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REPUBLIC OF KENYA



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THE PARLIAMENT

TWELFTH PARLIAMENT-THIRD SESSION

MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL

(NATIONAL ASSEMBLY BILL NO. 34 OF 2017)

PARLIAMENT
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REPORT ON THE MEDIATION OF THE PHYSICAL PLANNING BILL

(NATIONAL ASSEMBLY BILL NO. 34 OF 2017)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 JUN 2019	DAY: WED
TABLED BY:	L.O.M
CLERK-AT THE-TABLE:	Modb Mijau JUNE, 2019

JOINT CLERKS' CHAMBERS
PARLIAMENT OF KENYA
NAIROBI

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1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the Physical Planning Bill (National Assembly Bill No. 34 of 2017) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of the National Assembly Standing Orders and the Speaker of the Senate pursuant to Standing Order 160 (2) of the Senate Standing Orders on 28th March, 2019 and 4th April, 2019, respectively. Thereafter the Senate membership in the Committee was reconstituted on 21st May, 2019 with Sen. Mutula Kilonzo Junior, MP replacing Sen. Mwaruma Johnes, M.P.

The members of the Committee were: -

1. Sen. Mwangi Paul Githiomi, M.P.	(Chairperson)
2. Hon. Aden Duale, EGH, MP	(Vice Chairperson)
3. Hon. John Mbadi, EGH MP	Member
4. Sen. Mutula Kilonzo Junior MP	Member
5. Hon. Dr. Racheal, Nyamai, MP	Member
6. Sen. (Prof.) Margaret Kamar, EGH, MP	Member
7. Sen. Mary Seneta, M.P.	Member
8. Sen. (Arch.) Sylvia Kasanga, M.P	Member
9. Hon. Mishi Mboko, M.P.	Member
10. Hon. Caleb Kositany, MP	Member



1.2 Mandate of the Committee

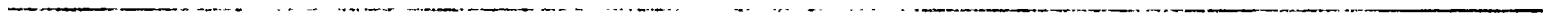
The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 160 (1).

The Committee was established to develop a version of the Physical Planning Bill (National Assembly Bill No. 34 of 2017) that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No. 161 (3).

The specific clauses of the Bill that were in contention were Parts II & III; clauses 5(9)(a), (b)(i) & (d); 6; 7; 8; 9(a), (b), (d) & (e); 11(c) & (d); 12(b), (c), (d) & (e); 13(b), (c) & (d); 14(a) & (c); 15; 16 (a), (c), (d), (e), (f), (g) & (i); 17; 18; 19(a)(iii), (b), (c) & (d); 20(a), (c), (d) & (e); 21(e); 22; 23; 24 (a); 26; 27; 28(d), (e) and (f); 29(a), (c) & (e); 30; 31; 32(a), (b), (c)(ii), (d) & (e); 33; 34; 35; 37; 38(a)(ii), (iii), (b)(ii), (c), (d), (e), (f), (g) & (h); 39(a)(ii), (b) & (c); 40; 41; 42; 43(ii); 44; 45; 46(b); 47(b)(ii) & (d); 48; 50; 51; 52(a), (b), (c)(i), (d) & (e); 53; 54; 56; 57(a), (b) & (c)(i); 58; 59; 60; 61; 62; 63; 64; 66(b); 67(a)(i), (b) & (c); 68; 69(a)(i), (iv), (vi), (b), (c), (d) & (e); 70; 71; 72 (a) (i), (b) & (e); 73; 74; 75; 76(a)(i) & (b); 77; 78; 79; 80; 81; 82; 83; 85; 88; 12A; 12B; 12C; 60A; Second Schedule paragraphs (a), (b)(i) & (c); Third Schedule paragraphs (a), (b), (c)(c) & (e); Fourth Schedule paragraphs (a), (b), (c), (e), (f), (g), (h), (i), (j), (l), (m) & (n) and clause 2 on the definition of the terms “planning”, “land use planning”, “local land use development plan”, “physical planning”, “Inter- County Land Use Development Plan”, “spatial planning” & “registrar of the Bill

1.3 Committee Sittings

The Committee held its first meeting on 7th May, 2019 and elected Sen. Mwangi Paul Githiomi, M.P. as Chairperson and Hon. Aden Duale, EGH, MP as Vice - Chairperson respectively. The Committee thereafter deliberated on contested clauses. The



Committee held other sittings on 21st May, 2019, 29th May, 2019, 4th June, 2019 and 6th June, 2019 (Appendix II).

1.4 Committee Resolutions

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is appended to this report.

1.5 Adoption of the Report

Members of the Mediation Committee on the Physical Planning Bill (National Assembly Bill No. 34 of 2017) have adopted this report pursuant to Standing Order 150 (1), of the National Assembly Standing Orders and Standing Orders 161 (1) of the Senate Standing Orders and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached schedule (Appendix II)

1.6 Acknowledgment


The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until a common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 150 (1) and 161 (1) of the National Assembly and Senate Standing Orders respectively to present the report on the Mediation Committee on the Physical Planning Bill (National Assembly Bill No. 34 of 2017) for consideration by the National Assembly and the Senate.

SIGNED:



Sen. Mwangi Paul Githiomi, M.P.

(Chairperson)

SIGNED:



Hon. Aden Duale, EGH, MP

(Vice Chairperson)

DATE... 12/06/19

12/06/19

DATE... 12-6-2019

12-6-2019



2.0 BACKGROUND ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017)

The Physical Planning Bill (National Assembly Bill No. 34 of 2017) was published in the Kenya Gazette Supplement No. 28 of 18th September 2017 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and was subjected to public participation as required by the Constitution of Kenya, 2010 and National Assembly Standing Orders.

The Bill was passed by the National Assembly on 3rd May, 2018 and referred to the Senate for consideration pursuant to National Assembly Standing Order 142. The Bill was passed by the Senate with amendments on 14th February, 2019.

Pursuant to Article 110 (4) of the Constitution, the Senate conveyed a message to the National Assembly seeking the concurrence of the National Assembly to the amendments made to Physical Planning Bill (National Assembly Bill No. 34 of 2017).

The National Assembly, Sitting on 28th March 2018 considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments on the title to **Parts II & III; clauses 5(9)(a), (b)(i) & (d); 6; 7; 8; 9(a), (b), (d) & (e); 11(c) & (d); 12(b), (c), (d) & (e); 13(b), (c) & (d); 14(a) & (c); 15; 16 (a), (c), (d), (e), (f), (g) & (i); 17; 18; 19(a)(iii), (b), (c) & (d); 20(a), (c), (d) & (e); 21(e); 22; 23; 24 (a); 26; 27; 28(d), (e) and (f); 29(a), (c) & (e); 30; 31; 32(a), (b), (c)(ii), (d) & (e); 33; 34; 35; 37; 38(a)(ii), (iii), (b)(ii), (c), (d), (e), (f), (g) & (h); 39(a)(ii), (b) & (c); 40; 41; 42; 43(ii); 44; 45; 46(b); 47(b)(ii) & (d); 48; 50; 51; 52(a), (b), (c)(i), (d) & (e); 53; 54; 56; 57(a), (b) & (c)(i); 58; 59; 60; 61; 62; 63; 64; 66(b); 67(a)(i), (b) & (c); 68; 69(a)(i), (iv), (vi), (b), (c), (d) & (e); 70; 71; 72(a)(i), (b) & (e); 73; 74; 75; 76(a)(i) & (b); 77; 78; 79; 80; 81; 82; 83; 85; 88; 12A; 12B; 12C; 60A; Second Schedule paragraphs (a), (b)(i) & (c); Third Schedule paragraphs (a), (b), (c)(c) & (e); Fourth Schedule paragraphs (a), (b), (c), (e), (f), (g), (h), (i), (j), (l), (m) & (n) and clause 2 on the definition of the terms “planning”, “land use planning”, “local land use development plan”, “physical planning”, “Inter-**



County Land Use Development Plan”, “spatial planning” & “registrar of the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 160 the Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

3.0 CONSIDERATION OF THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017)

The Committee considered the Senate amendments to the Physical Planning Bill (National Assembly Bill No. 34 of 2017) as follows:

Clauses 3; 4; 5(b)(iii), (vii), (viii), (ix), (x) & (xi); 9(c); 10; 11(a), (b) & (e); 12(a), (f) & (g); 13(a) & (e); 14(b); 16(h); 19(a)(i) & (ii); 20(b); 21(a), (b), (c) & (d); 24(b); 25; 28(a), (b) & (c); 29(b) & (d); 32(c)(i); 36(b) & (c)(i); 38(a)(i) & (b)(i); 39(a)(i); 43(i); 46(a); 47(a), (b)(i) & (c)(i); 52(c)(ii); 55; 57(c)(ii); 66(a); 67(a)(ii), (iii) & (v); 72(a)(ii), (iii), (iv), (v), (vi), (vii), (viii) & (c); 76(a)(ii); 4A; 49A, First Schedule; Second Schedule paragraph (b)(ii); Third Schedule paragraph (c)(d); Fourth Schedule paragraphs (d), (k) and clause 2 on the definitions of the terms “Director General of Physical Planning” & “county executive committee member”.

Committee Observation

The Committee observed that the National Assembly concurred with the above-mentioned Senate amendments.

Committee Recommendation

The Committee therefore resolved to adopt the Senate amendments as concurred to by the National Assembly.

Title to Parts II & III; clauses 5 (1), (2)(a), (b) & (marginal note); 6; 7; 8; 9(a), (b) & (e); 11(introductory clause & marginal note); 12(introductory clause), (b), (c), (d), (e) & (marginal note); 13(a), (c) & (marginal note); 14(1), (2) & (marginal note); 15(introductory clause & marginal note); 16 (introductory clause), (a), (b),



(c), (d), (e), (f), & (marginal note); 17(2) & (marginal note); 18; 19(1)(introductory clause), (2), (3) & (marginal note); 20; 21; 22; 23(2) & (marginal note); 24 (1); 26; 27; 28(marginal note); 29(3) & (marginal note); 30; 31; 32(1), (2), (3), & (marginal note); 33; 34(3) & (marginal note); 35; 36; 38; 39; 40; 41; 42(introductory clause & marginal note); 43; 44; 45; 46; 47; 48(2), (6) & (marginal note); 50; 51(d) & (f); 56(1)(a); 63(1); 64; 66(2); 67(3), & (4); 68; 69(1)(introductory clause), (j), (3), (5), (6) & (marginal note); 70; 71; 72(1)(introductory clause), (2), (4) & (marginal note); 73; 74; 75; 76; 77; 78; 79; 80; 81; 82; 83; 85; 88; title to the Second Schedule; title to the Third Schedule, Part A and paragraphs (5) & (7); Fourth Schedule paragraphs (2), (5), (6) & (7) and clause 2 on the definition of the terms “Cabinet Secretary”, “land use planning”, “local physical planning development plan”, “National Director of Physical Planning”, “physical planning”, “Inter-County physical development plan” and “spatial planning”.

Committee Observations

The Committee observed that the pending Senate amendments contained in the above-mentioned clauses all deal with the change of Title of the Bill from ‘Physical Planning’ to ‘Land Use Planning’. In seeking to resolve the question on the Title of the Bill, the Committee first deliberated on the definitions of the term Physical Planning versus Land Use Planning and agreed as follows-

“land use planning” means the process of designating, regulating, evaluating, zoning and organizing the present and the future use and development of land in all its geographical areas and its resources to secure the physical, economic and social efficiency, health and well-being of urban and rural communities;

“physical planning” means the active process of organizing the physical infrastructure and its functions 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 optimum level of land utilization in a sustainable manner;

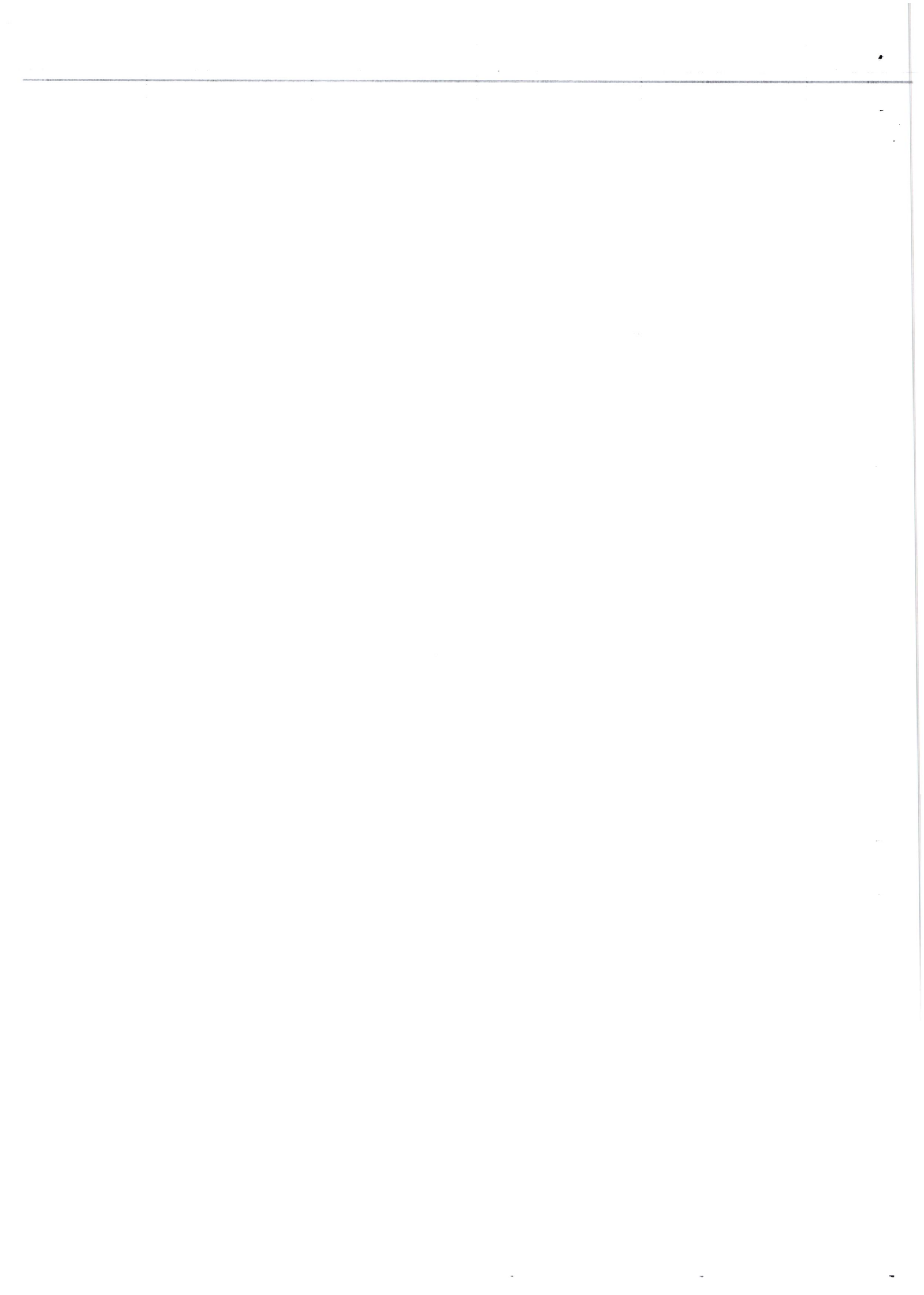


In light of the foregoing, the Committee observed that although the Bill seeks to implement the provisions of Articles 66 and 68 of the Constitution as read with the Fifth Schedule to the Constitution on land use planning, the Bill largely contains matters relating to physical planning. The Bill however also addresses land use planning in line with the aforementioned Article 66 of the Constitution and the National Land Use Policy (Sessional Paper No. 1 of 2017). The Committee further observed that the Bill sought to repeal the Physical Planning Act, 1996. The Committee noted that either of the Houses can in future consider introducing a specific law to deal holistically with land use planning.

The Committee further considered the definition of the term ‘planning authority’ and agreed to amend it to clarify the obligations of the national executive and county executive with respect to the planning function under the Bill.

Committee Recommendation

In this regard and in view of the agreed definitions on land use planning and physical planning, the Committee agreed to change the Title of the Bill to Physical and Land Use Planning Bill and effect the consequential amendments to Title to Parts II & III; clauses 5 (1), (2)(a), (b) & (marginal note); 6; 7; 8; 9(a), (b) & (e); 11(introductory clause & marginal note); 12(introductory clause), (b), (c), (d), (e) & (marginal note); 13(a), (c) & (marginal note); 14(1), (2) & (marginal note); 15(introductory clause & marginal note); 16 (introductory clause), (a), (b), (c), (d), (e), (f), & (marginal note); 17(2) & (marginal note); 18; 19(1)(introductory clause), (2), (3) & (marginal note); 20; 21; 22; 23(2) & (marginal note); 24 (1); 26; 27; 28(marginal note); 29(3) & (marginal note); 30; 31; 32(1), (2), (3), & (marginal note); 33; 34(3) & (marginal note); 35; 36; 38; 39; 40; 41; 42(introductory clause & marginal note); 43; 44; 45; 46; 47; 48(2), (6) & (marginal note); 50; 51(d) & (f); 56(1)(a); 63(1); 64; 66(2); 67(3), & (4); 68; 69(1)(introductory clause), (j), (3), (5), (6) & (marginal note); 70; 71; 72(1)(introductory clause), (2), (4) & (marginal note); 73; 74; 75; 76; 77; 78; 79; 80; 81; 82; 83; 85; 88; title to the Second Schedule; title to the Third Schedule, Part A and paragraphs (5) & (7); Fourth Schedule paragraphs (2), (5), (6) & (7) and clause 2 on the definition of the terms “Cabinet Secretary”, “land use planning”, “local physical



planning development plan”, “National Director of Physical Planning”, “physical planning”, “Inter-County physical development plan” and “spatial planning”.

The Committee further agreed to amend the definition of the term ‘planning authority’ as follows:

“Planning authority”-

(a)with respect to national government functions means the Cabinet Secretary; and

(b)with respect to county government functions means the county executive committee member.

Clause 5

Committee Observation

The Committee observed that the proposed amendment to paragraph (o) providing that ‘a person nominated by a registered association representing the largest number of entities in the private sector in Kenya’ in the membership of the National Physical and Land Use Planning Consultative Forum is ambiguous and needs to be specific as it is clear that the registered association representing the largest number of entities in the private sector in Kenya is the Kenya Private Sector Alliance. Further, the Committee observed that the proposed amendment to paragraph (p) referring to ‘a person nominated by a registered national association representing the largest number of residents in Kenya’ lacks clarity and requires to be amended. The Committee also observed that the proposed amendment to sub-clause (3) deals with appointment of the members to the Forum under paragraphs I, m, n, o, p and q by notice in the Gazette.

Committee Recommendation

The Committee rejected the Senate amendments to paragraphs (o) and (p) agreed to the following amendments-

Paragraphs (o) and (p) be amended to read-

(o) a person nominated by the Kenya Private Sector Alliance and appointed by the
Cabinet Secretary;

(p) a person nominated by the registered associations representing residents;

The Committee agreed to the Senate amendment to sub-clause (3) as follows-

THAT clause 5 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

(3) The Cabinet Secretary shall appoint members nominated under subsection (2)(l), (m), (n), (o), (p) and (q) by notice in the Gazette.

Clause 9(d)

Committee Observation

The Bill as it is in paragraph (d) provides that the Cabinet Secretary shall monitor and oversight matters land use planning. The Committee observed that paragraph (d) is in conflict with Article 67(2)(h) of the Constitution which provides that the National Land Commission shall monitor and have oversight responsibilities over land use planning throughout the country.

Committee Recommendation

The Committee agreed with the Senate amendment to paragraph (d) as follows-

THAT clause 9 of the Bill be amended—

(d) by deleting paragraph (d).

Clause 11(c) and (d)

Committee Observation

The Committee noted that amendment to paragraph (c) proposing to change the qualifications of the Director General of Physical and Land Use Planning from “registered physical planner” to “professional planner” is ambiguous and might give room for abuse. However, the Committee observed that there would be need for the person appointed to be in good standing with the relevant professional body. The Committee also observed that there is need to have the specific post-qualification years of experience for a person to be appointed as a Director-General of Physical and Land Use Planning hence paragraph (d) should remain as it is in the Bill.

Committee recommendation

The Committee rejected the Senate amendment to paragraph (c) and proposed the following new amendment-

(c) is registered as a physical planner under the Physical Planners’ Registration Act, 1996 and is in good standing with the relevant professional body.

The Committee rejected the Senate amendment to paragraph (d) and proposed to retain the provision in the Bill.

Clause 13(b)

Committee Observation

The Bill as it is in paragraph (b) is in conflict with Article 67(2)(h) of the Constitution which provides that the National Land Commission shall monitor and have oversight responsibilities over land use planning throughout the country and hence the County Executive Committee Member cannot monitor and oversight matters land use planning.

Committee Recommendation

The Committee agreed with the Senate amendments to paragraph (b).

