any legal process; or (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 other than land held, used land transferred to the State by way of sale, reversion or surrender or occupied by a national State organ.
- d. The Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101 is an Act of Parliament providing that the officer for the time being discharging the duties of Cabinet Secretary to the Treasury of Kenya, and his successors in office, shall be a body corporate under the name of "Cabinet Secretary to the Treasury of Kenya".
- e. Clause 3 of the Bill proposes that the Registrar to register land set aside by persons or a land buying company for a public purpose consequent upon a proposed

development pursuant to section 58 and paragraph 7 of the third schedule to the Physical and Land Use Planning Act, 2019. The justification for this proposal is to align the proposal with the Physical and Land use Planning Act, 2019. The Physical and Land use Planning Act, 2019 is an Act of Parliament to make provision for the planning, use, regulation and development of land.

82. The Committee observed that the State Department of Lands and Physical Planning tabled submissions to the extent that it did not support the enactment of the Bill on the grounds that the Land (Allocation of Public Land) Regulations 2017, were not sufficient and acceptable as there was no statement demonstrating the Registrar may issue a certificate of registration in the name of an entity that is incorporated by law and in the name of the Cabinet Secretary to the National Treasury as a trustee in a case where the entity is not incorporated.
83. The Committee observed that the National Land Commission supported the enactment of the Bill.
84. The Committee noted that there are two public schools that are titled in Ruiru, one of which had 74 acres of property and whose size has been decreased by 24 acres, according to comments made by the bill's sponsor. The Committee was also informed that Mwiki Primary School, Kwihota Primary, Githunguri Primary/Secondary, and Ruiru Boys Secondary School are among the schools that have lost land as a result of land grabbing.

7.0 COMMITTEE RECOMMENDATIONS

85. The Committee having considered and taken into account the views and recommendations of the public including facilitating public participation by inviting submission of memoranda and consulting relevant stakeholders in the sector, recommends; Enactment of the Land (Amendment) Bill, National Assembly Bill No. 40 of 2022 by Hon. Simon King'ara, MP without amendments and that the Bill should proceed to be tabled in the House for second reading in accordance with standing order 127(4) of the National Assembly Standing Orders.

Signed.......... Date: 02/05/2023.....
Hon. Joash Nyamoko Nyamache, HSC, M.P
(CHAIRPERSON)



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Lands, have pursuant to Standing Orders 114, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date: 02/05/2023

No.	MEMBER	SIGNATURE
1.	Hon. Nyamoko Joash Nyamache, HSC, MP	
2.	Hon. Kihara Jayne Wanjiru Njeri, MP	
3.	Hon. Rachael Kaki Nyamai, CBS, MP	
4.	Hon. Ogolla Gideon Ochanda, MP	
5.	Hon. Shimbwa Omar Mwinyi, MP	
6.	Hon. Robi Mathias Nyamabe, MP	
7.	Hon. Passaris Esther Muthoni, MP	
8.	Hon. Gitari Joseph Gachoki, MP	
9.	Hon. Guyo Ali Wario, MP	
10.	Hon. Nzambia Thuddeus Kithua, MP	
11.	Hon. Ndung'u George Koimburi, MP	
12.	Hon. Mupe Anthony Kenga, MP	
13.	Hon. Katana Paul Kahindi, MP	
14.	Hon. Joseph Hamisi Dena, MP	
15.	Hon. Lelmengit Josses Kiptoo Kosgey, MP	

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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION, 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD AT THE COMMITTEE ON 2ND FLOOR, CONTINENTAL HOUSE ON 2ND
MAY 2023 AT 12:00 PM**

MEMBERS PRESENT

1. Hon. Nyamoko Joash Nyamache, M.P.-Chairperson
2. Hon. Kihara Jayne Wanjiru Njeri, M.P.- Vice Chairperson
3. Hon. Rachel Kaki Nyamai, CBS, M.P
4. Hon. Ogolla Gideon Ochanda, M.P.
5. Hon. Shimbwa Omar Mwinyi, M.P.
6. Hon. Gitari Joseph Gachoki, M.P.
7. Hon. Guyo Ali Wario, M.P.
8. Hon. Nzambia Thuddeus Kithua, M.P.
9. Hon. Katana Paul Kahindi, M.P.

APOLOGIES

1. Hon. Passaris Esther Muthoni, M.P.
2. Hon. Robi Mathias Nyamabe, M.P.
3. Hon. Ndung'u George Koimhuri, M.P.
4. Hon. Mupe Anthony Kenga, M.P.
5. Hon. Joseph Hamisi Dena, M.P.
6. Hon. Lelmengit Josses Kiptoo Kosgey, M.P.