THAT clause 13 of the Bill be amended—

(c) by deleting paragraph (b);

Clause 15(c) and (d)

Committee Observation

The Committee noted that amendment to paragraph (c) proposing to change the qualifications of the County Director of Physical and Land Use Planning from “registered physical planner” to “professional planner” is ambiguous and might give room for abuse. The Committee observed that there would be need for the person appointed to be in good standing with the relevant professional body. The Committee also observed that there is need to have the specific post- qualification years of

experience for a person to be appointed as the County Director of Physical and Land Use Planning hence paragraph (d) should remain as it is in the Bill.

Committee Recommendation

The Committee rejected the Senate amendment to paragraph (c) and proposed the following new amendment-

(c) is registered as a physical planner under the Physical Planners' Registration Act, 1996 and is in good standing with the relevant professional body.

The Committee rejected the Senate amendment to paragraph (d) and proposed to retain as it is in the Bill.

Clause 17(1)

Committee Observation

The Committee agreed with the Senate amendment to sub-clause (1) with amendment as it creates clarity on the role of the Cabinet Secretary in the preparation of the National Physical and Land Use Development Plan.

Committee Recommendation

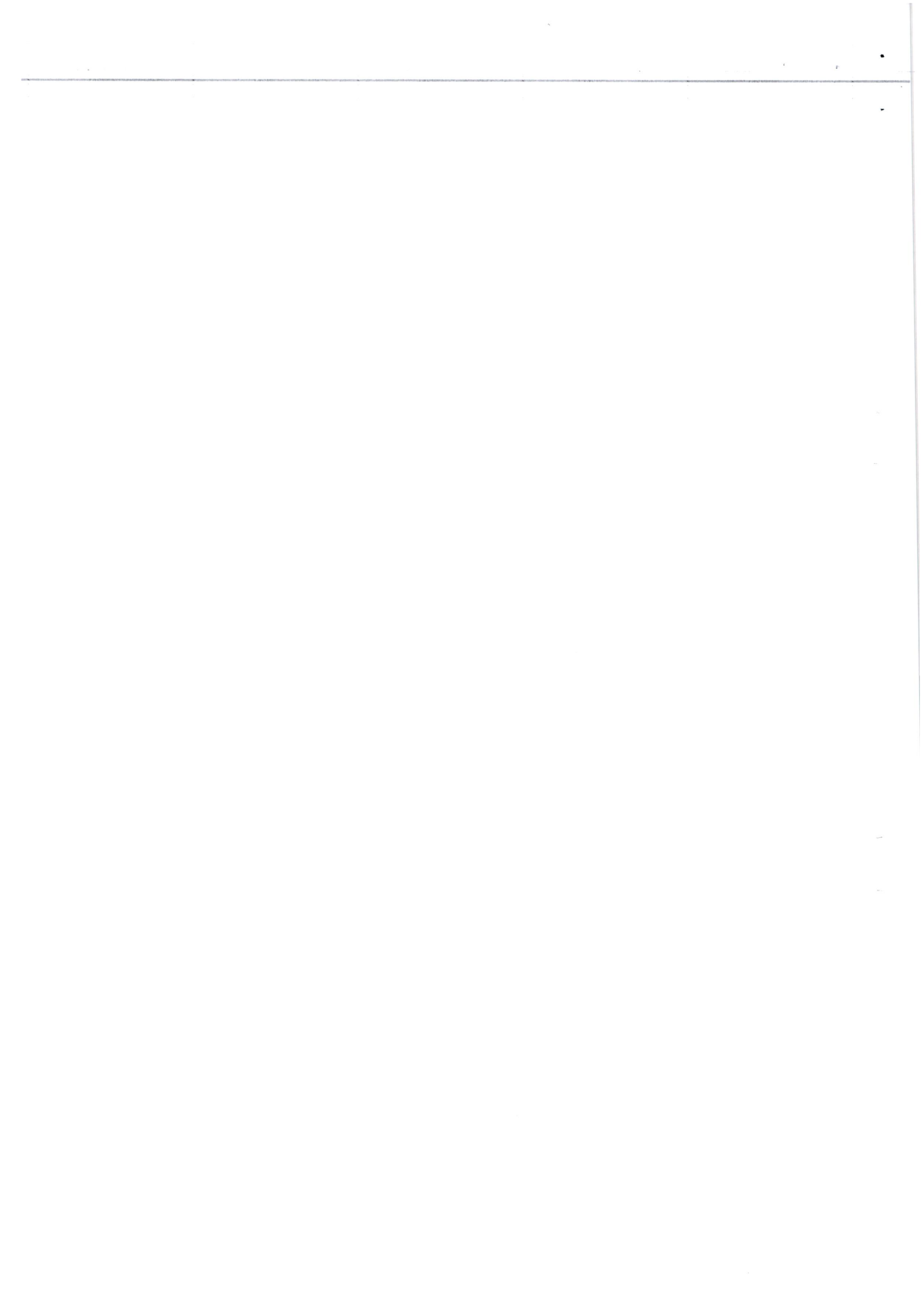
The Committee agreed with the Senate amendment to sub-clause (1) to read as follows-

- (1) The Cabinet Secretary shall cause the Director-General of Physical and Land Use Planning to prepare the National Physical and Land Use Development Plan for approval and publication in accordance with this Part.

Clause 23

Committee Observation

The Committee observed that the use of the term planning authorities in sub-clause (1) makes it clear that planning authorities which include the Cabinet Secretary and the County Executive Committee Member shall base the preparation of the various physical and land use development plans on the National Physical and Land Use Development Plan.



Committee Recommendation

The Committee agreed with the Senate amendment to sub-clause (1) on the use of the term 'planning authorities'.

THAT clause 23 of the Bill be amended by—

(a) deleting sub clause (1) and substituting therefor the following new sub clause—

(1) Planning authorities shall base the preparation of inter-county physical and land use development plans, integrated county physical and land use development plans, city physical and land use development plans, urban area physical and land use development plans and sectoral plans on the National Land Use Development Plan.

Clause 28(3) and (4)

Committee Observation

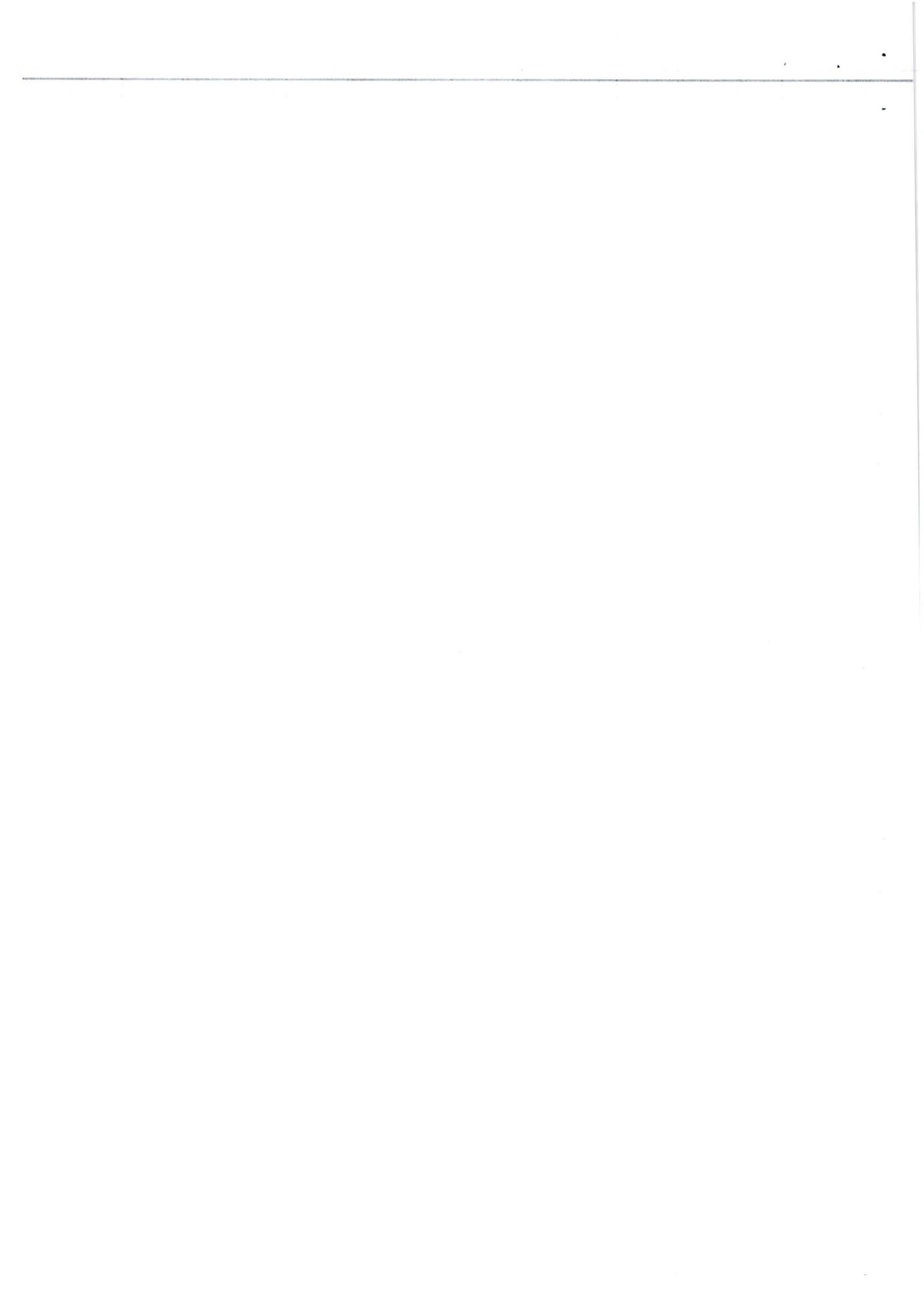
The Committee observed that the Senate amendment deletes the provisions through which an aggrieved person can appeal against the decisions of the Inter-County Physical Planning Joint Committee and this would result in a vacuum in as far as redress mechanisms are concerned.

Committee Recommendation

The Committee rejected the Senate amendments to clause 28(3) and (4) but agreed to include a timeline of 14 days within which a person can appeal under sub-clauses (3) and (4).

Clause 28 to state as follows:

28(1) Within thirty days of the completion of an Inter-County Physical and Land Use Development Plan, the Inter-County Physical and Land Use 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 place and time specified in the notice for inspection and that any interested person may, within fourteen days, comment on the content of the plan.



(2) The Inter-County Physical and Land Use Planning Joint Committee shall, within twenty-one days of the expiry of the period for making comments under sub-section (1), consider the comments made about the plan and may or may not incorporate the comments in the plan.

(3) Within seven days of making a decision under subsection (2), the Inter-County Physical and Land Use Planning Joint Committee shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that a decision on the comments received by the joint committee has been made and that the reviewed draft Inter-County Physical and Land Use Development Plan is available for perusal at the place and time specified in the notice.

(4) Any person dissatisfied with the decision of the Inter-County Physical and Land Use Planning Joint Committee may appeal to the National Physical and Land Use Planning Liaison Committee within fourteen days and the committee shall consider the application and make its determination within (60) days of the receipt of the application.

(5) Any person dissatisfied with the decision of the National Physical and Land Use Planning Liaison Committee may, within fourteen days of the decision, appeal to the Environment and Land Court.

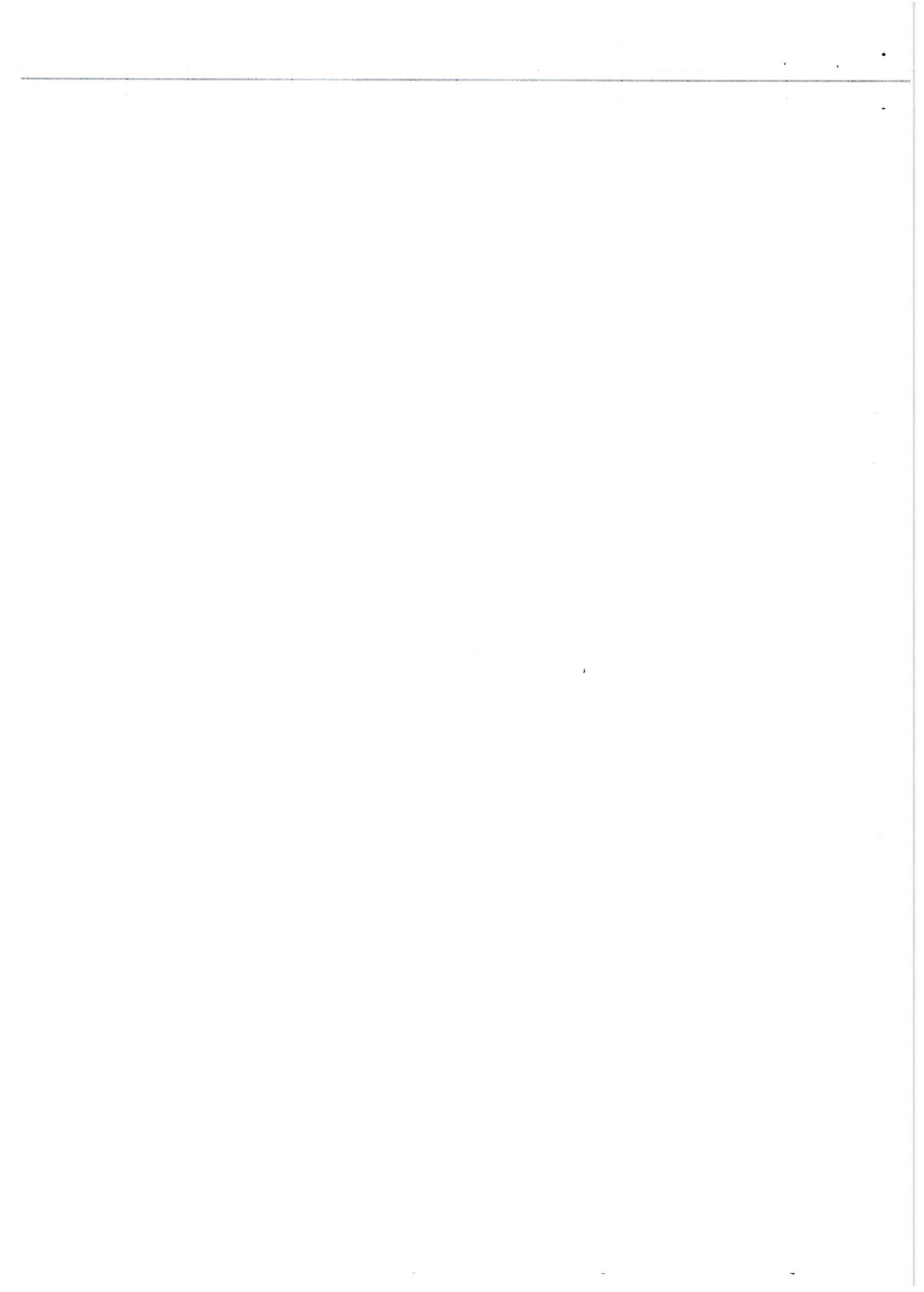
Clause 29(1)

Committee Observation

The Committee agreed that clause 29 of the Bill be amended to remove reference to the word processing as this can interfere with the functions of county governments to prepare and approve the inter-county plans. However, the Committee observed that since the national government has the function of coordinating planning in counties, there would be need for the inter-county physical and land use plans to be coordinated and certified by the Director-General of Physical and Land Use Planning.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) as follows-



Insert the words “and thereafter submit the same to the Director-General of Physical and Land Use Planning for coordination and certification” immediately after the words “County Assemblies for approval”;

Clause 32(4)

Committee Observation

The Committee observed that section 110 of the County Governments Act deals with county spatial plans, matters which have not be dealt with by the county physical and land use development plans. The Committee however noted that the two plans may be subsequently harmonized and thereafter one plan may suffice.

Committee recommendation

The Committee agreed with the Senate amendment to clause 32(4).

THAT clause 32 of the Bill be amended—

(d) by deleting sub clause (4);

Clause 42(e)

Committee Observation

Clause 41(3) provides that a local physical and land use plan shall be consistent with the Integrated City or Urban Development Plan as envisaged in the Urban Areas and Cities Act, 2011. In this regard, a local physical and land use plan cannot give effect to an integrated city or urban development plan as the two plans can be implemented independently. The Committee observed that the two plans should however be consistent with each other as provided under clause 41(3) of the Bill.

Committee recommendation

The Committee agreed with the Senate amendment to clause 42(e).

THAT clause 42 of the Bill be amended—

(ii) by deleting paragraph (e)



Clause 48

Committee Observation

The Committee observed that the Senate amendment seeks to include “natural resources” consideration with respect to unique potential or challenges in declaring a special planning area.

Committee recommendation

The Committee agreed with the Senate amendment to clause 48.

THAT clause 48 of the Bill be amended—

- (i) in sub clause (1) by—*
- (ii) deleting the word “and” appearing immediately after the words “has unique development” and substituting therefor the words “natural resource or”;*

Clause 52(3)

Committee Observation

The Committee observed that there would be need to make it mandatory for the county executive committee member to 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.

Committee Recommendation

The Committee proposed the following amendment-

Delete the words “The planning authority may” appearing immediately before the words “require a person” and substitute therefor the words “The county executive committee member shall”.

Clause 62

Committee Observation

The Committee observed that the proposed amendments seek to insert new subclauses (1A) and (1B) which is a repetition since the matters of restoration of land are already provided in clause 52 of the Bill.

The Committee also observed that the further amendment to clause 62 to create an offence for a public officer who grants development permission or comments on an application for development permission contrary to the Act or any other law was appropriate but observed that the penalty as proposed is lenient and hence the need to create a minimum sentence.

Committee Recommendation

The Committee rejected the Senate amendment to insert new sub-clauses 62(1A) and (1B). However, the Committee agreed to the Senate amendment to create an offence but put a minimum of the sentence as follows-

(2) A person who commits an offence under this section is liable, on conviction, to a fine not less than one million shillings or to imprisonment for a term not less five years or to both.

Clause 69(1)(h)

Committee Observation

The Committee observed that the proposed amendment to paragraph (o) providing that ‘a person nominated by a registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary’ in the membership of the National Physical and Land Use Planning Liaison Committee is ambiguous and needs to be specific as it is clear that the registered association representing the largest number of entities in the private sector in Kenya is the Kenya Private Sector Alliance.

Committee Recommendation

The Committee agreed to redraft paragraph (h) to read “a person nominated by the Kenya Private Sector Alliance and appointed by the Cabinet Secretary” as this would be more specific and has clarity.



THIRD SCHEDULE PARAGRAPH 3

Committee Observation

The Committee observed that the inclusion of human rights, poverty eradication and gender in a situational analysis of a physical development plan is already covered by the population and demographic analysis and need not be included.

Committee Recommendation

The Committee rejected the Senate amendments to paragraphs 3 of the Third Schedule.

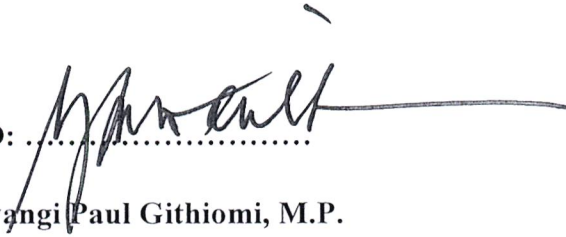
FOURTH SCHEDULE

Committee Observation

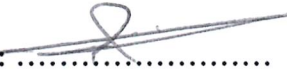
The Committee agreed that the title of the Schedule to the Bill be amended to read 'Development Control'.

Committee Recommendation

The Committee agreed with the Senate amendments to the Title of the Fourth Schedule.

SIGNED: .....
Sen. Mwangi Paul Githiomi, M.P.