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|------------------------|
| 1. Ms. Naserian Lotuai | - | Second Clerk assistant |
| 2. Mr. Binensa Mabungu | - | Clerk Assistant III |
| 3. Mr. Sidney Lugaga | - | Senior Legal Counsel |
| 4. Ms. Audrey Ogutu | - | Legal Counsel II |
| 5. Ms. Lydia Shalom | - | Research Officer III |
| 6. Mr. Danton Kimutai | - | Audio Officer III |
| 7. Ms. Yasmin Hassan | - | Serjeant-at-arms |

AGENDA

1. Prayers
2. Preliminaries;
3. Confirmation of Minutes.
4. Matters Arising;
5. **Meeting:**
 - i. **Adoption of the Report on the Land (Amendment) Bill (National Assembly Bill No. 40 of 2022)**
 - ii. **Consideration of the Concept Paper on Compulsory Acquisition of Land**
6. Any Other Business
7. Adjournment

MIN/NO./NA/DC-LANDS/2022/103: PRELIMINARIES

The meeting was called to order at thirty minutes past twelve o'clock and prayers said by Hon. Kihara Jayne Wanjiru Njeri, M.P. The Agenda of the meeting was adopted after it was proposed by Hon. Katana Paul Kahindi, M.P. and seconded by Hon. Gitari Joseph Gachoki, M.P.

MIN/NO./NA/DC-LANDS/2022/104: CONFIRMATION OF MINUTES

The Minutes of the 21st Sitting were confirmed to be a true record of the proceedings having been proposed by Hon. Katana Paul Kahindi M.P. and seconded by Hon. Nzambia Thuddeus Kithua, M.P.

The Minutes of the 20th Sitting were confirmed to be a true record of the proceedings having been proposed by Hon. Gitari Joseph Gachoki M.P. and seconded by Hon. Nzambia Thuddeus Kithua, M.P.

The Minutes of the 19th Sitting were confirmed to be a true record of the proceedings having been proposed by Hon. Katana Paul Kahindi M.P. and seconded by Hon. Kihara Jayne Wanjiru Njeri, M.P.

MIN/NO./NA/DC-LANDS/2022/105: MATTERS ARISING

Due to concerns about security expressed by several members, the Committee decided against visiting the Kibiku land. Due to the security situation, the site visit was postponed.

MIN/NO./NA/DC-LANDS/2022/106: ADOPTION OF THE REPORT ON THE LAND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2022)

The Committee was guided through the report by the Legal Counsel attached to the Committee. The Land (Amendment) National Assembly Bill No. 40 by Hon. Nixon King'ara, MP is a Bill that sought to provide that where public land had been allocated to a public body or public institution by the National Land Commission for a public purpose, or where land set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be. Public land and land set aside for a public purpose by land-buying companies continued to be grabbed by private persons primarily because there existed no certificates of title issued in respect to such land.

Committee observations

The Committee made the following observations:

Clause 2 of the Bill proposes to amend section 2 of the Land Act by inserting a definition of a Registrar from the Land Registration Act, 2012. The Land Registration Act defines a "Registrar" to mean the Chief Land Registrar, the Deputy Land Registrar, County Land Registrars and Land Registrars.

Clause 3 of the Bill proposes to amend section 12 of the Land Act by inserting new subsections with the following provisions—

- Clause 3 of the Bill proposes that a public body or institution apply to the Registrar for registration of public land allocated to the National Land Commission. The justification for this proposal is that the onus of applying for registration of public land should be placed on a public body.
- Clause 3 of the Bill proposes that the Registrar to issue a certificate of registration in the name of an entity that is incorporated by law and in the name of the Cabinet Secretary to the National Treasury as a trustee in a case where the entity is not incorporated. The justification for this proposal is to ensure that the proposal aligns with Article 62(2) of the Constitution and the Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101.
- Article 62(2) of the Constitution provides that public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under: (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date; land in respect of which no individual or community ownership can be established by any legal process; land in respect of which no heir can be identified by any legal process; or (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 other than land held, used land transferred to the State by way of sale, reversion or surrender or occupied by a national State organ.
- The Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101 is an Act of Parliament providing that the officer for the time being discharging the duties of Cabinet

Secretary to the Treasury of Kenya, and his successors in office, shall be a body corporate under the name of "Cabinet Secretary to the Treasury of Kenya".

- Clause 3 of the Bill proposes that the Registrar to register land set aside by persons or a land buying company for a public purpose consequent upon a proposed development pursuant to section 58 and paragraph 7 of the third schedule to the Physical and Land Use Planning Act, 2019. The justification for this proposal is to align the proposal with the Physical and Land use Planning Act, 2019. The Physical and Land use Planning Act, 2019 is an Act of Parliament to make provision for the planning, use, regulation and development of land.