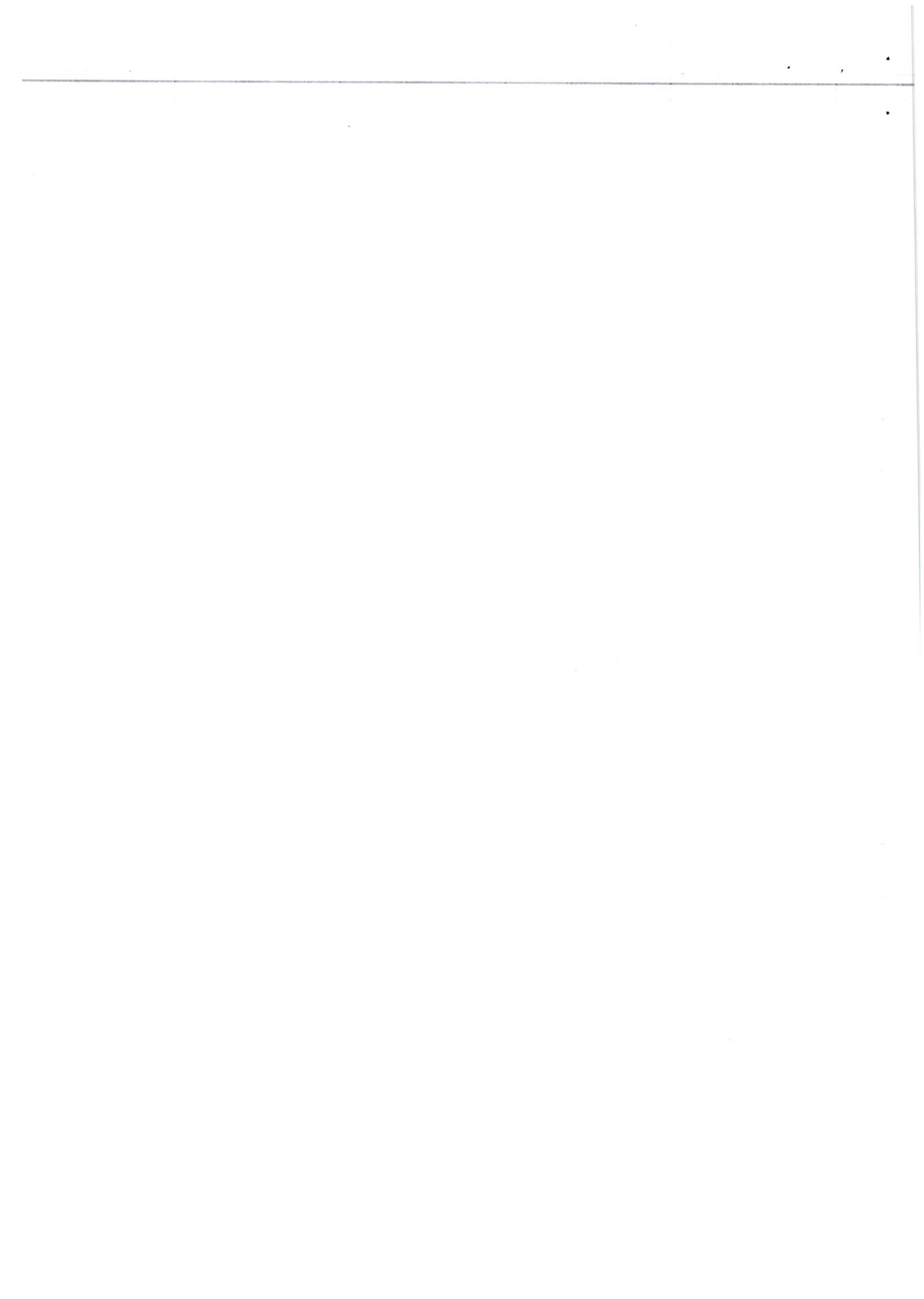
(Chairperson)

SIGNED: .....
Hon. Aden Duale, EGH, MP

(Vice Chairperson)

DATE.....12/06/19.....

DATE.....12-6-2019.....



Appendix I: Report Adoption List

Appendix II: Minutes of the Committee

Appendix III: Mediated Version of the Bill



Appendix I

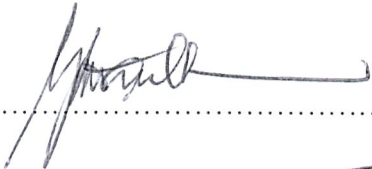
Report

Adoption List



**ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON
THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017)**

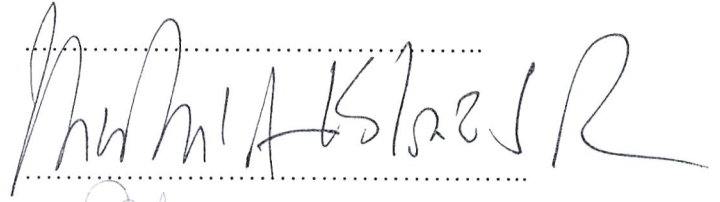
We, the undersigned Members of the Mediation Committee on the Physical Planning Bill (National Assembly Bill No. 34 of 2017), do hereby append our signatures to adopt the Report-

1. Sen. Mwangi Paul Githiomi, M.P. (Chairperson).....

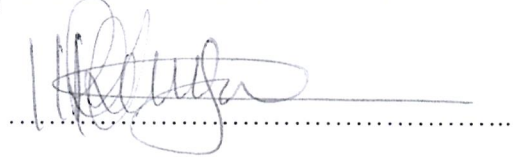
2. Hon. Aden Duale, EGH, MP (Vice Chairperson)

3. Hon. John Mbadi, EGH MP

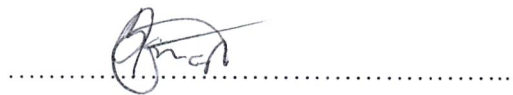
4. Sen. Mutula Kilonzo Junior MP



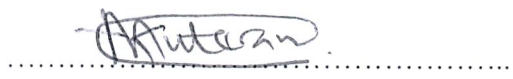
5. Hon. Dr. Racheal, Nyamai, MP



6. Sen. (Prof.) Margaret Kamar, EGH, MP



7. Sen. Mary Seneta, M.P.



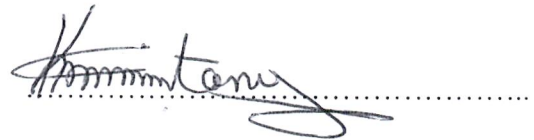
8. Sen. (Arch.) Sylvia Kasanga, M.P

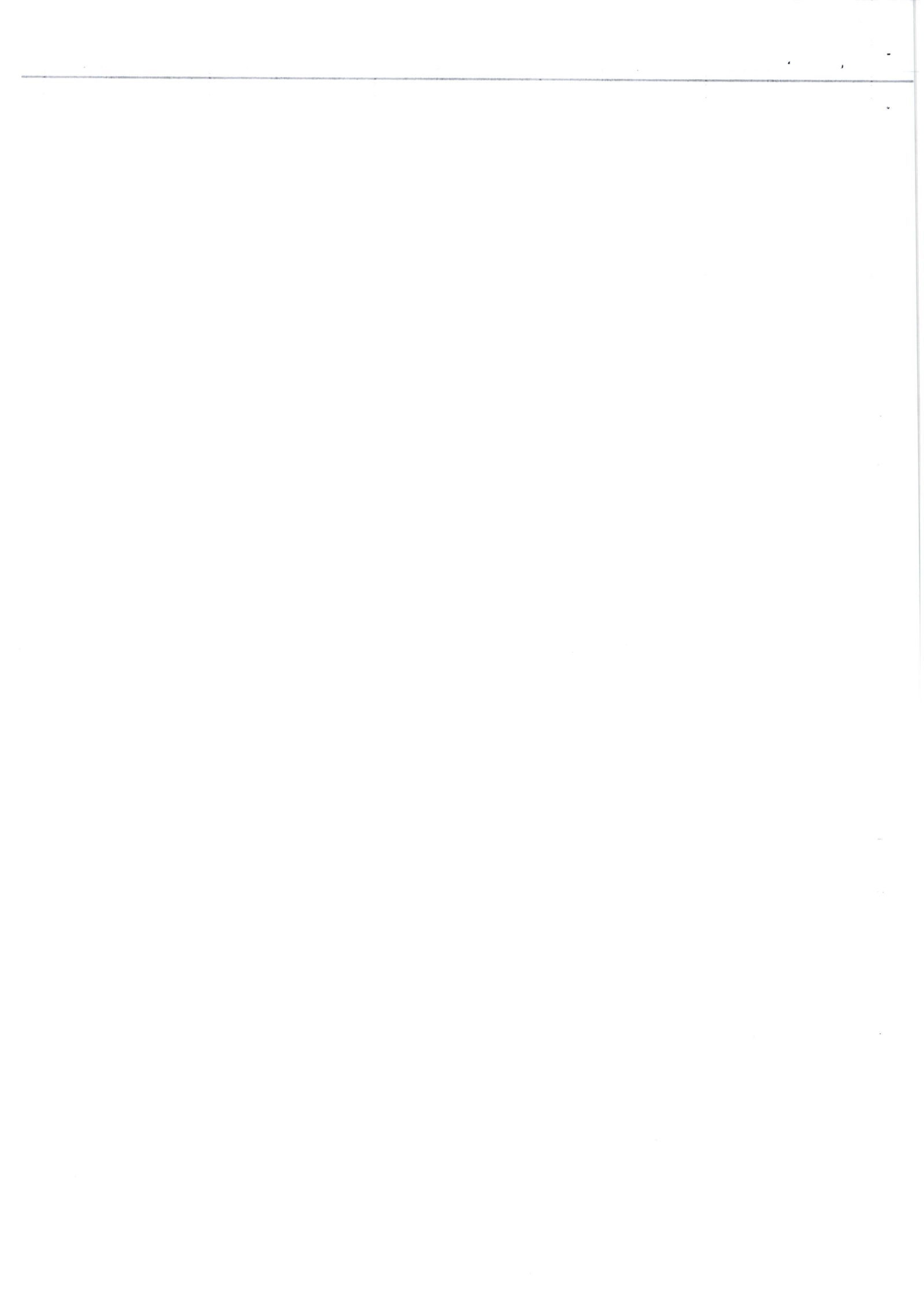
.....

9. Hon. Mishi Mboko, M.P.

.....

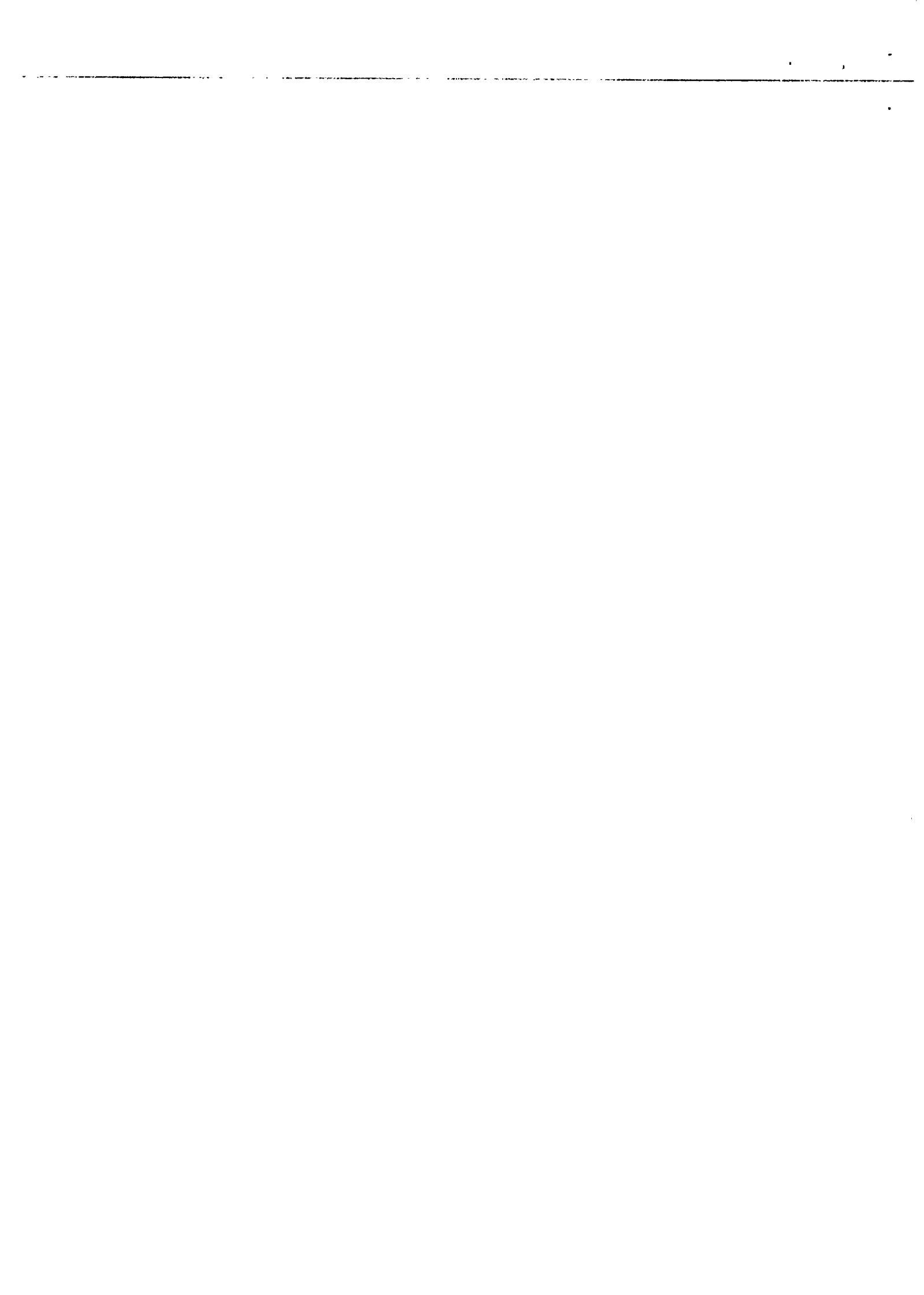
10. Hon. Caleb Kositany, MP





Appendix II

Minutes of the Committee



MINUTES OF THE 6TH MEETING OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017) HELD ON THURSDAY, 6TH JUNE 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 5.30 PM

PRESENT

1. Sen. Mwangi Paul Githiomi, M.P. (Chairperson)
2. Hon. Aden Duale, EGH, MP (Vice Chairperson)
3. Sen. Mutula Kilonzo Junior MP
4. Hon. (Dr.) Racheal, Nyamai, MP
5. Sen. (Prof.) Margaret Kamar, EGH, MP
6. Sen. Mary Seneta, M.P.
7. Hon. Caleb Kositany, MP

ABSENT WITH APOLOGY

1. Hon. John Mbadi, EGH MP
2. Hon. Mishi Mboko, M.P.
3. Sen. (Arch.) Sylvia Kasanga, M.P

IN ATTENDANCE

1. Mr. Leonard Machira
2. Mr. Victor Bett
3. Ms. Jemimah Waigwa
4. Mr. Mitchell Otoro
5. Ms. Sylvia Ocharo
6. Ms. Joyce Chelangat
7. Ms. Winnie Stephen

SECRETARIAT

- Clerk Assistant I
- Clerk Assistant III
- Legal Counsel I
- Legal Counsel
- Research Officer
- Audio Recording
- Intern

MIN. MC/PPB/2019/030:

The meeting was called to order at 12.30pm followed by a word of prayer.

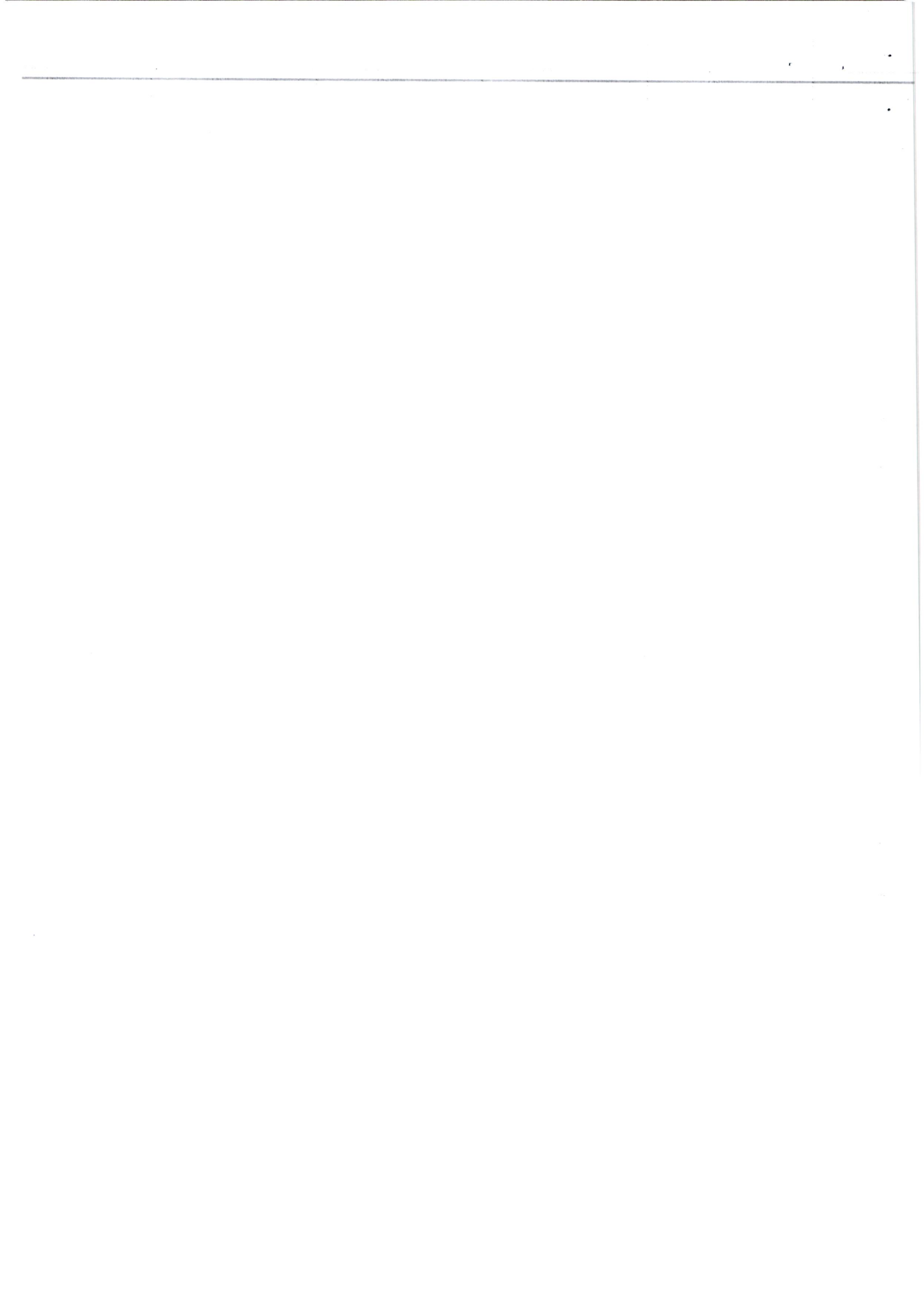
PRELIMINARIES

MIN. MC/PPB/2019/031:

ADOPTION OF AGENDA

The agenda was agreed to, having been proposed by Sen. Mutula Kilonzo Junior, M.P and seconded by Hon. Aden Duale, EGH, MP as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Confirmation of Minutes
4. Adoption of the Mediation Committee Report on the Physical Planning Bill (National Assembly Bill No. 34 of 2017)



5. Any other Business
6. Date of the next meeting/ Adjournment

MIN. MC/PPB/2019/032:

CONFIRMATION OF MINUTES

The Minutes of the 4th Sitting were confirmed as true record of the proceedings and was proposed by Hon. (Dr.) Racheal, Nyamai, MP and seconded by Sen. Mary Seneta, MP.

The Minutes of the 5th Sitting were confirmed as true record of the proceedings and was proposed by Hon. Aden Duale, EGH, MP and seconded by Sen. Mary Seneta, MP.

MIN. MC/PPB/2019/033:

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017);

The Committee adopted its report after being proposed by Hon. Aden Duale, EGH, MP and Seconded by Sen. Mutula Kilonzo Junior, M.P with the following slight amendments.

1. Amend all areas indicating a particular Senate amendment to have the entire amendment included disregarding whether it was taken or dropped by the Committee; and
2. Define “Planning Authority” clearly in the Bill such that it clearly defines the roles of the Cabinet Secretary Nationally in Charge of Physical & Land Use Planning and the County Executive Committee Member in Charge of Physical & Land Use Planning.

MIN. MC/PPB/2019/034:

ANY OTHER BUSINESS

The Committee resolved to have the 1st Meeting of the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 on Tuesday, 11th June, 2019 as from 11.00am.

MIN. MC/PPB/2019/035:

ADJOURNMENT

There being no other business the meeting was adjourned at 6.33 pm.

SIGNATURE.......... DATE.....12/6/2019.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



Clause 17(1)

The Committee agreed with the Senate amendment to sub-clause (1) with amendment as it creates clarity on the role of the Cabinet Secretary in the preparation of the National Physical and Land Use Development Plan.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) to read as follows-

- (1) The Cabinet Secretary shall cause the Director-General of Physical and Land Use Planning to prepare the National Physical and Land Use Development Plan for approval and publication in accordance with this Part.

Clause 23

The Committee observed that the use of the term planning authorities in sub-clause (1) makes it clear that planning authorities which include the Cabinet Secretary and the County Executive Committee Member shall base the preparation of the various physical and land use development plans on the National Physical and Land Use Development Plan.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) on the use of the term 'planning authorities'.

Clause 28(3) and (4)

The Committee observed that the Senate amendment deletes the provisions through which an aggrieved person can appeal against the decisions of the Inter-County Physical Planning Joint Committee and this would result in a vacuum in as far as redress mechanisms are concerned.

Committee recommendation

The Committee rejected the Senate amendments to clause 28(3) and (4) but agreed to include a timeline of 14 days within which a person can appeal under sub-clauses (3) and (4).

Clause 29(1)

The Committee agreed that clause 29 of the Bill be amended to remove reference to the word processing as this can interfere with the functions of county governments to prepare and approve the inter-county plans. However, the Committee observed that since the national government has the function of coordinating planning in counties, there would be need for the inter-county physical and land use plans to be coordinated and certified by the Director-General of Physical and Land Use Planning.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) as follows-

Insert the words "and thereafter submit the same to the Director-General of Physical and Land Use Planning for coordination and certification" immediately after the words "County Assemblies for approval";



Clause 32(4)

The Committee observed that section 110 of the County Governments Act deals with county spatial plans, matters which have not be dealt with by the county physical and land use development plans. The Committee however noted that the two plans may be subsequently be harmonized and thereafter one plan may suffice.

Committee recommendation

The Committee agreed with the Senate amendment to clause 32(4).

Clause 42(e)

Clause 41(3) provides that a local physical and land use plan shall be consistent with the Integrated City or Urban Development Plan as envisaged in the Urban Areas and Cities Act, 2011. In this regard, a local physical and land use plan cannot give effect to an integrated city or urban development plan as the two plans can be implemented independently. The Committee observed that the two plans should however be consistent with each other as provided under clause 41(3) of the Bill.

Committee recommendation

The Committee agreed with the Senate amendment to clause 42(e).

Clause 48

The Committee observed that the Senate amendment seeks to include “natural resources” consideration with respect to unique potential or challenges in declaring a special planning area.

Committee recommendation

The Committee agreed with the Senate amendment to clause 48.

Clause 52(3)

The Committee observed that there would be need to make it mandatory for the county executive committee member to 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.

Committee recommendation

The Committee proposed the following amendment-

Delete the words “The planning authority may” appearing immediately before the words “require a person” and substitute therefor the words “The county executive committee member shall”.

Clause 62

The Committee observed that the proposed amendments seek to insert new subclauses (1A) and (1B) which is a repetition since the matters of restoration of land are already provided in clause 52 of the Bill.

The Committee also observed that the further amendment to clause 62 to create an offence for a public officer who grants development permission or comments on an application for



development permission contrary to the Act or any other law was appropriate but observed that the penalty as proposed is lenient and hence the need to create a minimum sentence.

Committee recommendation

The Committee rejected the Senate amendment to insert new sub-clauses 62(1A) and (1B). However, the Committee agreed to the Senate amendment to create an offence but put a minimum of the sentence as follows-

(2) A person who commits an offence under this section is liable, on conviction, to a fine not less than one million shillings or to imprisonment for a term not less five years or to both.

Clause 69(1)(h)

The Committee observed that the proposed amendment to paragraph (o) providing that ‘a person nominated by a registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary’ in the membership of the National Physical and Land Use Planning Liaison Committee is ambiguous and needs to be specific as it is clear that the registered association representing the largest number of entities in the private sector in Kenya is the Kenya Private Sector Alliance.

Committee recommendation

The Committee agreed to redraft paragraph (h) to read “a person nominated by the Kenya Private Sector Alliance and appointed by the Cabinet Secretary” as this would be more specific and has clarity.

New Clause 60A

The Committee observed that the Senate amendment is redundant as its provisions are already adequately covered in section 39(2) of the Land Registration Act, No. 3 of 2012

Committee recommendation

The Committee rejected the new clause 60A.

Clauses 37, 12A, 12B and 12C- COUNTY PHYSICAL AND LAND USE PLANNING CONSULTATIVE FORUMS

The Committee observed that in line with the function of county governments to deal with matters county planning as envisaged under the Fourth Schedule, there is need to establish county physical and land use planning consultative forums in each county for purposes of providing a forum for counties to consult on county and inter-county physical and land use planning.

Committee recommendation

The Committee agreed with the Senate amendments to clauses 37, 12A, 12B and 12C.

Clauses 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 67 and FOURTH SCHEDULE-USE OF THE TERM “PLANNING AUTHORITIES”.

Clause 2 of the Bill defines planning authorities to include Cabinet Secretary and the County Executive Committee Member responsible for physical and land use planning. The definition as it is would mean in effect that one has to seek approval from both the Cabinet Secretary and the



County Executive Committee member which would stifle the ability of counties to undertake county planning a function that exclusively lies with counties. The Committee however observed that there would be need to recognize that there are functions of development control that may fall under the national government and hence requires approval by the Cabinet Secretary.

Committee recommendation

The Committee agreed with the Senate amendments to clauses 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 67 and the Fourth Schedule to delete planning authority and substitute with the term ‘county executive committee member’ save for inclusion of an amendment to demarcate the functions of the national government with respect to development control that require the approval of the Cabinet Secretary.

SECOND SCHEDULE: PARAGRAPHS 3 and 12

The Committee observed that the inclusion of human rights, poverty eradication and gender in a situational analysis of a physical and land use development plan is already covered by the population and demographic analysis and need not be included.

Committee recommendation

The Committee rejected the Senate amendments to paragraphs 3 and 12 of the Second Schedule.

THIRD SCHEDULE PARAGRAPH 3

The Committee observed that the inclusion of human rights, poverty eradication and gender in a situational analysis of a physical development plan is already covered by the population and demographic analysis and need not be included.

Committee recommendation

The Committee rejected the Senate amendments to paragraphs 3 of the Third Schedule.

FOURTH SCHEDULE

The Committee agreed that the title of the Schedule to the Bill be amended to read ‘Development Control’.

Committee recommendation

The Committee agreed with the Senate amendments to the Title of the Fourth Schedule.

MIN. MC/PPB/2019/028:

ANY OTHER BUSINESS

There was no other business discussed.

MIN. MC/PPB/2019/029: ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm. The date of the next meeting was scheduled for Thursday, 6th June 2019 at 2.00 pm.

SIGNATURE..... DATE.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



MINUTES OF THE 5TH MEETING OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017) HELD ON TUESDAY, 4TH JUNE 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 12.30 PM

PRESENT

1. Sen. Mwangi Paul Githiomi, M.P. (Chairperson)
2. Hon. Aden Duale, EGH, MP (Vice Chairperson)
3. Hon. John Mbadi, EGH MP
4. Sen. Mutula Kilonzo Junior MP
5. Hon. (Dr.) Racheal, Nyamai, MP
6. Sen. (Prof.) Margaret Kamar, EGH, MP
7. Sen. Mary Seneta, M.P.
8. Sen. (Arch.) Sylvia Kasanga, M.P
9. Hon. Caleb Kositany, MP

ABSENT WITH APOLOGY

Hon. Mishi Mboko, M.P.

IN ATTENDANCE

MEMBERS OF PARLIAMENT

Hon. (Dr.) Wilberforce Oundo MP

SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Victor Bett - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Mitchell Otoro - Legal Counsel
5. Ms. Sylvia Ocharo - Research Officer
6. Ms. Joyce Chelangat - Audio Recording
7. Ms. Winnie Stephen - Intern

MIN. MC/PPB/2019/025: PRELIMINARIES

The meeting was called to order at 12.30pm followed by a word of prayer.

MIN. MC/PPB/2019/026: ADOPTION OF AGENDA

The agenda was agreed to, having been proposed by Sen. Mutula Kilonzo Junior, M.P and seconded by Hon. Aden Duale, EGH, MP. as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Mediation on the Physical Planning Bill (National Assembly Bill No. 34 of 2017)



4. Any other Business
5. Date of the next meeting/ Adjournment

**MIN. MC/PPB/2019/027: MEDIATION ON THE AMENDMENTS TO THE
PHYSICAL PLANNING BILL (NATIONAL
ASSEMBLY BILL NO. 34 OF 2017);**

The Committee continued with its deliberations as follows:

Clause 13(b)

The Bill as it is in paragraph (b) is in conflict with Article 67(2)(h) of the Constitution which provides that the National Land Commission shall monitor and have oversight responsibilities over land use planning throughout the country and hence the County Executive Committee Member cannot monitor and oversight matters land use planning.

Committee recommendation

The Committee agreed with the Senate amendments to paragraph (b).

Clause 15(c) and (d)

The Committee noted that amendment to paragraph (c) proposing to change the qualifications of the County Director of Physical and Land Use Planning from “registered physical planner” to “professional planner” is ambiguous and might give room for abuse. However, the Committee observed that there would be need for the person appointed to be in good standing with the relevant professional body. The Committee also observed that there is need to have the specific post- qualification years of experience for a person to be appointed as the County Director of Physical and Land Use Planning hence paragraph (d) should remain as it is in the Bill.

Committee recommendation

The Committee rejected the Senate amendment to paragraph (c) and proposed the following new amendment-

(c) is registered as a physical planner under the Physical Planners’ Registration Act, 1996 and is in good standing with the relevant professional body.

The Committee rejected the Senate amendment to paragraph (d) and proposed to retain the Bill as is.

Clause 17(1)

The Committee agreed with the Senate amendment to sub-clause (1) with amendment as it creates clarity on the role of the Cabinet Secretary in the preparation of the National Physical and Land Use Development Plan.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) to read as follows-



- (1) The Cabinet Secretary shall cause the Director-General of Physical and Land Use Planning to prepare the National Physical and Land Use Development Plan for approval and publication in accordance with this Part.

Clause 23

The Committee observed that the use of the term planning authorities in sub-clause (1) makes it clear that planning authorities which include the Cabinet Secretary and the County Executive Committee Member shall base the preparation of the various physical and land use development plans on the National Physical and Land Use Development Plan.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) on the use of the term ‘planning authorities’.

Clause 28(3) and (4)

The Committee observed that the Senate amendment deletes the provisions through which an aggrieved person can appeal against the decisions of the Inter-County Physical Planning Joint Committee and this would result in a vacuum in as far as redress mechanisms are concerned.

Committee recommendation

The Committee rejected the Senate amendments to clause 28(3) and (4) but agreed to include a timeline of 14 days within which a person can appeal under sub-clauses (3) and (4).

Clause 29(1)

The Committee agreed that clause 29 of the Bill be amended to remove reference to the word processing as this can interfere with the functions of county governments to prepare and approve the inter-county plans. However, the Committee observed that since the national government has the function of coordinating planning in counties, there would be need for the inter-county physical and land use plans to be coordinated and certified by the Director-General of Physical and Land Use Planning.

Committee recommendation

The Committee agreed with the Senate amendment to sub-clause (1) as follows-
Insert the words “and thereafter submit the same to the Director-General of Physical and Land Use Planning for coordination and certification” immediately after the words “County Assemblies for approval”;

Clause 32(4)

The Committee observed that section 110 of the County Governments Act deals with county spatial plans, matters which have not be dealt with by the county physical and land use development plans. The Committee however noted that the two plans may be subsequently be harmonized and thereafter one plan may suffice.

Committee recommendation

The Committee agreed with the Senate amendment to clause 32(4).



Clause 42(e)

Clause 41(3) provides that a local physical and land use plan shall be consistent with the Integrated City or Urban Development Plan as envisaged in the Urban Areas and Cities Act, 2011. In this regard, a local physical and land use plan cannot give effect to an integrated city or urban development plan as the two plans can be implemented independently. The Committee observed that the two plans should however be consistent with each other as provided under clause 41(3) of the Bill.

Committee recommendation

The Committee agreed with the Senate amendment to clause 42(e).

Clause 48

The Committee observed that the Senate amendment seeks to include “natural resources” consideration with respect to unique potential or challenges in declaring a special planning area.

Committee recommendation

The Committee agreed with the Senate amendment to clause 48.

Clause 52(3)

The Committee observed that there would be need to make it mandatory for the county executive committee member to 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.

Committee recommendation

The Committee proposed the following amendment-

Delete the words “The planning authority may” appearing immediately before the words “require a person” and substitute therefor the words “The county executive committee member shall”.

Clause 62

The Committee observed that the proposed amendments seek to insert new subclauses (1A) and (1B) which is a repetition since the matters of restoration of land are already provided in clause 52 of the Bill.

The Committee also observed that the further amendment to clause 62 to create an offence for a public officer who grants development permission or comments on an application for development permission contrary to the Act or any other law was appropriate but observed that the penalty as proposed is lenient and hence the need to create a minimum sentence.

Committee recommendation

The Committee rejected the Senate amendment to insert new sub-clauses 62(1A) and (1B). However, the Committee agreed to the Senate amendment to create an offence but put a minimum of the sentence as follows-

(2) A person who commits an offence under this section is liable, on conviction, to a fine not less than one million shillings or to imprisonment for a term not less five years or to both.



Clause 69(1)(h)

The Committee observed that the proposed amendment to paragraph (o) providing that ‘a person nominated by a registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary’ in the membership of the National Physical and Land Use Planning Liaison Committee is ambiguous and needs to be specific as it is clear that the registered association representing the largest number of entities in the private sector in Kenya is the Kenya Private Sector Alliance.

Committee recommendation

The Committee agreed to redraft paragraph (h) to read “a person nominated by the Kenya Private Sector Alliance and appointed by the Cabinet Secretary” as this would be more specific and has clarity.

New Clause 60A

The Committee observed that the Senate amendment is redundant as its provisions are already adequately covered in section 39(2) of the Land Registration Act, No. 3 of 2012

Committee recommendation

The Committee rejected the new clause 60A.

Clauses 37, 12A, 12B and 12C- COUNTY PHYSICAL AND LAND USE PLANNING CONSULTATIVE FORUMS

The Committee observed that in line with the function of county governments to deal with matters county planning as envisaged under the Fourth Schedule, there is need to establish county physical and land use planning consultative forums in each county for purposes of providing a forum for counties to consult on county and inter-county physical and land use planning.

Committee recommendation

The Committee agreed with the Senate amendments to clauses 37, 12A, 12B and 12C.

Clauses 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 67 and FOURTH SCHEDULE-USE OF THE TERM “PLANNING AUTHORITIES”.

Clause 2 of the Bill defines planning authorities to include Cabinet Secretary and the County Executive Committee Member responsible for physical and land use planning. The definition as it is would mean in effect that one has to seek approval from both the Cabinet Secretary and the County Executive Committee member which would stifle the ability of counties to undertake county planning a function that exclusively lies with counties. The Committee however observed that there would be need to recognize that there are functions of development control that may fall under the national government and hence requires approval by the Cabinet Secretary.

Committee recommendation

The Committee agreed with the Senate amendments to clauses 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 67 and the Fourth Schedule to delete planning authority and substitute with the term ‘county executive committee member’ save for inclusion of an amendment to demarcate the



functions of the national government with respect to development control that require the approval of the Cabinet Secretary.

SECOND SCHEDULE: PARAGRAPHS 3 and 12

The Committee observed that the inclusion of human rights, poverty eradication and gender in a situational analysis of a physical and land use development plan is already covered by the population and demographic analysis and need not be included.

Committee recommendation

The Committee rejected the Senate amendments to paragraphs 3 and 12 of the Second Schedule.

THIRD SCHEDULE PARAGRAPH 3

The Committee observed that the inclusion of human rights, poverty eradication and gender in a situational analysis of a physical development plan is already covered by the population and demographic analysis and need not be included.

Committee recommendation

The Committee rejected the Senate amendments to paragraphs 3 of the Third Schedule.

FOURTH SCHEDULE

The Committee agreed that the title of the Schedule to the Bill be amended to read 'Development Control'.

Committee recommendation

The Committee agreed with the Senate amendments to the Title of the Fourth Schedule.

MIN. MC/PPB/2019/028:

ANY OTHER BUSINESS

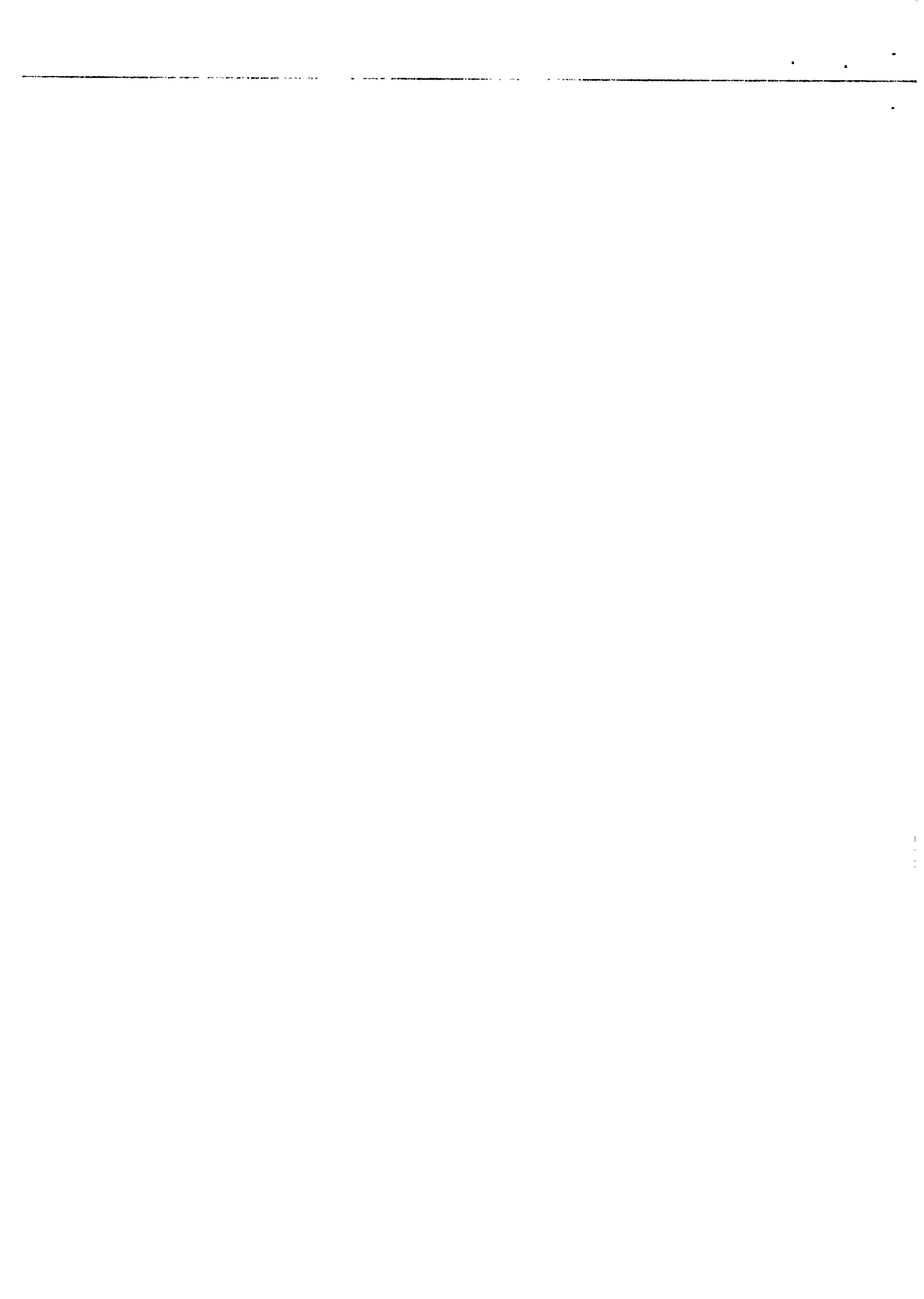
There was no other business discussed.

MIN. MC/PPB/2019/029: ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm. The date of the next meeting was scheduled for Thursday, 6th June 2019 at 2.00 pm.

SIGNATURE.......... DATE..... 6/6/2019.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



MINUTES OF THE 4TH MEETING OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017) HELD ON TUESDAY, 4TH JUNE, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 10.00 AM

PRESENT

1. Sen. Mwangi Paul Githiomi, M.P. (Chairperson)
2. Hon. Aden Duale, EGH, MP (Vice Chairperson)
3. Hon. John Mbadi, EGH MP
4. Sen. Mutula Kilonzo Junior MP
5. Hon. (Dr.) Racheal, Nyamai, MP
6. Sen. (Prof.) Margaret Kamar, EGH, MP
7. Sen. Mary Seneta, M.P.
8. Sen. (Arch.) Sylvia Kasanga, M.P
9. Hon. Caleb Kositany, MP

ABSENT WITH APOLOGY

Hon. Mishi Mboko, M.P.

IN ATTENDANCE

MEMBERS OF PARLIAMENT

Hon. (Dr.) Wilberforce Oundo MP

SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Victor Bett - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Mitchell Otoro - Legal Counsel
5. Ms. Sylvia Ocharo - Research Officer
6. Ms. Joyce Chelangat - Audio Recording
7. Ms. Winnie Stephen - Intern

MIN. MC/PPB/2019/019: PRELIMINARIES

The meeting was called to order at 10.30am followed by a word of prayer.

MIN. MC/PPB/2019/020: ADOPTION OF AGENDA

The agenda was agreed to, having been proposed by Sen. Mutula Kilonzo Junior, M.P and seconded by Hon. Aden Duale, EGH, MP. as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Confirmation of Minutes



4. Mediation on the Physical Planning Bill (National Assembly Bill No. 34 of 2017)
5. Any other Business
6. Date of the next meeting/ Adjournment

MIN. MC/PPB/2019/021: CONFIRMATION OF MINUTES

The Committee resolved that the minutes be rectified to include the presentation made by the Ministry of Lands and Physical Planning and the same would be confirmed during the next meeting.

MIN. MC/PPB/2019/022: MEDIATION ON THE AMENDMENTS TO THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017);

The Committee observed that the National Assembly concurred with the below-mentioned Senate amendments. The Committee therefore resolved to adopt the Senate amendments as concurred to by the National Assembly as follows.