The Committee observed that the State Department of Lands and Physical Planning tabled submissions stating that it did not support the enactment of the Bill on the grounds that the Land (Allocation of Public Land) Regulations 2017, were not sufficient as there was no statement demonstrating the Registrar may issue a certificate of registration in the name of an entity that is incorporated by law and in the name of the Cabinet Secretary to the National Treasury as a trustee in a case where the entity is not incorporated.

Furthermore, the Committee observed that the National Land Commission supported the enactment of the Bill.

The Committee observed from submissions tabled by the sponsor of the Bill, that, in Ruiru, there are two public schools that are titled one of which had 74 acres of land and whose acreage has been reduced by 24 acres. The Committee was also informed that the schools that experienced loss of land due to land grabbing include: Mwiki Primary School, Kwihota Primary, Githunguri Primary/Secondary and Ruiru Boys Secondary School.

Committee recommendations

The Committee having considered and taken into account the views and recommendations of the public including facilitating public participation by inviting submission of memoranda and consulting relevant stakeholders in the sector, recommended;

- i) Enactment of the Land (Amendment) Bill, National Assembly Bill No. 40 of 2022 by Hon. Simon King'ara, MP without amendments and that the Bill should proceed to be tabled in the House for second reading in accordance with standing order 127(4) of the National Assembly standing orders.
- ii) Undertaking an inquiry to establish the status of allocation of titles to land occupied by primary schools and secondary schools by the Ministry of Lands and Physical Planning.

The report was adopted after it was proposed by Hon. Katana Paul, MP and seconded by Hon. Thuddeus Nzambia, MP.

MIN/NO./NA/DC-LANDS/2022/107: CONSIDERATION OF THE CONCEPT PAPER ON COMPULSORY ACQUISITION OF LAND

The Committee was guided through the concept paper by the Research officer attached to the Committee. Section 2 of the Land Act defines compulsory acquisition as the power of the state to acquire title to any other interest in land for a public purpose. It further describes public purpose to entail purposes such as:

- a) transportation including roads, canals, highways, railways, bridges, airports and wharves;
- b) Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- c) Public entities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- d) public parks, playgrounds, gardens, sports facilities and cemeteries;
- e) security and defense installations;
- f) settlement of squatters, the poor and landless, and the internally displaced persons; and any other analogous public purpose.

The Committee was further briefed that the National Land Commission has an express and constitutional mandate to undertake compulsory acquisition. Section 107-133 of the Land Act, 2012 as read together with Part V of the Land Regulations, 2017 points out the process of compulsory acquisition as follows:

1. *Application for Compulsory Acquisition*

An acquiring entity lodges a formal request to the Commission indicating the purpose for which land is to be acquired which should prove that the land is needed for public purposes. The acquiring entity should confirm in writing that it has sufficient funds for the intended purpose.

The acquiring bodies that engage in the acquisition of land in Kenya to undertake investment projects include inter alia; the Kenya Urban Roads Authority (KURA), the Kenya Rural Roads Authority (KERRA), the Kenya Railways Authority, Kenya National Highways Authority (KENHA) and Water Services Regulatory Board (WASREB)

2. *Notification of the Proposed Acquisition*

On receipt of application the NLC is required to publish at least a 30-day *notice of intention* to acquire land in the Kenya Gazette, at least two daily newspapers of national circulation and one local newspaper. The Commission will consequently undertake public sensitization and participation to inform the public about the proposed project and matters pertaining to the procedure, expectations and responsibilities of stakeholders in the land acquisition process.

In accordance with section 131, the notice shall be served to the affected persons and the Registrar. Further, in consultation with the affected persons, the Commission will physically visit and conduct a valuation to record any improvements affected by the proposed projects.

3. ***Entry of the Proposed Acquisition in the Register***

Upon receipt of notice of intention under **regulation 23(1)** of the Land Regulations, 2017, the Registrar shall make entry of the intended acquisition in the register.

4. ***Notice of Inquiry***

The Commission shall issue a notice of inquiry to everyone whose interest appears in the register and claims to be interested in the land. Thereafter, the notice of inquiry is published and at the expiry of 15 days, the Commission conducts an inquiry to hear and determine any claims for compensation by interested parties as laid out in **section 112** of the Land Act.

5. ***Valuation of Claims and Interest***

The Commission conducts the valuation of interests or claims for the purposes of full and just compensation as well as informing the acquiring entities of the cost. In case a party is dissatisfied with the decision of the Commission, they can seek redress from the High Court.

6. ***Preparation and Service of Award***

An award is prepared by the Commission highlighting the size and value of the land and the amount of compensation payable. The bonafide person will then be required to accept or reject the award.