Clauses 3; 4; 5(b)(iii), (vii), (viii), (ix), (x) & (xi); 9(c); 10; 11(a), (b) & (e); 12(a), (f) & (g); 13(a) & (e); 14(b); 16(h); 19(a)(i) & (ii); 20(b); 21(a), (b), (c) & (d); 24(b); 25; 28(a), (b) & (c); 29(b) & (d); 32(c)(i); 36(b) & (c)(i); 38(a)(i) & (b)(i); 39(a)(i); 43(i); 46(a); 47(a), (b)(i) & (c)(i); 52(c)(ii); 55; 57(c)(ii); 66(a); 67(a)(ii), (iii) & (v); 72(a)(ii), (iii), (iv), (v), (vi), (vii), (viii) & (c); 76(a)(ii); 4A; 49A, First Schedule; Second Schedule paragraph (b)(ii); Third Schedule paragraph (c)(d); Fourth Schedule paragraphs (d), (k) and clause 2 on the definitions of the terms “Director General of Physical Planning” & “county executive committee member”.

The Committee observed that the pending Senate amendments contained in the below-mentioned clauses all deal with the change of Title of the Bill from ‘Physical Planning’ to ‘Land Use Planning’.

Title to Parts II & III; clauses 5 (1), (2)(a), (b) & (marginal note); 6; 7; 8; 9(a), (b) & (e); 11(introductory clause & marginal note); 12(introductory clause), (b), (c), (d), (e) & (marginal note); 13(a), (c) & (marginal note); 14(1), (2) & (marginal note); 15(introductory clause & marginal note); 16 (introductory clause), (a), (b), (c), (d), (e), (f), & (marginal note); 17(2) & (marginal note); 18; 19(1)(introductory clause), (2), (3) & (marginal note); 20; 21; 22; 23(2) & (marginal note); 24 (1); 26; 27; 28(marginal note); 29(3) & (marginal note); 30; 31; 32(1), (2), (3), & (marginal note); 33; 34(3) & (marginal note); 35; 36; 38; 39; 40; 41; 42(introductory clause & marginal note); 43; 44; 45; 46; 47; 48(2), (6) & (marginal note); 50; 51(d) & (f); 56(1)(a); 63(1); 64; 66(2); 67(3), & (4); 68; 69(1)(introductory clause), (j), (3), (5), (6) & (marginal note); 70; 71; 72(1)(introductory clause), (2), (4) & (marginal note); 73; 74; 75; 76; 77; 78; 79; 80; 81; 82; 83; 85; 88; title to the Second Schedule; title to the Third Schedule, Part A and paragraphs (5) & (7); Fourth Schedule paragraphs (2), (5),

.....

(6) & (7) and clause 2 on the definition of the terms “Cabinet Secretary”, “land use planning”, “local physical planning development plan”, “National Director of Physical Planning”, “physical planning”, “Inter-County physical development plan” and “spatial planning”.

In seeking to resolve the question on the Title of the Bill, the Committee first deliberated on the definitions of the term “Physical Planning” versus “Land Use Planning” and agreed as follows-

“**Land use planning**” means the process of designating, regulating, evaluating, zoning and organizing the present and the future use and development of land in all its geographical areas and its resources to secure the physical, economic and social efficiency, health and well-being of urban and rural communities;

“**Physical planning**” means the active process of organizing the physical infrastructure and its functions 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 optimum level of land utilization in a sustainable manner;

In light of the foregoing, the Committee observed that although the Bill seeks to implement the provisions of Articles 66 and 68 of the Constitution as read with the Fifth Schedule to the Constitution on land use planning, the Bill largely contains matters relating to physical planning.

The Bill however also addresses land use planning in line with the aforementioned Article 66 of the Constitution and the National Land Use Policy (Sessional Paper No. 1 of 2017). The Committee further observed that the Bill sought to repeal the Physical Planning Act, 1996.

The Committee noted that either of the Houses can in future consider introducing a specific law to deal holistically with land use planning.

Committee recommendation

In this regard and in view of the agreed definitions on land use planning and physical planning, the Committee agreed to change the Title of the Bill to Physical and Land Use Planning Bill and effect the consequential amendments to Title to Parts II & III; clauses 5 (1), (2)(a), (b) & (marginal note); 6; 7; 8; 9(a), (b) & (e); 11(introductory clause & marginal note); 12(introductory clause), (b), (c), (d), (e) & (marginal note); 13(a), (c) & (marginal note); 14(1), (2) & (marginal note); 15(introductory clause & marginal note); 16 (introductory clause), (a), (b), (c), (d), (e), (f), & (marginal note); 17(2) & (marginal note); 18; 19(1)(introductory clause), (2), (3) & (marginal note); 20; 21; 22; 23(2) & (marginal note); 24 (1); 26; 27; 28(marginal note); 29(3) & (marginal note); 30; 31; 32(1), (2), (3), & (marginal note); 33; 34(3) & (marginal note); 35; 36; 38; 39; 40; 41; 42(introductory clause & marginal note); 43; 44; 45; 46; 47; 48(2), (6) & (marginal note); 50; 51(d) & (f); 56(1)(a); 63(1); 64; 66(2); 67(3), & (4); 68; 69(1)(introductory clause), (j), (3), (5), (6) & (marginal note); 70; 71; 72(1)(introductory clause), (2), (4) & (marginal note); 73; 74; 75;



76; 77; 78; 79; 80; 81; 82; 83; 85; 88; title to the Second Schedule; title to the Third Schedule, Part A and paragraphs (5) & (7); Fourth Schedule paragraphs (2), (5), (6) & (7) and clause 2 on the definition of the terms “Cabinet Secretary”, “land use planning”, “local physical planning development plan”, “National Director of Physical Planning”, “physical planning”, “Inter-County physical development plan” and “spatial planning”.

Clause 5

The Committee observed that the proposed amendment to paragraph (o) providing that ‘a person nominated by a registered association representing the largest number of entities in the private sector in Kenya’ in the membership of the National Physical and Land Use Planning Consultative Forum is ambiguous and needs to be specific as it is clear that the registered association representing the largest number of entities in the private sector in Kenya is the Kenya Private Sector Alliance. Further, the Committee observed that the proposed amendment to paragraph (p) referring to ‘a person nominated by a registered national association representing the largest number of residents in Kenya’ lacks clarity and requires to be amended. The Committee also observed that the proposed amendment to sub-clause (3) deals with appointment of the members to the Forum under paragraphs l, m, n, o, p and q by notice in the Gazette.

Committee recommendation

The Committee rejected the Senate amendments to paragraphs (o) and (p) agreed to the following amendments-

Paragraphs (o) and (p) be amended to read-

(o) a person nominated by the Kenya Private Sector Alliance and appointed by the Cabinet Secretary;

(p) a person nominated by the registered associations representing residents;

The Committee agreed to the Senate amendment to sub-clause (3).

Clause 9(d)

The Bill as it is in paragraph (d) is in conflict with Article 67(2)(h) of the Constitution which provides that the National Land Commission shall monitor and have oversight responsibilities over land use planning throughout the country and hence the Cabinet Secretary cannot monitor and oversight matters land use planning.

Committee recommendation

The Committee agreed with the Senate amendment to paragraph (d).

Clause 11(c) and (d)

The Committee noted that amendment to paragraph (c) proposing to change the qualifications of the Director General of Physical and Land Use Planning from “registered physical planner” to “professional planner” is ambiguous and might give room for abuse. However, the Committee observed that there would be need for the person appointed to be in good standing with the relevant professional body. The Committee also observed that there is need to have the specific



post- qualification years of experience for a person to be appointed as a Director-General of Physical and Land Use Planning hence paragraph (d) should remain as it is in the Bill.

Committee recommendation

The Committee rejected the Senate amendment to paragraph (c) and proposed the following new amendment-

(c) is registered as a physical planner under the Physical Planners' Registration Act, 1996 and is in good standing with the relevant professional body.

The Committee rejected the Senate amendment to paragraph (d) and proposed to retain the provision in the Bill as it.

MIN. MC/PPB/2019/023:

ANY OTHER BUSINESS

There was no other business discussed.

MIN. MC/PPB/2019/024: ADJOURNMENT

There being no other business the meeting was adjourned at 11.30 pm. The date of the next meeting was scheduled for at 12.30 pm on the same day.

SIGNATURE.......... DATE..... 6/6/2019.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



MINUTES OF THE 3RD MEETING OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017) HELD ON WEDNESDAY, 29TH MAY, 2019 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING AT 10.00 AM

PRESENT

1. Sen. Mwangi Paul Githiomi, M.P. (Chairperson)
2. Hon. Aden Duale, EGH, MP (Vice Chairperson)
3. Hon. John Mbadi, EGH MP
4. Sen. Mutula Kilonzo Junior
5. Hon. (Dr.) Racheal, Nyamai, MP
6. Sen. (Prof.) Margaret Kamar, EGH, MP
7. Sen. Mary Seneta, M.P.
8. Sen. (Arch.) Sylvia Kasanga, M.P
9. Hon. Mishi Mboko, M.P.

ABSENT WITH APOLOGY

Hon. Caleb Kositany, MP

IN ATTENDANCE

MEMBERS OF PARLIAMENT

Hon. (Dr.) Wilberforce Oundo MP

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Ms. Farida Karoney, OGW - Cabinet Secretary
2. Mr. Augustine K. Masinde - Director of Physical Planning
3. Mr. Alfred Mwanzia - Physical Planner
4. Mr. Brian Ndelena - Physical Planner
5. Dr. Herbert Musoga - Director

SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Victor Bett - Clerk Assistant III
3. Mr. Ahmed Odhowa - Principal Researcher
4. Ms. Jemimah Waigwa - Legal Counsel I
5. Mr. Mitchell Otoro - Legal Counsel
6. Ms. Sylvia Ocharo - Research Officer
7. Ms. Joyce Chelangat - Audio Recording
8. Mr. Abdalla Mbore - Sergeant At Arms
9. Ms. Nancy Akinyi - Intern



MIN. MC/PPB/2019/012: PRELIMINARIES

The meeting was called to order at 10.30 pm followed by a word of prayer. Thereafter the Chairperson had a communication to make regarding the nomination of Sen. Mutula Kilonzo Jnr. MP to replace Sen. Johnes Mwaruma, MP.

MIN. MC/PPB/2019/013: ADOPTION OF AGENDA

The agenda was agreed to, having been proposed by Sen. Mary Seneta, M.P. and seconded by Sen. (Arch.) Sylvia Kasanga, M.P as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Confirmation of Minutes
4. Presentation by the Ministry of Lands and Physical Planning
5. Mediation of the Physical Planning Bill (National Assembly Bill No. 34 of 2017)
6. Any other Business
7. Date of the next meeting/ Adjournment

MIN. MC/PPB/2019/014: CONFIRMATION OF MINUTES

The Minutes were confirmed as true record of the proceedings and was proposed by Sen. (Arch.) Sylvia Kasanga, M.P and seconded by Sen. Mary Seneta, MP.

MIN. MC/PPB/2019/015: PRESENTATION BY THE MINISTRY OF LANDS AND PHYSICAL PLANNING ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017)

The Chairperson invited the Cabinet Secretary, Ms. Farida Karoney, and her team to the meeting, being the originators of the Bill and asked her to lead the Committee through their presentation on aspects relating to the title of the Bill Physical Planning Bill (National Assembly Bill No. 34 of 2017).

The Cabinet Secretary urged the Committee to sustain the Title of the Bill as it is “Physical Planning Bill (National Assembly Bill No. 34 of 2017)”.

Thereafter the Cabinet Secretary invited the Director of Physical Planning in the Ministry of Lands and Physical Planning, Mr. Augustine K. Masinde to take the Committee through his presentation on the Bill.



The Director presented as follows:

1.0 INTRODUCTION

Constitutional and Statutory Provisions with regard to Physical Planning

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 of the Fourth Schedule** - land planning
- **Section 8 of Part 2 of the Fourth Schedule** - 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

Conceptual Definitions

a) Physical planning

Physical Planning is concerned with the general pattern of land use, standards and development control aspects such as; the character and location of public buildings and structures, the design of streets, the location of transit and transportation systems and all other physical facilities which are necessary and desirable to promote economic betterment, comfort, convenience and general welfare.

The Physical Planning function entails provision of spatial frameworks for arrangement and organization of socio-economic activities on space at the national, regional, county and local levels to achieve optimal use and sustainable development for the well-being of the society.

As a practice and function, physical planning is an amalgam of the various sub disciplines that include: urban planning, regional planning, county planning, town planning, rural planning, spatial planning, land planning and land use planning.

The expected outcomes of physical planning processes and practice include: public order, spatial convenience, aesthetics, economy of land use, congruency, public health, public morality, public safety, public security and defense, equity, efficiency and productivity. These outcomes are consistent with the constitutional land policy principles in Article 60 as well as the objectives of regulation of interests and/or rights in the use of land as per Article 66.



b) Land Use Planning

Land use planning refers to the process of zoning a specified parcel of land to indicate the best present and future uses with the aim of regulating its use and development. Land Use Planning allocates available space among competing user groups/activities.

As a practice, land use planning is used as one of the instruments that seek to promote the principles of physical planning in terms of ensuring optimal and efficient use of land. In common usage, land use planning is practiced by way of formulating zoning plans and local area development policies. In this sense, it is an **integral part** of the physical planning function and practice.

Refer to the **First, Second and Third Schedules** of the **Physical Planning Act Cap 286** and the **Second, Third and Fourth Schedules** of the **Physical Planning Bill No. 34 of 2017**.

Physical Planning Bill has been drafted to revise the Physical Planning Act, Cap 286 for the purpose of bringing the existing Act into accord with the Constitutional and policy imperatives. However, the Bill does not depart markedly from the existing Act in terms of objects, purpose and scope.

As outlined in the respective substantive provisions, schedules and regulations relating to preparation of plans, their approval, implementation, enforcement and development control, the substantive matters and expected outcomes of both the existing Act and the Bill are essentially physical planning. In this respect therefore, it would be erroneous to change the title of the Bill to Land Use Planning when its substantive matter, procedures and expected outcomes are entirely physical planning.

The above conceptual definitions are supported by the following authorities among others:

According to Jha, Abhas K, Barenstein, Jennifer Duyne Phelps, Prescilla M, et-al, 2010 **Physical Planning is a design exercise that uses the Land use plan as a framework to propose the optimal physical infrastructure for a settlement or area**, including infrastructure for public services, transport, economic activities, recreation and environmental protection. A Physical plan may be prepared for an urban area or a rural area. A Physical plan for an urban region can have both rural and urban components, although the latter usually predominates. A Physical plan at a regional scale can also deal with the provision of specific regional infrastructure such as regional roads or bulk water supply system."

According to Webster (1958) Physical Planning **"is concerned with general pattern of land use, the character and location of public buildings and structures, the design of streets, the location and development of transit and transportation system and all other physical facilities which are necessary or desirable to promote economic betterment, comfort, convenience and general welfare."**

According to Jha, Abhas K, Barenstein, Jennifer Duyne Phelps, Prescilla M, et-al, 2010; **"Land-use planning is a public policy exercise that designates and regulates the use of land** in order to improve a community's physical, economic and social efficiency and well-being. By considering social economic trends as well as physical and geographical (such as topography and



ecology), planning helps identify the preferred land uses that will support local development goals".

The Director made reference to a table in his presentation page 6 (Jha, Abhas K, Barenstein, Jennifer Duayne Phelps, Prescilla M, et-al, 2010.) explaining how a Physical Development Plan process goes beyond Land use planning.

2.0 POLICY CONTEXT

2.1 Sessional Paper No. 10 of 1965 on African Socialism and its Application to Development Planning In Kenya

Paragraph 139 of Sessional Paper No. 10 of 1965 on African Socialism and its Application to Development Planning In Kenya defines Physical Planning as follows "Physical Planning deals with land use and layout, and locational, transport and design problems in both rural and urban areas."

The words "deals with land use and layout" are important because:

- The Policy recognizes that Land use is a subset of Physical Planning
- Physical Planning goes beyond land use by employing design (lay out) to address the issue identified in paragraph 138 of the Policy - "need to plan and control how resources are used"

The outcomes of the Policy were:

- (i) **Development and Use of Land (Planning) Regulations 34 of 1967.**
- (ii) **Land Planning Act Cap 303** which made provisions for planning the use and development of land.
- (iii) Preparation of **Regional Physical Development Plans** for Central, Nyanza, Western, Eastern, Coast and Rift Valley Provinces. These were prepared following a Government directive that the Physical Planning Department (formerly Town Planning Department) to undertake planning for physical development at the national, regional and local levels to ensure greater coordination and integration of physical and socio-economic development planning.
- (iv) **Human Settlements in Kenya: A strategy for Urban and Rural Development, 1978.** The strategy provided a framework for management of future urban growth and provided a perspective within which the five year development plans would be drawn. In addition, the strategy proposed a hierarchy of service centres namely; growth centres, urban centres, rural centres, local centres and market centers. The purpose of this strategy was to provide a rationale for location of services and to spur uniform development across the country.

All these outcomes of this Policy were physical planning processes.



2.2 Sessional Paper No. 1 of 1986 on economic management for renewed growth in Kenya

This Policy aimed at achieving regional balance in growth and in the provision of infrastructure and basic need services. The Policy recognized the need to develop an urban hierarchy for the respective districts by identifying the key sectors that require to be designated to develop rural areas. Chapter 4 of this Policy emphasized the need to apply physical planning instruments and strategies to address the acute rural urban imbalance in development.

The outcome of this Policy was the identification of Rural Trade and Production Centres as engines of rural development.

2.3 Kenya Vision 2030

The recommendations of this Policy in as far as Physical planning, included formulation of the National Master Plan which has been realized in form of the National Spatial Plan (NSP). The NSP addresses all the challenges that need to be addressed both at sectoral and national level to unlock the potential for development of this country to make Kenya globally competitive and ensure high quality of life for her people. In this respect, the NSP both in terms of objectives and scope clearly goes beyond the narrow perspective of a national land use plan.

2.4 Sessional Paper No. 1 2017 on National Land Use Policy (NLUP)

(i). Objectives

The principal objectives of NLUP are:

- (i) Land use planning, resource allocation and resource management for sustainable development to promote public good and general welfare;
- (ii) Environmental management and sustainable production in the utilization of land resources;
- (iii) Coordination and integration of institutional linkages in planning at sectoral and cross-sectoral levels to foster collaboration and decision making among different land users;
- (iv) Equitable utilization of land resources to meet governance, social-economic and cultural obligations of the people of Kenya;
- (v) Anchoring land development initiatives that will respond positively to the market demands;
- (vi) Integrated framework for the preparation of a National Spatial Plan and review of various land use plans;
- (vii) Mainstreaming of gender and special interest groups in land use planning and management;
- (viii) A comprehensive and efficient CIS-based national land use information management system;
- (ix) An appropriate, independent, accountable and democratic institution for land use conflict resolution; and
- (x) Mitigating problems associated with poor land use.

These objectives are broad and cuts across the entire spectrum of land use practice in the country. To this extent as it can be observed that land use planning is just one of the elements



that the Policy seeks to address. Physical Planning provides a framework to ensure all these objectives are harmonized through implementable frameworks.

(ii). Scope of Land Uses in Kenya

The Policy addresses diverse issues that include land capability, population, land use and land cover, land availability, agricultural development, pastoralism and livestock development, industrial development, human settlements, tourism, environmental degradation, climate change, land tenure systems, land market and taxation regime.

Although the Policy defines land use at **page 13** as "activities to which land is subjected to and is often determined by economic returns, social cultural practices, ecological zones and public policy", the scope and content of the policy goes beyond this contextual definition.

At **page 21** the Policy recognizes that *"currently, land use and environmental management is guided by multiple sectoral laws and guidelines which are not harmonized"*.

The scope of the Policy goes beyond the subject of land use planning and covers the following thematic areas identified at **pages 20-25** of the Policy: **Agricultural development, pastoralism and livestock development, Industrial development, mining and energy, tourism, transport and infrastructure, natural resources and environment, environmental degradation, agriculture environment and management, Coastal environmental management and conservation, Rangelands degradation, Urban environment management, Climate change, Human settlements, urban land uses, land tenures systems, land markets and taxation regimes, and sectoral land use conflicts.**

(iii). Policy Guidelines, Principles and Strategies

The Policy at **page 33** recommends that "Allocation of lands and issuance of titles should be done on the basis of **approved physical development plans and approved survey plans, approved local area zoning regulations** and policy guidelines" and that "all lands should be managed according to their actual suitability and **local land use plans** be required to implement proper management".

Therefore, the Policy recognizes **two types of plans** namely **physical development plans and land use plans**. The former incorporates zoning regulations, policy guidelines, and layout and forms the basis of approved survey plans, while the latter refers to actual land suitability and broad prescription of use.

In practice, land use plans are prepared as an intergral part of **physical development plans** prepared at national, regional and local levels. There is no stand-alone land use plan.