7. ***Acquisition of Part of the Land and Survey***

In case only a part of the land has been acquired, the Commission shall conduct a final survey and prepare a cadastral map and plan within 6 months before payment of compensation.

8. ***Payment of Compensation***

The acquiring entity deposits the compensation funds with the Commission which pays the award to the entitled persons within 90 days from the date of receipt of the funds. The landowner is then required to surrender the original title to the Commission if the acquisition was for the whole parcel. If the acquisition is for part of the parcel, the title is delivered to the Commission to prepare surrender documents for part of the parcel.

Further, the Land compensation for compulsory acquisition in Kenya is required to be commensurate with the standard of compensation. Compensation may take different forms such as; whether to compensate land for land, land for cash or partly land and partly cash. Perception and expectations from communities or individuals to be compensated play a crucial part in determining the criteria for the valuation of the land in question.

The Land (Assessment of Just Compensation) Rules of 2017 in section 3 and section 7 of the Land Value (Amendment) Act 2019 spotlights the factors to be considered in the assessment of compensation including the following:

- a) the market value of the land;
- b) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from his or her other land;
- c) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of the acquisition injuriously affecting his or her other hand property, whether moveable or immovable, in any other manner or his or her actual earnings;
- d) reasonable expenses incidental to the relocation any of the persons interested or who will be compelled to change residence or place of business as a consequence of the acquisition; and
- e) Damage genuinely resulting from the diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commission takes possession of the land.

Comparative Analysis

❖ Ghana

The Constitution of Ghana guarantees private ownership of property or in association with others under *Article 18(1)*. On the other hand, *Article 20(1)* stipulates that no property, interest or right over any property shall be acquired by the state unless the acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or any other manner that promotes public benefit.

In addition, *Article 20(2)* highlights that where a compulsory acquisition involves displacement of inhabitants, the State in Ghana is required to resettle the displaced individuals on suitable alternative land putting into consideration their economic well-being and social and cultural values.

Analogous to Kenya, the Constitution of Ghana outlines that any property compulsorily acquired in the interest of the public shall only be used for the intended public purpose. In

case the said acquisition fails, the initial owner is given first priority to re-possess the land and consequently refund the whole or part of the compensation paid.

Moreover, *Article 20(2)* of the Constitution of Ghana, in regard to compensation, prescribes that upon compulsory acquisition, there should be payment of prompt, fair and adequate compensation. However, any party who has an interest in the land and feels aggrieved may make an application to the High Court to determine their interest or right and the amount of compensation entitled to them.

Further, *Section 4* of the State Lands Act, 1962 provides that compensation to an expropriated owner may be assessed by alternative forms including the market value of the land acquired; replacement value of the land acquired; cost of disturbance; damages such as severance and injurious affection or grand land of equivalent value.

In Ghana, compensation is largely paid in monetary form similar to Kenya. In limited situations, land of equivalent value may also be allocated to the expropriated owner, although this is less preferred as the processes and procedures are long and tedious.

❖ France

Similar to Kenya, the right to compulsory acquire land in France, either at the national or local level, belongs to the State through its representatives. However, other authorities called “**expropriators**” can also initiate a procedure of compulsory purchase.¹

The authorities conduct transactions in relation to land and transmit it to third parties hence may not be the ultimate owners of the land. This occurs in cases whereby, for instance, it pertains to uncultivated parcels of land. Expropriators can be local authorities, public institutions or private or joint public/private companies exercising activities of general interest or overseeing activities of public service.

The French Expropriation Code defines **expropriation** as expropriation that may be imposed in part or whole over immovables or real rights in immovable property on the condition that it befits the threshold for public purpose. This is ascertained by conducting an investigation to determine the parcels to be expropriated, the parcel owners, persons

holding rights to the land and the interested parties in order to give rise to a **just and prior indemnity**.

As is the case in Kenya, land in France can be expropriated only for reasons of **public interest** which comprises traditional subjects such as public transportation, military activity and public defence, social and sanitary projects, education and culture and energy-related construction or equipment.

Moreover, similar to Kenya, on matters concerning compensation, *Article 545* of the Civil Code prescribes that one may not be compelled to yield their ownership to land unless it is for a public purpose where they are entitled to a fair and previous indemnity.

The guiding principles of compensation in France stipulate that since expropriation involves a forced contract, monetary compensation is not considered to be equivalent to the value of land, but to the loss incurred by the acquisition.

In addition, *Article L13-13* of the Expropriation Code outlines four principles to be considered in expropriation. They include: that the purpose is for a public benefit; should not be discriminatory; carried out in regard to the due process of the law and accompanied by prompt, adequate and effective compensation.