(iv). **Land Management and Administration** At **pages 34 and 35** the Policy recommends the following interventions:

- The National Cadastre should be predicted upon **National Spatial Plans and policy guidelines** specific to various aspects of land use and practices.



- All leases of public land will be issued with binding conditions stating clearly the intended use of the land and which shall comply with the relevant **local land use plans** and the **National Spatial Plan**.
- Management of reserved public land should be predicated on **approved development plans (physical development plans), local area development policies (zoning regulations) or technical guidance** issued by the relevant planning authorities at national and county level.

Therefore, land administration and management should be carried out on the basis of land use plans and approved development plans.

(v). Land Taxation

At page 35 the Policy provides that land valuation shall be based on **approved development plans and relevant local area land use and development guidelines**. Therefore developments plans are different from land use plans.

Local area land use plans are zoning policies which are part of the approved physical development plans.

(vi). Population Growth and Distribution

To address the issues of population growth and distribution, the Policy at **page 36** directs the national and county governments to:

- Develop a **National Spatial Plan** to provide an integrated framework for development of the country including guidelines for sustainable rural and urban planning management;
- Prepare and implement **integrated physical development plans** specific to all counties, urban and metropolitan areas, cities and local centers;
- Prepare and enforce **land use plans (zoning regulations) and policy guidelines** to address development activities that take place within the peri-urban areas to control urban sprawl, subdivision of land, and conversion of land to different uses as well as control of ribbon type of urban development.

(vii). Physical Development Planning

The Policy at **pages 54-56**:

- Recognizes the process of **physical development planning**,
- Preparation and implementation of physical development plans for urban and rural areas
- The establishment of the **National Directorate of Physical Planning**
- The need to establish and implement an effective **system for physical planning** at national and county levels
- Recognizes a **physical planning legislation**
- Recognizes existence of **physical planning regulations**

Physical Planning is therefore a **distinct discipline** that comprises of institutions, legislation, regulations, and procedures of plan preparation and implementation. Land use planning is just a part of it.



(viii). Implementation Framework

The Policy at **pages 58 and 59** establishes the National Council for Land Use Policy chaired by the Head of Public Service to coordinate sectoral integration and mobilization of resources for implementation of this policy. Membership is drawn from several line ministries, county governments, National Land Commission, NEMA, KWS and KFS. The secretary is the **National Director of Physical Planning and not** National Director of Land Use Planning.

The Council draws membership from the several ministries and agencies that carry out sector based land use practices and the Ministry responsible for lands and physical planning.

(ix). Ministry of Lands and Physical Planning

The Policy provides at **page 60** that "**The National Director of Physical Planning shall be the lead national authority and advisor on matters of physical planning as well as urban development and management**"

The policy recognizes and buttresses the discipline of Physical Planning. **(x). Review of Existing Legislation**

The Policy at **page 66** recognizes the **existence of various sectoral laws** that have a bearing on land use. These include : These include; Agriculture Food and Fisheries Act, 2013, Survey Act, Cap 299, Environmental Management and Coordination (Amendments) Act 2015, Water Act, Wildlife Conservation and Management Act, 2013, Kenya Maritime Authority Act Cap 370, 2012, Roads Act, Climate Change Act, 2016, Physical Planning Act Cap 286, Land Act 2012, National Land Commission Act 2012, County Governments Act, 2012, Land Registration Act 2012, Urban Areas and Cities Act, 2012, Forestry Act, 2005, Protected Areas Act. These laws will be reviewed to bring them in to accord with the Policy.

The Policy doesn't implicitly or explicitly demand a change to the title of the Physical Planning Act Cap 286 but rather to align it with the Policy. Therefore the title should be retained.

(xi). Review of Policy Frameworks

The Policy at **page 66** proposes revision of the following sectoral policy frameworks to bring them into accord with the recommendation of the Policy. These include;

- (a) National Land Policy
- (b) National Urban Development Policy
- (c) National Transportation Policy
- (d) Agriculture, Food and Fisheries
- (e) Maritime Policies
- (f) Wildlife Policies
- (g) Environmental Conservation Policies
- (h) Forestry Conservation Policies
- (i) **Kenya Vision 2030**

The National Spatial Plan has provided guidance in principles and guidelines to the above issues.



(xii). Preparation of Planning Guidelines and Manuals

The Policy at **page 67** requires the **National Director of Physical Planning** to prepare and disseminate appropriate **physical planning guidelines, manuals and standards** in a multisectoral and participatory manner.

The Policy recognizes that the physical planning discipline has guidelines, manuals and standards.

(xiii). Dissemination of the Land Use Policy Guidelines and Principles

The Policy at **page 67** requires the Ministry of Lands and Physical Planning through the **National Director of Physical Planning** to disseminate land use policy guidelines and principles.

3.0 CONCLUSION

Consequently, flowing from the above analysis they conclude:

1. That, the Policy does not restrict itself to the narrow subject of land use planning but covers the entirety of broad subjects of land use practices.
2. The Policy recognizes and requires Government to establish and give impetus the office of the National Director of Phys as the lead agency on matters of policy, strategy and quality assurance in Physical Planning across the country.
3. The Policy recognizes and requires Governments to prepare and approve physical development plans to apply across Kenya at the national, regional, county, urban and rural areas.
4. The policy requires Governments to prepare land use plans to inform zoning of land at national, regional, county and local levels as integral parts of Physical Planning.
5. NLUP recognizes the physical planning legislation as one of critical legal frameworks for realization of intentions of the Policy.
6. For that reason, the title of the Bill is consistent with constitutional imperatives, policy aspirations and is therefore appropriate.

Thereafter the Committee made clarifications on the presentation and then released the Ministry officials.



MIN. MC/PPB/2019/016:

MEDIATION ON THE AMENDMENTS TO
PHYSICAL PLANNING BILL (NATIONAL
ASSEMBLY BILL NO. 34 OF 2017);

Title of the Bill

The Committee proceeded with the consideration of the Title of the Bill. The Members noted that the Bill contained aspects of both the two terms “Land Use Planning” vis a vis “Physical Planning”. However, the Committee was not able to agree on either of the two as a title for the Bill. Therefore, the Members proposed that both terms “Land Use Planning” and “Physical Planning be captured in the title of the Bill.

Committee resolution

The Committee tasked the secretariat to draft definitions of “Land Use Planning” and “Physical Planning for consideration in the next meeting in light of the proposal that the title of the Bill contain both terms. The Committee would then agree on the proposal to include the two terms; “Land Use Planning” and “Physical Planning, in the title of the Bill.

The Committee resolved to defer the consideration of the remaining clauses to the next sitting to after the consideration of draft definitions of “Land Use Planning” and “Physical Planning”.


MIN. MC/PPB/2019/017:

ANY OTHER BUSINESS

There was no other business discussed.

MIN. MC/PPB/2019/018: **ADJOURNMENT**

There being no other business the meeting was adjourned at 1.30 pm. The date of the next meeting was scheduled for Tuesday, 4th June, 2019 at 10.00 am.

SIGNATURE.......... DATE.....6/6/2019.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



MINUTES OF THE 2ND MEETING OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017) HELD ON TUESDAY, 21ST MAY, 2019 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING AT 3.00PM

PRESENT

1. Sen. Mwangi Paul Githiomi, M.P. (**Chairperson**)
2. Hon. Aden Duale, EGH, MP (**Vice Chairperson**)
3. Hon. Dr. Racheal, Nyamai, MP
4. Sen. (Prof.) Margaret Kamar, EGH, MP
5. Sen. Mary Seneta, M.P.
6. Sen. (Arch.) Sylvia Kasanga, M.P
7. Sen. Mwaruma Johnes, M.P
8. Hon. Mishi Mboko, M.P.

ABSENT WITH APOLOGY

1. Hon. John Mbadi, EGH MP
2. Hon. Caleb Kositany, MP

IN ATTENDANCE

1. Hon. (Dr. Wilberforce Oundo MP
2. Sen. Mutula Kilonzo Junior

SECRETARIAT

- | | |
|---------------------------|-----------------------|
| 1. Mr. Leonard Machira | - Clerk Assistant I |
| 2. Mr. Victor Bett | - Clerk Assistant III |
| 3. Mr. Ahmad Guliye | - Clerk Assistant III |
| 4. Ms. Christine Odhiambo | - Legal Counsel I |
| 5. Mr. Mitchell Otoro | - Legal Counsel |
| 6. Ms. Joyce Chelangat | - Audio Recording |
| 7. Ms. Hawa Abdi | - Sergeant At Arms |
| 8. Ms. Sharon Eleman | - Intern |

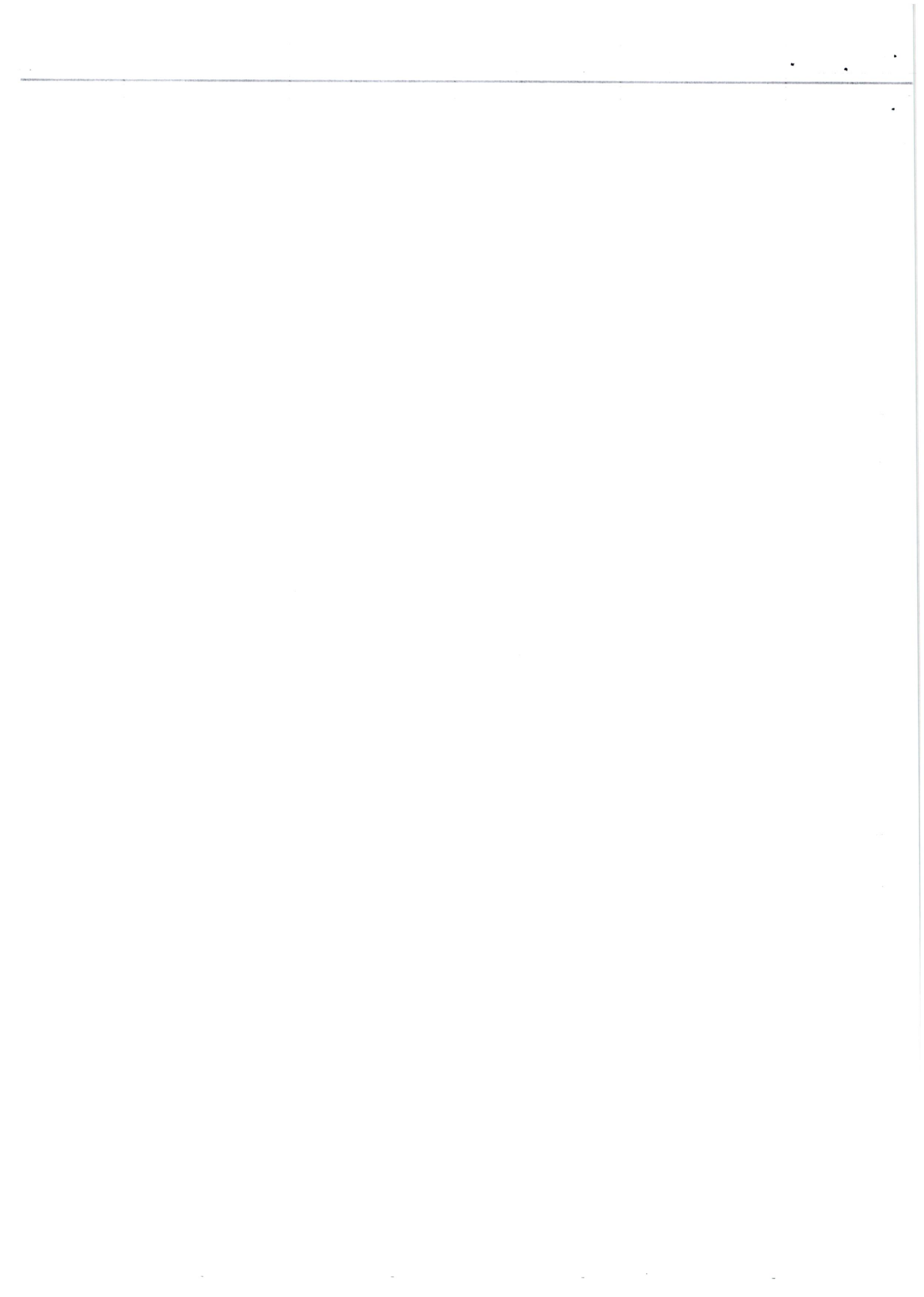
MIN. MC/PPB/2019/006: PRELIMINARIES

The meeting was called to order at 3.30pm followed by a word of prayer.

MIN. MC/PPB/2019/007: ADOPTION OF AGENDA

The agenda was agreed to, having been proposed by Hon. Aden Duale, EGH, MP and seconded by Sen. Mwaruma Johnes, MP as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Confirmation of Minutes



4. Mediation of the Physical Planning Bill (National Assembly Bill No. 34 of 2017)
5. Any other Business
6. Date of the next meeting/ Adjournment

MIN. MC/PPB/2019/008: CONFIRMATION OF MINUTES

The Minutes were confirmed as true record of the proceedings and was proposed by Hon. Aden Duale, EGH, MP and seconded by Sen. Mwaruma Johnes, MP.

MIN. MC/PPB/2019/009: MEDIATION OF THE AMENDMENTS TO PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017);

Title of the Bill

The Committee proceeded with the consideration of the Title of the Bill noting that the Senate had amended the title of the Bill from “Physical Planning Bill” to “Land Use Planning Bill” and made further amendments to the entire Bill by deleting the term ‘physical planning’ and substituting it with the term “land use planning” wherever it appeared in the Bill.

The Committee considered arguments in support of the two terms; “Physical Planning Bill” and “Land Use Planning Bill” based on the following grounds:

- i. The definition of the term “Land Use Planning” vis a vis “Physical Planning” and which of the two encompassed the other;
- ii. Which of the two terms “Land Use Planning” and “Physical Planning” best captured the contents of the Bill;
- iii. The provisions of the Constitution, particularly Article 66 and the Fourth Schedule to the Constitution. The discussion also focused on whether the Constitution referred to the term physical planning or land use planning;
- iv. The usage of the two terms; physical Planning and Land Use Planning in other planning jurisdictions, particularly in Commonwealth countries;
- v. The Physical Planning Act, 1996 and Sessional Paper No.1 of 2017 on Land Use Policy; and
- vi. The submissions made by stakeholders such as the Ministry of Lands and Physical Planning, the National Land Commission (NLC), Constitutional bodies among others.

Committee resolution

The Committee was unable to reach a consensus on the matter. Therefore, the Committee resolved to defer the conclusion of the discussion on the title of the Bill to the next sitting to facilitate further consultations with a view to reaching a consensus on the matter.

MIN. MC/PPB/2019/010: ANY OTHER BUSINESS

The Committee resolved to have the 1st Meeting of the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 on Tuesday, 28th May, 2019 as from 9.00am.

.....

MIN. MC/PPB/2019/011: ADJOURNMENT

There being no other business the meeting was adjourned at 5.30 pm. The date of the next meeting was scheduled for Wednesday, 28th May, 2019 at 10.00 am.

SIGNATURE.......... DATE..... 29/5/2019.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



MINUTES OF THE 1ST MEETING OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017) HELD ON TUESDAY, 7TH MAY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT NOON.

PRESENT

1. Hon. Aden Duale, EGH, MP
2. Hon. John Mbadi, EGH MP
3. Hon. Dr. Racheal, Nyamai, MP
4. Hon. Caleb Kositany, MP
1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Mwaruma Johnes, M.P.

ABSENT WITH APOLOGY

1. Hon. Mishi Mboko, M.P.
2. Sen. (Prof.) Margaret Kamar, EGH, MP
3. Sen. Mary Seneta, M.P.
4. Sen. (Arch.) Slyvia Kasanga, M.P

IN ATTENDANCE

Hon. (Dr. Wilberforce Oundo MP

SECRETARIAT

1. Ms. Vane Akama - Director Legal Services National Assembly
2. Mr. Leonard Machira - Clerk Assistant I
3. Mr. Ahmad Guliye - Clerk Assistant II
4. Mr. Victor Bett - Clerk Assistant III
5. Ms. Christine Odhiambo - Legal Counsel I
6. Mr. Mitchell Otoro - Legal Counsel
7. Mr Salim Lorot - Legal Counsel II
8. Ms. Joyce Chelangat - Audio Recording
9. Ms. Hawa Abdi - Sergeant At Arms
10. Ms. Sharon Eleman - Intern

MINUTE MCPPB/2019/001: PRELIMINARIES

The meeting was called to order at 12.01pm followed by a word of prayer.

MINUTE MCPPB/2019/002: ADOPTION OF AGENDA

The agenda was agreed to having been proposed by Sen. Mwaruma Johnes, MP and seconded by Hon. (Dr.) Racheal, Nyamai, MP as follows;

1. Prayers & Preliminaries.
2. Adoption of the agenda.
3. Election of the Chairperson and Vice Chairperson
4. Mediation of the Physical Planning Bill (National Assembly Bill No. 34 of 2017).



5. Any other Business.
6. Date of the next meeting/ Adjournment.

MINUTE MCPPB/2019/003: ELECTION OF THE CHAIRPERSON AND VICE

CHAIRPERSON

The Members unanimously elected Sen. Mwangi Paul Githiomi, M.P. to be the Chairperson and Hon. Aden Duale, EGH, MP as the Vice Chairperson.

MINUTE MCPPB/2019/004:

MEDIATION OF THE AMENDMENTS TO PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017);

The Committee was briefed that the National Assembly agreed to the Senate amendments to clauses 3; 4; 5(b)(iii), (vii), (viii), (ix), (x) & (xi); 9(c); 10; 11(a), (b) & (e); 12(a), (f) & (g); 13(a) & (e); 14(b); 16(h); 19(a)(i) & (ii); 20(b); 21(a), (b), (c) & (d); 24(b); 25; 28(a), (b) & (c); 29(b) & (d); 32(c)(i); 36(b) & (c)(i); 38(a)(i) & (b)(i); 39(a)(i); 43(i); 46(a); 47(a), (b)(i) & (c)(i); 52(c)(ii); 55; 57(c)(ii); 66(a); 67(a)(ii), (iii) & (v); 72(a)(ii), (iii), (iv), (v), (vi), (vii), (viii) & (c); 76(a)(ii); 4A; 49A, First Schedule; Second Schedule paragraph (b)(ii); Third Schedule paragraph (c)(d); Fourth Schedule paragraphs (d), (k) and clause 2 on the definitions of the terms “Director General of Physical Planning” & “county executive committee member”.

The Committee was further informed that National Assembly Committee had rejected the Senate Amendments to the title to **Parts II & III; clauses 5(9)(a), (b)(i) & (d); 6; 7; 8; 9(a), (b), (d) & (e); 11(c) & (d); 12(b), (c), (d) & (e); 13(b), (c) & (d); 14(a) & (c); 15; 16 (a), (c), (d), (e), (f), (g) & (i); 17; 18; 19(a)(iii), (b), (c) & (d); 20(a), (c), (d) & (e); 21(e); 22; 23; 24 (a); 26; 27; 28(d), (e) and (f); 29(a), (c) & (e); 30; 31; 32(a), (b), (c)(ii), (d) & (e); 33; 34; 35; 37; 38(a)(ii), (iii), (b)(ii), (c), (d), (e), (f), (g) & (h); 39(a)(ii), (b) & (c); 40; 41; 42; 43(ii); 44; 45; 46(b); 47(b)(ii) & (d); 48; 50; 51; 52(a), (b), (c)(i), (d) & (e); 53; 54; 56; 57(a), (b) & (c)(i); 58; 59; 60; 61; 62; 63; 64; 66(b); 67(a)(i), (b) & (c); 68; 69(a)(i), (iv), (vi), (b), (c), (d) & (e); 70; 71; 72(a)(i), (b) & (e); 73; 74; 75; 76(a)(i) & (b); 77; 78; 79; 80; 81; 82; 83; 85; 88; 12A; 12B; 12C; 60A; Second Schedule paragraphs (a), (b)(i) & (c); Third Schedule paragraphs (a), (b), (c)(c) & (e); Fourth Schedule paragraphs (a), (b), (c), (e), (f), (g), (h), (i), (j), (l), (m) & (n) and clause 2 on the definition of the terms “planning”, “land use planning”, “local land use development plan”, “physical planning”, “Inter- County Land Use Development Plan”, “spatial planning” & “registrar”.**

The Committee was further informed that the clauses that were rejected by the National Assembly mainly dealt with the following key issues as provided for in the Bill:

- i. The title of the Bill;
- ii. The County consultative forum; and
- iii. The definition of the term “Planning authorities”



The Committee agreed that the deliberations on the Bill be focused on the above – mentioned issues instead of proceeding on a clause per clause basis. The Committee then deliberated on the Bill as follows:

Title of the Bill

The Committee noted that the Senate had amended the title of the Bill from “Physical Planning Bill” to “Land Use Planning Bill” and made further amendments to the entire Bill by deleting the term ‘physical planning’ and substituting it with the term “land use planning” where it appeared in the Bill.

The Committee considered arguments in support of the two terms; “Physical Planning Bill” and “Land Use Planning Bill” based on the following grounds:

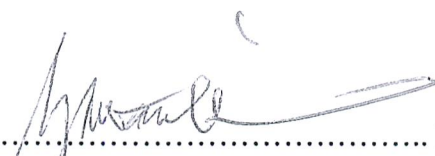
- i. The definition of the term Land Use Planning vis a vis Physical Planning, and which of the two encompassed the other;
- ii. The provisions of the Constitution, particularly Article 66 and the Fourth Schedule to the Constitution. The discussion also focused on whether the Constitution referred to the term physical planning or land use planning;
- iii. The usage of the two terms; Physical Planning and Land Use Planning in other planning jurisdictions, particularly in Commonwealth countries;
- iv. The submissions made by stakeholders such as the Ministry of Lands and Physical Planning, the National Land Commission (NLC), among others.

Committee resolution

The Committee noted that three Members were engaged in official duties out of the country and had registered their apologies. Therefore, the Committee resolved to defer the conclusion of the discussion on the title of the Bill to the next sitting to facilitate further consultations with a view to reaching a consensus on the matter.

MINUTES/ MCPPB/2019/ 5: ADJOURNMENT

There being no other business the meeting was adjourned at 1.50 pm. The date of the next meeting was scheduled for Tuesday, 21st May 2019 at 11.00 am.

SIGNATURE.......... DATE 21-05-2019
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



Appendix III

Mediated

Version of the

Bill





REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 34 of 2017)

**THE PHYSICAL AND LAND USE
PLANNING BILL, 2017**

(A Bill published in the Kenya Gazette Supplement No. 143 of 2017 and passed by the National Assembly, with amendments, on 3rd May, 2018)

N.A. /B/No. 34/2017



THE PHYSICAL AND LAND USE PLANNING BILL, 2017
ARRANGEMENT OF CLAUSES

Clauses

PART I – PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of the Act.
- 4—Values and Principles.
- 5—Principles and norms of physical and land use planning.

**PART II – PHYSICAL AND LAND USE PLANNING
INSTITUTIONS**

- 6—National Physical and Land Use Planning Consultative Forum.
- 7—Functions of the National Physical and Land Use Planning Consultative Forum.
- 8—National Physical and Land Use Planning Consultative Forum Meetings.
- 9—Functions of the National Land Commission.
- 10—Functions of the Cabinet Secretary.
- 11—Director-General of Physical and Land Use Planning.
- 12—Qualifications of the Director-General of Physical and Land Use Planning.
- 13—Responsibilities of the Director-General of Physical and Land Use Planning.
- 14—County Physical and Land Use Consultative Forum.
- 15—Functions of the County Physical and Land Use Consultative Forum.
- 16—County Physical and Land Use Consultative Forum meetings.
- 17—Responsibilities of the County Executive Committee Member responsible for Physical and Land Use Planning.



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- ii. The provisions of the Constitution, particularly Article 66 and the Fourth Schedule to the Constitution. The discussion also focused on whether the Constitution referred to the term physical planning or land use planning;
- iii. The usage of the two terms; Physical Planning and Land Use Planning in other planning jurisdictions, particularly in Commonwealth countries;
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Committee resolution

The Committee noted that three Members were engaged in official duties out of the country and had registered their apologies. Therefore, the Committee resolved to defer the conclusion of the discussion on the title of the Bill to the next sitting to facilitate further consultations with a view to reaching a consensus on the matter.

MINUTES/ MCPPB/2019/ 5: ADJOURNMENT

There being no other business the meeting was adjourned at 1.50 pm. The date of the next meeting was scheduled for Tuesday, 21st May 2019 at 11.00 am.

SIGNATURE.......... DATE. 21-05-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

Appendix III

Mediated Version of the Bill





REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
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THE PHYSICAL AND LAND USE PLANNING BILL, 2017
ARRANGEMENT OF CLAUSES

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- 15—Functions of the County Physical and Land Use Consultative Forum.
- 16—County Physical and Land Use Consultative Forum meetings.
- 17—Responsibilities of the County Executive Committee Member responsible for Physical and Land Use Planning.



- 18—County Director of Physical and Land Use Planning.
- 19—Qualifications of the County Director of Physical and Land Use Planning.
- 20—Responsibilities of the County Director of Physical and Land Use Planning.

**PART III – TYPES OF PHYSICAL AND LAND USE
DEVELOPMENT PLANS**

- 21—The National Physical and Land Use Development Plan.
- 22—Purpose and objects of the National Physical and Land Use Development Plan.
- 23—Procedure for preparation of the National Physical and Land Use Development Plan.
- 24—Content of National Physical and Land Use Development Plan.
- 25—Notice of preparation of National Physical and Land Use Development Plan.
- 26—Approval of National Physical and Land Use Development Plan.
- 27—Implementation of a National Physical and Land Use Development Plan.
- 28—Status Reports.
- 29—Establishment of Inter-County Joint Physical and Land Use Development Planning Committees.
- 30—Scope of the Inter-County Physical and Land Use Development Plan.
- 31—Commencement of Inter-County Physical and Land Use Development Planning Process.
- 32—Notice of and objections to an Inter-County Physical and Land Use Development Plan.
- 33—Approval of an Inter-County Physical and Land Use Development Plan.
- 34—Implementation of the Inter-County Physical and Land Use Development Plan.
- 35—Status Reports on Inter-County Physical and Land Use Development Plans.
- 36—County Physical and Land Use Development Plan.
- 37—Purpose and Objects of a County Physical and Land Use Development Plan.



- 38—Notice of Intention to prepare a County Physical and Land Use Development Plan.
- 39—Contents of a County Physical and Land Use Development Plan.
- 40—Public Participation in the preparation of a County Physical and Land Use Development Plan.
- 41—Completion and approval of a County Physical and Land Use Development Plan.
- 42—Modification of a County Physical and Land Use Development Plan.
- 43—Revision of a County Physical and Land Use Development Plan.
- 44—Contents of the National, Inter-County and County Physical and Land Use Development Plans.
- 45—Local Physical and Land Use Development Plan.
- 46—Purpose of a Local Physical and Land Use Development Plan.
- 47—Initiation and Preparation of Local Physical and Land Use Development Plan.
- 48—Contents of a Local Physical and Land Use Development Plan.
- 49—Notice of and objections to a Local Physical and Land Use Development Plan.
- 50—Approval of Local Physical and Land Use Development Plans.
- 51—Amendment or Revision of Local Physical and Land Use Development Plans.
- 52—Declaration of a Special Planning Area.
- 53—Contents of a Special Area Plan.

- 54—Plans to be made in accordance with this Act.

PART IV – DEVELOPMENT CONTROL

- 55—Objectives of development control.
- 56—Power to undertake development control.
- 57—Development permission.
- 58—Application for development permission.
- 59—Plans and documents to be prepared by qualified person.



- 60—Development application referred to relevant authorities.
- 61—Decision making and communication.
- 61—Registers.
- 63—Development fees.
- 64—Lapse of development permission.
- 65—Commencement and completion of building.
- 66—Prohibition of grant of licence for development of a commercial or industrial nature.
- 67—Offences relating to development permission.
- 68—Access to information.
- 69—Strategic national or inter-county projects.
- 70—Preservation of heritage sites.
- 71—Exemption from application of this Part.

PART V – ENFORCEMENT

- 72—Enforcement notice.

PART VI – PHYSICAL AND LAND USE PLANNING LIAISON COMMITTEES

- 73—Establishment of National Physical and Land Use Planning Liaison Committee.
- 74—Composition of the National Physical and Land Use Planning Liaison Committee.
- 75—Functions of the National Physical and Land Use Planning Liaison Committee.
- 76—Establishment of County Physical and Land Use Planning Liaison Committee.
- 77—Composition of the County Physical and Land Use Planning Liaison Committee.
- 78—Functions of the County Physical and Land Use Planning Liaison Committee.
- 79—Procedure of the County Physical and Land Use Planning Liaison Committees.



- 80—Appeal to a County Physical and Land Use Planning Liaison Committee.
- 81—Duty to appear before a County Physical and Land Use Planning Liaison Committee.
- 82—Communication.
- 83—Withdrawal of appeal and abandonment of appeal.
- 84—Appeals to National Physical and Land Use Planning Liaison Committees.
- 85—Declaration of personal interest.
- 86—Disclosure of information.
- 87—Physical and Land Use Planning Liaison Committees to keep registers.
- 88—Remuneration.
- 89—Indemnity for public officers acting under this Act.

PART VII – PROVISIONS ON DELEGATED POWERS

- 90—Regulations.

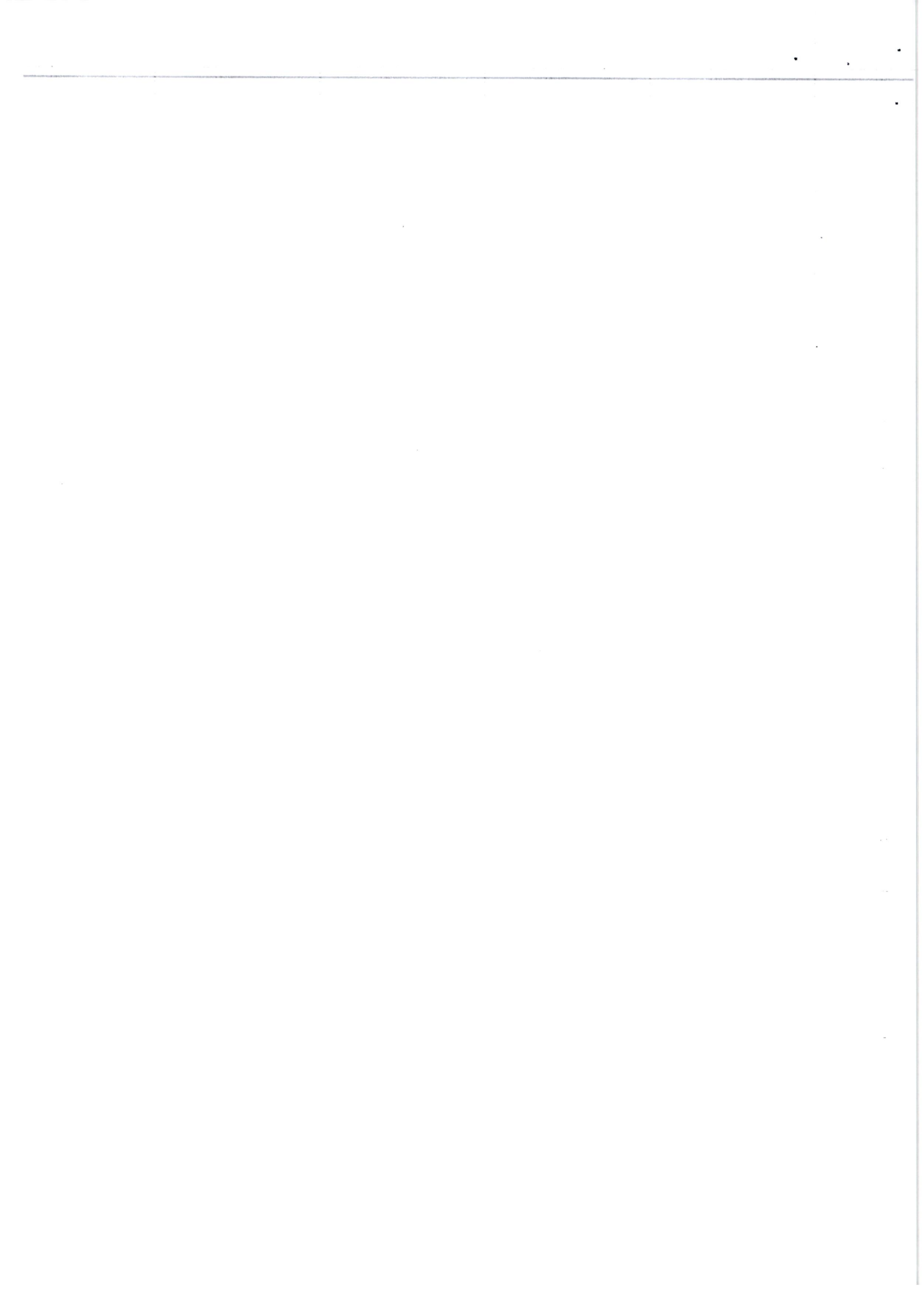
PART VIII – MISCELLANEOUS PROVISIONS

- 91—Repeal of No. 6 of 1996.
- 92—Transitional provisions.
- 93—Pending disputes.

FIRST SCHEDULE: Contents of National, Inter-County and County Physical and Land Use Development Plans.

SECOND SCHEDULE: Contents of Local Physical and Land Use Development Plans.

THIRD SCHEDULE: Development Control.



**THE PHYSICAL AND LAND USE 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 and Land Use Planning Act, 2017.

Short title.

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

Interpretation

“advertisement” means any word, letter, devise, 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



and land use planning;

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

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

“county executive committee member” means the county executive committee member responsible for matters relating to physical and land use planning in the respective county;

“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;

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

“Director-General of Physical and Land Use Planning” means the Director-General appointed under section 11 of this Act;

“electronic media” means any electronic medium including television or radio, that may be used to transmit information

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

“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;

“Inter-County physical and land use development plan” means a plan for the area covering two or more counties or parts thereof;

“land use planning” means the process of designating, regulating, evaluating, zoning and organizing the present and future use and development of land in all its geographical areas and its resources to secure the physical, economic and social efficiency, health and well-being of urban and rural communities;

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

“physical planning” means the active process of organizing the physical infrastructure and its functions 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 optimum level of land utilization in a sustainable manner;

“planning authority” -

(a) with respect to national government planning



functions means the Cabinet Secretary; and

- (b) with respect to county government planning functions means the County Executive Committee Member.

No. 6 of 2012

“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.

No. 3 of 1996.

“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;

“safeguarding area” means any area adjoining any land owned or occupied by the Kenya Defence Forces; and

“spatial planning” means the methodology and approach used to influence the distribution of people and activities to achieve optimal utilisation of physical, economic and sociocultural resources.

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 and land use development plans at the national, county, urban, rural and cities level;



- (b) the administration and management of physical and land use 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 and land use planning by county governments;
- (e) a mechanism for dispute resolution with respect to physical and land use planning;
- (f) a framework for equitable and sustainable use, planning and management of land;
- (g) the functions of and the relationship between planning authorities;
- (h) a robust, comprehensive and responsive system of physical and land use planning and regulation; and
- (i) a framework to ensure that investments in property benefit local communities and their economies.

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—

Values and principles.

- (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 and land use planning contemplated in this Act.

5. Every person engaged in physical and land use planning and regulation shall adhere to the following principles and norms of physical and land use planning—

Principles and norms of physical and land use planning.

- (a) physical and land use planning shall promote sustainable use of land and liveable communities



which integrates human needs in any locality;

- (b) development activities shall be planned in a manner that integrates economic, social and environmental needs of present and future generations;
- (c) physical and land use planning shall be comprehensive, sustainable and integrated at all levels of government, taking into consideration the interests of all parties concerned;
- (d) physical and land use planning shall take into consideration long-term optimum utilization of land and conservation of scarce land resource including preservation of land with important functions;
- (e) physical and land use planning shall be inclusive and must take into consideration the culture and heritage of people concerned; and
- (f) physical and land use planning shall take into account new approaches such as transit-oriented development, mixed land-uses, planning for public transport and non-motorized transport among others to achieve sustainable development and more efficient use of natural resources.

PART II – PHYSICAL AND LAND USE PLANNING INSTITUTIONS

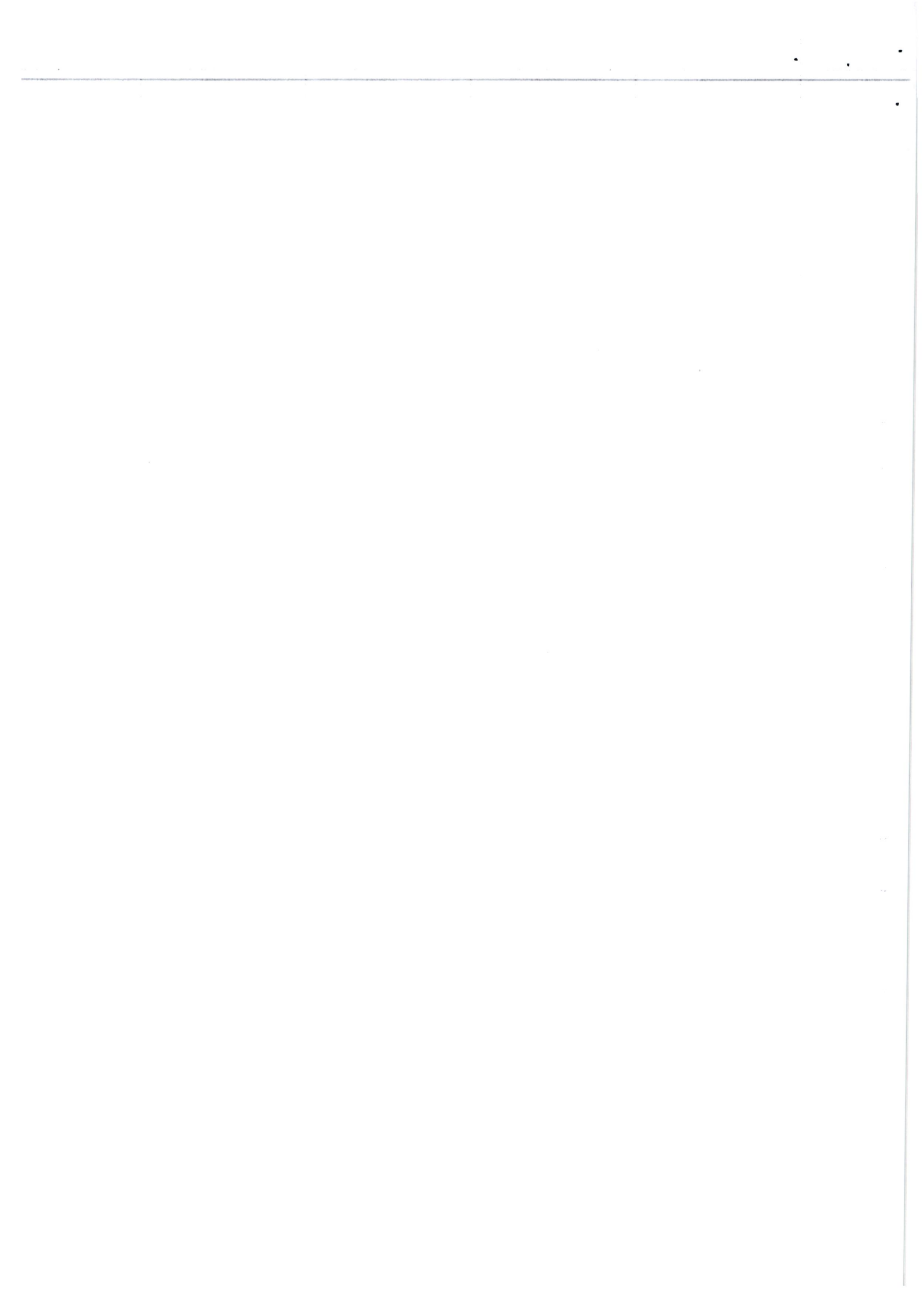
6. (1) There is established the National Physical and Land Use Planning Consultative Forum.

National Physical
and Land Use
Planning
Consultative
Forum.

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

- (a) the Cabinet Secretary for the time being responsible for matters related to physical and land use planning, who shall be the chairperson and shall provide the secretariat;
- (b) the Director-General of Physical and Land Use Planning;
- (c) three governors appointed by the Council of

- Governors or their respective designated representatives;
- (d) the Chairperson of the National Land Commission or a designated member of the Commission;
 - (e) the Cabinet Secretary for the time being responsible for matters related to economic planning or a designated principal secretary;
 - (f) the Cabinet Secretary for the time being responsible for matters related to the environment or a designated principal secretary;
 - (g) the Cabinet Secretary for the time being responsible for matters related to roads and infrastructure or a designated principal secretary;
 - (h) the Cabinet secretary for the time being responsible for matters related to social and community development or a designated principal secretary;
 - (i) the Cabinet Secretary for the time being responsible for matters related to culture or a designated principal secretary;
 - (j) the Cabinet Secretary for the time being responsible for matters related to defence or a designated principal secretary;
 - (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 the Kenya Private Sector Alliance and appointed by the Cabinet Secretary;
 - (o) a person nominated by the registered associations representing 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 Cabinet Secretary shall appoint members



nominated under subsection (2)(k), (l), (m), (n), (o), (p) and (q) by notice in the *Gazette*.

7. The functions of the National Physical and Land Use Planning Consultative Forum shall be to—

Functions of the National Physical and Land Use Planning Consultative Forum.

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

8. (1) The National Physical and Land Use Planning Consultative Forum shall meet at least four times in a year.

National Physical and Land Use Planning Consultative Forum Meetings.

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

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

9. 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 land use planning throughout the country;
- (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) develop monitoring framework and formulate oversight parameters relating to physical and land use planning;
- (d) publish and publicize the national land use planning report in accordance with the provisions

of Article 35(3) of the Constitution; and

- (e) encourage the use of traditional dispute resolution mechanisms in land use planning.