There are two types of compensation given in expropriations that involve agricultural land;

Asset-related damages

- a) In this compensation is paid of a principal sum that corresponds to the market value of the land and an additional cost to enable the previous land owner to start a new activity. This is aimed at reinstating the owner to the situation they were before the compulsory acquisition.

Business-related damages

- b) This is paid only to the actual owners of the land (farmers who are not owners are not qualified for this payment). This kind of compensation corresponds to the loss of economic activity associated with the land after the compulsory acquisition.

Furthermore, the principle of full compensation outlines that expropriation must not exceed actual damages and compensation can be an added value as a result of improvements completed immediately after the acquisition.

In the same way, as in Kenya, the amount of the compensation is set according to the value of the land at the time of acquisition. The basis of which is equal to the market value of the land which puts into consideration the price that land could be sold given its economic value and its physical location.

Committee Recommendations

Having adopted the Concept paper in the Committee, it was recommended that 3 members and one secretariat should go for a benchmarking visit to either Ghana or France in order to come up with suggestions on how to improve the compulsory acquisition of land by Government in Kenya. The details of the delegation would be discussed at a later date.

MIN/NO./NA/DC-LANDS/2023/108: ANY OTHER BUSINESS

The National Land Commission is close to completing the payment of compensation to PAPs on the Dongo-Kundu Road, Hon. Katana Paul Kahindi informed the Committee. According to sources, there may be people receiving PAP compensation even if they are not PAPs. It was suggested that the Committee ask the NLC for details on the actual PAPs, the amount of land they are each giving up, and the compensation they are each receiving. The Committee should also keep track of the list of those receiving compensation in comparison to the PAPs themselves.

The Fiscal Analyst was given a week (by Thursday, May 4, 2023) to compile all relevant facts as requested by the Committee and submit a report.

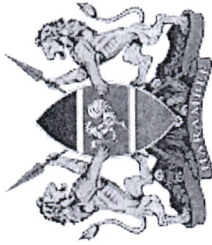
MIN/NO.NA/DC-LANDS/2022/109 ADJOURNMENT

There being no other business, the meeting was adjourned at forty-five minutes past one o'clock. The next meeting would be held on notice.

Signed.....

**THE HON. JOASH N. NYAMOKO, MP
(CHAIRPERSON)**

Date..... 10th May 2023.....

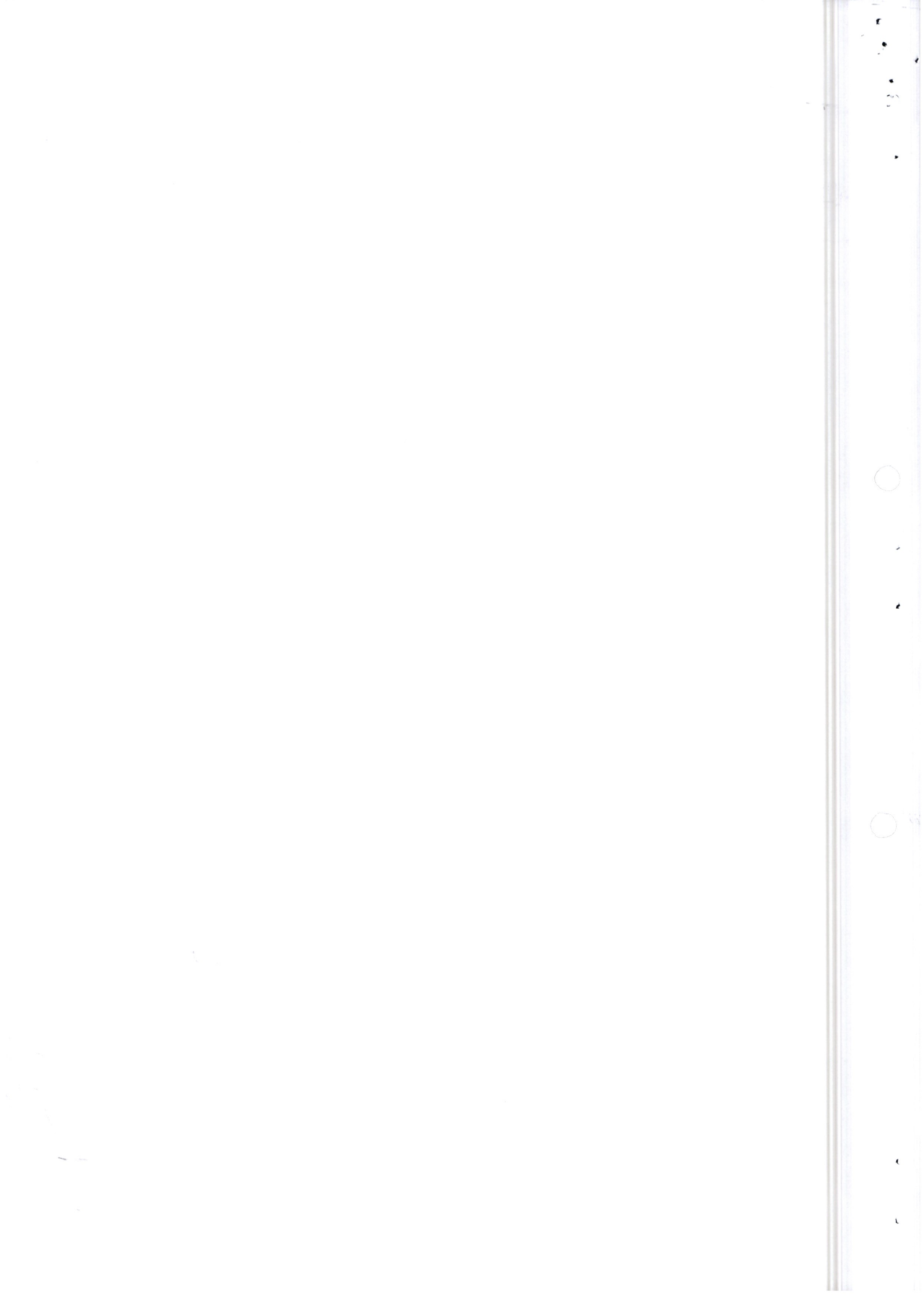


MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

MEMORANDUM ON THE LAND (AMENDMENT) BILL, 2022

	PROPOSED AMENDMENT	OBSERVATION AND COMMENTS
2	<p>The Land Act, 2012 hereinafter referred to as the 'Principal Act' is amended in section 2 by inserting the following new definition in proper alphabetical sequence-</p> <p>'Registrar' has the meaning assigned to it under section 2 of the Land Registration Act.</p>	<p>No harm to have the term 'registrar' defined under the Land Act</p>
3	<p>Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (12)</p> <p>(13) a public body or institution shall apply to the Registrar for registration of public land allocated</p>	<p>The process of allocation of public land and eventual registration of the same is provided under the Land (Allocation of public land) Regulations) 2017 whereby a mechanism is provided right from allocation to surveying of the land and eventual handing over of all the documentation needed to the Chief land Registrar for registration.</p>

	<p>by the commission in the prescribed form</p>	<p>Regulation 36 of the Land (Allocation of Public Land) Regulations) 2017 provides-</p> <p>“36. (1) the Commission shall prepare and execute leases emanating from allocation of public land.</p> <p>(2) In order to facilitate preparation of leases the Commission shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the Schedule from the office or authority responsible for surveys.</p> <p>(3) Upon receipt of the sealed cadastral plan and cadastral map, a lease document in Form LA 13 set out in the Schedule shall be executed by designated officers of the Commission duly designated by notice in the Gazette, on behalf of the national government or county government.</p> <p>(4) The executed Lease document and the cadastral map and plan shall be forwarded to the Chief Land Registrar for registration and issuance of Certificate of Lease to the proprietor.</p> <p>(5) The Commission shall forward the documents in paragraph (4) to the Chief Land Registrar in Form LA 14 set out in the Schedule”</p> <p>Note: Amendment of Section 23 of the Land Act by the Statute Law (Miscellaneous Amendments) Act, 2019 vested the mandate of preparing and issuing leases on the Cabinet Secretary. This amendment will necessitate amendment to the Regulation 36 to align with Section 23 of the Land Act.</p> <p>Save for a minor modification that is required to be made on the said Regulations so as to capture the above amendment of section 23 of the Land Registration Act which now solely vest the issuance of leases on the Cabinet Secretary as opposed to the National Land Commission, this process sits well in the Regulations than it is in the Land Act</p> <p>Conclusion-From the foregoing, the proposal for amendment to the Land Act is not necessary.</p>
<p>(14) The Registrar shall register public land allocated to a public body or institution by the Commission</p> <p>(15) pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019, the Registrar shall register land set aside by persons or a land buying company for a public</p>	<p>As provided in the above cell</p> <p>1. The development control process of sub-division of land is provided for in the Physical and Land Use Planning Act and Land Act. The Land Regulations, 2017 has provided in detail the process of sub-division as is provided under Regulations 16 and 17 for freehold and leasehold land respectively.</p>	



	purpose consequent upon a proposed development	<p>2. All parcels that are a resultant of sub-division including public utility parcels of land are supposed to be registered by the registrar if and only when the requisite documents (cadastral map and plan, transfer, surrender etc) are presented to the registrar.</p> <p>3. This proposed amendment as it is does not appreciate the fact that the development control is a process having many players where the registrar is not one of them and to require him to register without exactly mentioning when he first encounters with this process will not serve the purpose of the amendment.</p> <p>4. For purpose of emphasis and protection to the public utility parcels of land, we are of the view that the proposal for amendment can be included as an additional clause to both Regulations 16 and 17 of the Land Regulations, 2017. We propose that the additional clause after clause (5) of regulation 16 can read as follows-</p> <p>“The Chief Land Registrar shall, upon receipt of a cadastral map and plan containing parcels of land set aside or surrendered to government for public purpose, ensure that such parcels of land are registered and certificates of title or certificates of leases are issued in –</p> <ol style="list-style-type: none"> a) the name of the public entity if the public entity is incorporated; b) the name of the cabinet Secretary to the National Treasury as trustee in case of an unincorporated public entity; and c) the name of the county government if it is a county government” <p>5. In the alternative, we propose that the amendment be anchored in the Land Registration Act so as to capture both the aspects of land allocated to public entities and land set aside or surrendered to government during development control process such as sub-division. We propose a new section to be inserted between section 30 and 31 of the Land Registration Act to appear as follows-</p> <p>30A. Registration of public utility land/public land</p> <p>(1) The Chief Land Registrar shall, upon receipt of a cadastral map and plan from the authority responsible for survey, containing parcels of land set aside or surrendered to government for</p>
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public purpose, ensure that first priority in registration of such parcels of land is given and certificates of title or certificates of leases are issued in –

- a) the name of the public entity if the public entity is incorporated;
 - b) the name of the cabinet Secretary to the National Treasury as trustee in case of an unincorporated public entity; and
 - c) the name of the county government if it is a county government”
- (2) the Chief Land Registrar shall require any person carrying out sub-division or any development on land resulting to surrender or setting aside of land for public purpose to provide a transfer or surrender in respect of public purpose parcels of land as apparent on the cadastral map and plan to enable registration and issuing of certificates of title or certificates of leases under subsection (1) above.
- (3) The Chief Land Registrar shall decline to register any parcel of land contained in the cadastral map and plan where the person carrying out sub-division or any development has failed or refused to provide the transfer or surrender in respect of public purpose parcels of land.
- (4) The Chief Land Registrar shall upon receipt of a lease from the Cabinet Secretary, together with the cadastral map and plan in respect of a parcel of land allocated to a public entity, register and issue a certificate of lease in-
- a) the name of the public entity if the public entity is incorporated;
 - b) the name of the cabinet Secretary to the National Treasury as trustee in case of an unincorporated public entity; and
 - c) the name of the county government if it is a county government”
- (5) the Chief Land Registrar shall require the public entity in respect of which a lease has issued to produce any documents that may be required to complete registration and issuance of a certificate of lease under sub-section (4) above.

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	<p>(16) Upon registration of land under sub-sections (14) and (15), the Registrar shall issue a certificate of title-</p> <p>(a) in the case of an incorporated public entity, the certificate of title shall be issued in the name of the entity;</p> <p>(b) in the case of an unincorporated public entity, the cabinet Secretary to the National Treasury as trustee; and</p> <p>© in the case of a county government, in the name of the county government</p>	<p>The same has been handled above.</p>
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Ref: NLC/1/31

Date: 8th March, 2023

Samuel N. Njoroge
The Clerk of the National Assembly
Parliament Building
P.O. Box 41842 - 00100
NAIROBI

*D/Deputy W/M/L
For attention of
Committee. RR
10.3.23
Daniel Mute
Pls facilitate
up w/l
13/3/23*

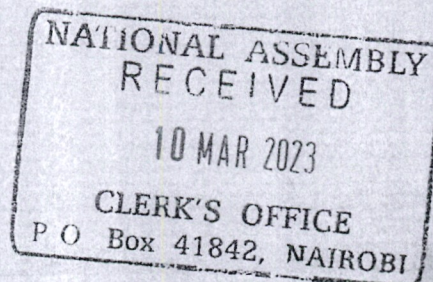
Dear *Njoroge,*

**RE: THE PROPOSED LAND (AMENDMENT) BILL, 2022
KENYA GAZETTE SUPPLEMENT NO. 165 (NATIONAL ASSEMBLY
BILLS NO. 40)**

Reference is made to the above subject matter.

The Commission supports the object and reasons of the Bill of protecting public land where such land has been allocated to a public body or public institution for a public purpose or where land is set aside by persons or land buying companies for a public purpose. Indeed, there is need to protect public land and land set aside for a public purpose by land buying companies because there has been continued grabbing and encroachment of such land by private persons.

Please find below our comments on the proposed amendments and proposals for additional amendments aimed at strengthening the protection of public purpose land in the Land Acts.



S/NO.	PROPOSED AMENDMENT	COMMENTS	PROPOSED PROVISIONS	JUSTIFICATIONS
1.	This Act may be cited as the land (Amendment) Act, 2022.	Agree	None	
2.	The Land Act, 2012 hereinafter referred to as the "principal Act" is amended in section 2 by inserting the following new definition in proper alphabetical sequence – "Registrar" has the meaning assigned to it under Section 2 of the Land Registration Act, 2012.	Agree	None	
3.	Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (12) - (13) A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission in a prescribed form	Delete Currently allocation by Commission does not necessarily culminate in registration of the allocated public land.	Proposed new Subsection (13 A) – A public body or institution shall apply to the Commission for consent to subdivide land. Proposed new Subsection (13 B) – Upon conclusion and authentication of surveys. Where Public parcels have been created the authority responsible for survey	The requirement for consent for sub division will result in surrender of public parcels at the point of approval of subdivision by the Commission. The Commission will require to be informed at the commencement of planning for subdivisions the portions set aside for public utility for vesting.

			shall submit deed plans/RMS of all parcels Marked as public utilities for public purpose to the Commission for vesting to the relevant public bodies.	In accordance with this proposal, the director of surveys should be required to submit to the Commission all deed plans and RIMs for the resultant land for public purpose for vesting
4.	(14) The Registrar shall register public land allocated to a public body or institution by the Commission.	Delete		None
5.	(15) Pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act. 2019, the Registrar shall register land set aside by Persons or a land buying company for a public purpose consequent upon a proposed development.	There is need to clarify the cross-referenced section because Section 58 of PLUPA does not address what is indicated in the proposed amendment. Also, in terms of sequence, planning comes before registration not after. The referred section of PLUPA deals with considerations regarding subdivision of private land including surrender	Proposed new sub-section 15(A) To include registration of public land set aside form public purpose arising out of Section 26 of the Community Land Act. The Commission should also be required to issue consent for any sub-division of Community land to protect land set aside	This will also enhance protection of public purpose land arising from subdivision of Community Land.

	of land for public purposes.	for public purpose.	
<p>6.</p> <p>(16) Upon registration of land under sub-sections (14) and (15), The Registrar shall issue a certificate of title:-</p> <p>(a) In the case of an incorporated public entity, the Certificate of title shall be issued in the name of the entity.</p> <p>(b) In the case of unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee; and</p> <p>(c) In the case of a county government, in the name of the County government.</p>	<p>Delete</p> <p>The provisions are superfluous and it is not necessary to repeat the functions which are spelt out in the Constitution</p>	<p>None</p>	<p>The Land Act provides for a clear allocation process.</p> <p>The Fourth schedule to the Constitution clarifies the roles of the National and County Governments.</p>

7.	<p>Indication of whether the Bill concerns County Governments</p> <p>The Bill seeks to amend the Land Act so as to provide for registration of public land</p> <p>Set aside for a public purpose. In view of this, the Bill does not concern County Governments in terms of Article (110(1) (a) of the Constitution as it does not affect the powers of the County Governments recognized in the Fourth Schedule of the Constitution.</p>	Amend	<p>The Bill concerns County Governments because Planning is a mandate of the Counties under the Fourth Schedule to the Constitution.</p> <p>Public utility lands are also ordinarily vested in the Counties therefore Counties would be affected.</p> <p>There is also need to comply with Article 10 of the Constitution on enhancing accountability.</p>
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PROPOSED NEW PROVISIONS

1. The Commission proposes that, in addition to gazettelement, a reservation of land for public purpose should be followed with issuance of a Certificate of Reservation. This will enhance protection of the public land from encroachment.
2. The Commission proposes that an amendment be done to the effect that where land is sub-divided the mother title should not be surrendered. This is because surrender effectively extinguishes the rights of the owner of the land. The Commission proposes that the alternative is to issue new allocations for the subdivided portions and entries are made on the mother title. However, a Certificate of Lease and/or Certificate of Title should only be issued where there is a long-term lease of more than 21 years. This will help to protect public purpose land. This will also enable the Government to collect more revenue arising from payments of stand premium for allocations.
3. The Commission also advises that since the Land Act provides for a clear allocation process, an emphasis should be to ensure full implementation of the existing Land Laws as they provide far reaching protection to public purpose land.
4. The Commission also recommends that professional bodies in the land sector (e.g. ISK, KIP, LSK, among others) should issue practice notes for practitioners to provide guidance and clarity for various land processes similar to practice directions issued by Courts.

We further reiterate our support for the Bill as it will provide protection of public purpose land. We are readily available to discuss and clarify our contribution further with you at your convenience should you find it necessary.

Yours *Sincerely*

Kabale
Kabale Tache Arero
Ag. Secretary/CEO