10. The Cabinet Secretary shall be responsible for—

- (a) formulating a national policy on physical and land use planning;
- (b) issuing in the *Gazette* policy statements, guidelines and circulars on general and specific aspects of physical and land use planning;
- (c) approval and oversight over the preparation of national physical and land use development plans; and
- (d) coordinating the national and county levels of physical and land use planning.

Functions of the
Cabinet Secretary.

11. (1) There is established the office of the Director-General of Physical and Land Use Planning which shall be an office in the public service.

Director-General
of Physical and
Land Use
Planning.

(2) The Director-General of Physical and Land Use Planning shall advise and be responsible to the Cabinet Secretary responsible for physical and land use planning.

(3) The Director-General of Physical and Land Use Planning shall hold office for a term of three years, renewable once.

12. A person is qualified for appointment as the Director-General of Physical and Land Use Planning if that person—

Qualifications of
the Director-
General of
Physical and Land
Use Planning.

- (a) is a citizen of Kenya;
- (b) holds a master'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 and is in good standing with the relevant professional body;
- (d) has at least ten years' post-qualification professional experience in physical and land use planning; and
- (e) is not otherwise disqualified under the provisions

No. 6 of 1996.



of Chapter 6 of the Constitution or any other written law.

13. The Director-General of Physical and Land Use Planning shall be responsible for—

Responsibilities of the Director-General of Physical and Land Use Planning.

- (a) advising the government on strategic physical and land use planning matters that impact on the whole country;
- (b) formulating national physical and land use planning policies, guidelines and standards;
- (c) preparation of national physical and land use development plans;
- (d) coordination of the preparation of inter-county physical and land use development plans;
- (e) undertaking capacity building and technical support for county planning authorities;
- (f) undertaking research related to physical and land use planning and development and making appropriate recommendations to relevant bodies; and
- (g) the preparation of development plans for strategic national installations and projects.

14. (1) There is established a County Physical and Land Use Planning Consultative Forum in each county.

County Physical and Land Use Planning Consultative Forum.

(2) Each County Physical and Land Use Planning Consultative Forum shall comprise of—

- (a) the respective County Executive Committee Member responsible for matters related to physical and land use planning, who shall be the chairperson and shall provide the secretariat;
- (b) the County Director of physical and land use Planning;
- (c) the Chairperson of the committee responsible for matters related to physical and land use planning in the respective county assembly;
- (d) the County Executive Committee Member



responsible for matters related to economic planning;

- (e) the County Executive Committee Member responsible for matters related to the environment;
- (f) the County Executive Committee Member responsible for matters related to roads and infrastructure;
- (g) the County Executive Committee Member responsible for matters related to social and community development;
- (h) a person nominated by the Commission;
- (i) a person nominated by the Director-General of Physical and Land Use Planning;
- (j) a person residing and working or conducting business in the respective county nominated by the Kenya Institute of Planners;
- (k) a person residing and working or conducting business in the respective county nominated by the Institution of Surveyors of Kenya;
- (l) a person residing and working or conducting business in the respective county nominated by the Architectural Association of Kenya;
- (m) a person residing and working or conducting business in the respective county nominated by Kenya Private Sector Alliance;
- (n) a person residing and working or conducting business in the respective county nominated by the registered associations representing residents in the county;
- (o) a person residing and working or conducting business in the respective county nominated by the National Council for Persons with Disability; and



(p) any person co-opted by the County Physical and Land Use Planning Consultative Forum for that person's special skills, interest and knowledge.

(3) The respective County Executive Committee Member shall appoint members nominated under subsection (2)(h), (i), (j), (k), (l), (m), (n), (o) and (p) by notice in the *Gazette*.

15. The functions of the County Physical and Land Use Planning Consultative Forum shall be to—

Functions of the County Physical and Land Use Planning Consultative Forum.

- (a) provide a forum for consultation on County and Inter-County Physical and Land Use Development Plans;
- (b) promote effective coordination and integration of physical and land use development and sector planning; and
- (c) advise on the mobilization of adequate resources for the preparation and implementation of physical and land use development plans and strategies.

16. (1) The County Physical and Land Use Planning Consultative Forum shall meet at least four times in a year.

County Physical and Land Use Planning Consultative Forum Meetings.

(2) Subject to this Act and any relevant county legislation, the County Physical and Land Use Planning Consultative Forum may regulate its procedure.

(3) The County Physical and Land Use Planning Consultative Forum may establish committees for the effective performance of its functions.

17. The County Executive Committee member shall be responsible for—

Responsibilities of the County Executive Committee Member.

- (a) formulating a county policy on physical and land use planning; and
- (b) promoting the integration of county physical and land use planning functions and sectoral planning levels.

18. (1) There is established the office of the County

County Director

Director of Physical and Land Use Planning which shall be an office in the county public service.

of Physical and Land Use Planning.

(2) The County Director of Physical and Land Use Planning shall advise and be responsible to the County Executive Committee Member..

19. A person is qualified for appointment as the County Director of Physical and Land Use Planning if that person—

Qualifications of a County Director of Physical and Land Use Planning.

- (a) is a citizen of Kenya;
- (b) holds 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 and is in good standing with the relevant professional body;
- (d) has at least five years' post-qualification professional experience in physical and land use planning; and
- (e) is not otherwise disqualified under the provisions of chapter six of the Constitution or any other written law.

No. 3 of 1996.

20. The County Director of Physical and Land Use Planning shall be responsible for—

Responsibilities of the County Director of Physical and Land Use Planning.

- (a) advising the county government on physical and land use planning matters that impact the county;
- (b) formulating county physical and land use planning policies, guidelines and standards;
- (c) preparation of county physical and land use development plans;
- (d) preparation of local physical and land use development plans;
- (e) participating in the preparation of inter-county physical and land use development plans;
- (f) undertaking research on matters relating to physical and land use development planning at the county level;



- (g) recommending to the county government the establishment of planning units as may be necessary;
- (h) maintaining a land information system to guide physical and land use planning;
- (i) communicating decisions of the county government on development applications; and
- (j) issuance of development permission and other development control instruments under this Act with the approval of the county executive committee member;

PART III – TYPES OF PHYSICAL AND LAND USE DEVELOPMENT PLANS

21. (1) The Cabinet Secretary shall cause the Director-General of Physical and Land Use Planning to prepare the National Physical and Land Use Development Plan for approval and publication in accordance with this Part.

The National Physical and Land Use Development Plan.

(2) The National Physical and Land Use 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.

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

Purpose and objects of the National Physical and Land Use Development Plan.

(2) The National Physical and Land Use 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 and land use



development planning policies;

- (f) guiding inter-county, 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.

23. (1) In preparing a National Physical and Land Use Development Plan, the Director-General of Physical and Land Use Planning shall—

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

Procedure for preparation of the National Physical and Land Use Development Plan.

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

(3) A notice published in accordance with this section shall state the objectives of National Physical and Land Use Development Plan, the purpose of the National Physical and Land Use Development Plan, the information to be set out in the plan and the places where members of the public may provide written comments on the National Physical and Land Use Development Plan.

24. (1) A National Physical and Land Use Development Plan shall include—

- (a) the objectives of the plan;

Content of National Physical and Land Use Development Plan.



- (b) situation analysis including—
 - (i) an analysis of the state of physical and land use development in Kenya; and
 - (ii) the relevant studies and reports concerning physical and land use development in Kenya;
- (c) policies, strategies and measures necessary to optimize opportunities and potentials and resolve challenges relating to physical and land use 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 Director-General of Physical and Land Use Planning shall, in addition to what is provided for in sub-section (1), take into account matters specified in the First Schedule to this Act.

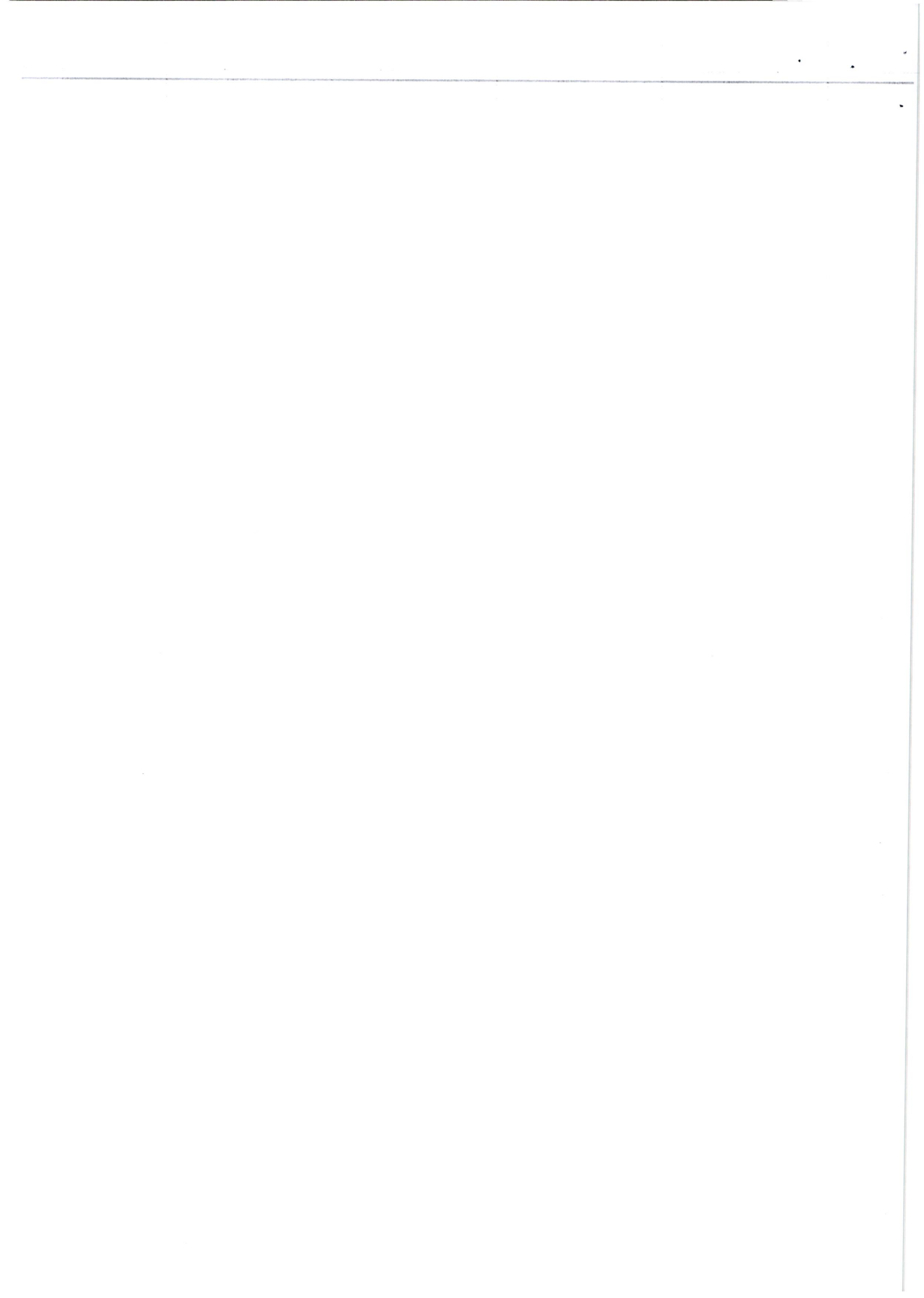
(3) The preparation of the National Physical and Land Use Development Plan shall be completed within twenty four months after the publication of the intention to prepare the plan.

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

25. (1) Within thirty days of the preparation of the National Physical and Land Use Development Plan, the Cabinet Secretary shall publish a notice in the *Gazette*, in at least two newspapers of national circulation and through electronic media informing the public that the draft National Physical and Land Use Development Plan is available at the place and time specified in the notice for inspection and that any interested person may within fourteen days, comment on the content of the draft National Physical and Land Use Development Plan.

(2) The Cabinet Secretary shall, within twenty-one days of the expiry of the period for making comments under sub-section (1), consider the comments made on the National Physical and Land Use Development Plan and

Notice of
preparation of
National Physical
and Land Use
Development
Plan.



may incorporate the comments in the plan.

(3) Within seven days of making a decision under subsection (2), the Cabinet Secretary shall publish a notice in the *Gazette*, in at least two newspapers of national circulation and through electronic media informing the public that a decision on the comments received by the Cabinet Secretary has been made and that the reviewed draft National Physical and Land Use Development Plan is available at the places and times designated in the notice for perusal.

(4) A person dissatisfied with the decision of the Cabinet Secretary may, within fourteen days of the publication of the notice under subsection (3), 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.”

26. (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 and Land Use Development Plan to the National Physical and Land Use Planning Consultative Forum for comments.

Approval of
National Physical
and Land Use
Development
Plan.

(2) The National Physical and Land Use 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 and Land Use Planning Consultative Forum, the plan shall be submitted to the Cabinet for approval.

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

(5) 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 and Land Use Development Plan.

27. (1) The planning authorities shall base the preparation of inter-county physical and land use development plans, integrated county physical and land use

Implementation of
a National
Physical and
Land Use
Development



development plans, city physical and land use development plans, urban area physical and land use development plans and sectoral plans on the National Physical and Land Use Development Plan.

Plan.

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

28. (1) 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 and Land Use Development Plan shall prepare and submit a status report on the implementation of the National Physical and Land Use Development Plan to the Cabinet Secretary or the County Executive Committee member and the Commission for their purposes.

Status Reports.

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

29. (1) Two or more Counties may, by mutual agreement or out of compelling necessity, formulate an inter-county physical and land use development plan.

Establishment of Inter-County Joint Physical and Land Use Planning Committees.

(2) In the preparation of the Inter-County physical and land use development plan, the counties shall form an Inter-County Joint Physical and Land Use Planning Committee.

(3) The Inter-County Joint Physical and Land Use Planning Committee shall consist of—

- (a) the county executive committee member of the respective counties;
- (b) two other relevant county executive committee members from the respective counties nominated by the relevant county governor; and
- (c) the Director General of Physical and Land Use Planning who shall be an *ex-officio* member of the Committee;

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

(5) The members of the inter-county joint physical and land use planning committee appointed under subsection



(3)(a) and (b) shall, during the first meeting of the Committee, elect from amongst themselves a chairperson and a vice chairperson provided that the chairperson and the vice chairperson shall not be county executive committee members from the same county.

(6) The Director General of Physical and Land Use Planning shall, in consultation with the other members of the Committee, convene the first meeting.

(7) The Director General of Physical and Land Use Planning shall co-ordinate meetings of the inter-county joint physical and land use planning committee and provide it with secretariat services.

30. An Inter-County Physical and Land Use Development Plan shall—

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

Scope of the Inter-County Physical and Land Use Development Plan.

31. (1) The Inter-County Physical and Land Use Planning Joint Committee preparing an Inter-County Physical and Land Use 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.

Commencement of Inter-County Physical and Land Use Planning Process.

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

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

(4) The joint committee shall consult, publish, consider national security and hold stakeholders' meetings during the preparation of the Inter-County Physical and Land Use Development Plan.

32. (1) Within thirty days of the completion of an Inter-County Physical and Land Use Development Plan, the

Notice of and objections to an Inter-County

Inter-County Physical and Land Use 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 place and time specified in the notice for inspection and that any interested person may, within fourteen days, comment on the content of the plan.

Physical and Land Use Development Plan.

(2) The Inter-County Physical and Land Use Planning Joint Committee shall, within twenty-one days of the expiry of the period for making comments under subsection (1), consider the comments made about the plan and may or may not incorporate the comments in the plan.

(3) Within seven days of making a decision under subsection (2), the Inter-County Physical and Land Use Planning Joint Committee shall publish a notice in the *Gazette* and in at least two newspapers of national circulation informing the public that a decision on the comments received by the joint committee has been made and that the reviewed draft Inter-County Physical and Land Use Development Plan is available for perusal at the place and time specified in the notice.

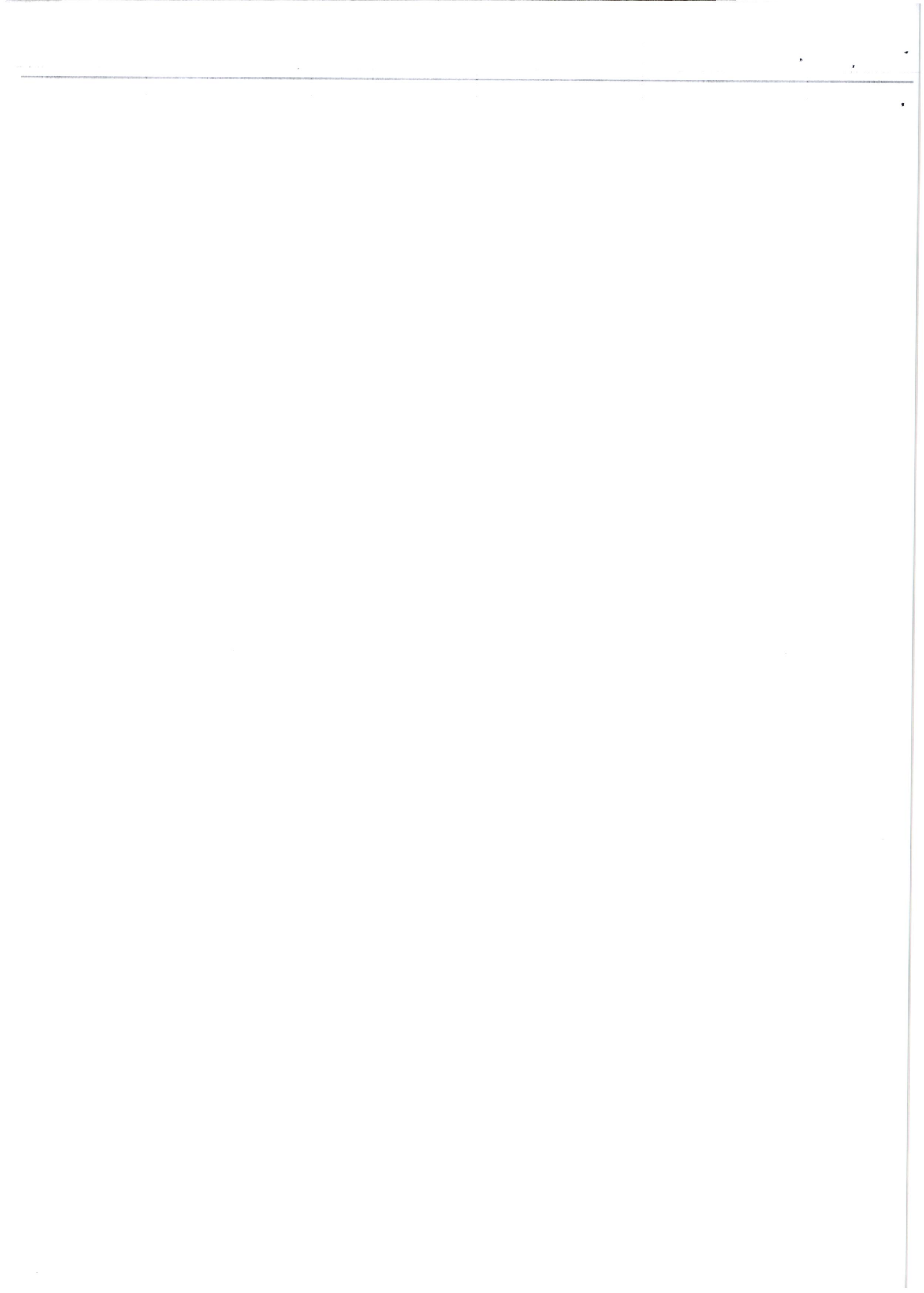
(4) Any person dissatisfied with the decision of the Inter-County Physical and Land Use Planning Joint Committee may appeal to the National Physical and Land Use Planning Liaison Committee within fourteen days and the committee shall consider the application and make its determination within (60) days of the receipt of the application.

(5) Any person dissatisfied with the decision of the National Physical and Land Use Planning Liaison Committee may, within fourteen days of the decision, appeal to the Environment and Land Court.

33. (1) The County Executive Committee members of all counties participating in the Inter-County physical and land use development plan shall separately submit the plans to the respective County Assemblies for approval and thereafter submit the same to the Director-General of Physical and Land Use Planning for coordination and certification.

Approval of an Inter-County Physical and Land Use Development Plan.

(2) Within thirty days of the completion of an Inter-



County Physical and Land Use Development Plan or if comments on the plan have been heard and determined, the Inter-County Physical and Land Use Planning Joint Committee shall publish a notice in the *Gazette* and in at least two newspapers of national circulation informing the public that the Inter-County Physical and Land Use Development Plan is available for perusal at the place and time specified in the notice.

(3) Before the Inter-County Physical and Land Use 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 Inter-County Physical and Land Use Planning Joint Committee.

(4) The approved Inter-County Physical and Land Use Development Plan shall be deposited with the relevant County Director of Physical and Land Use Planning who shall submit certified copies of the plan to the Director General of Physical and Land Use Planning and the Commission.

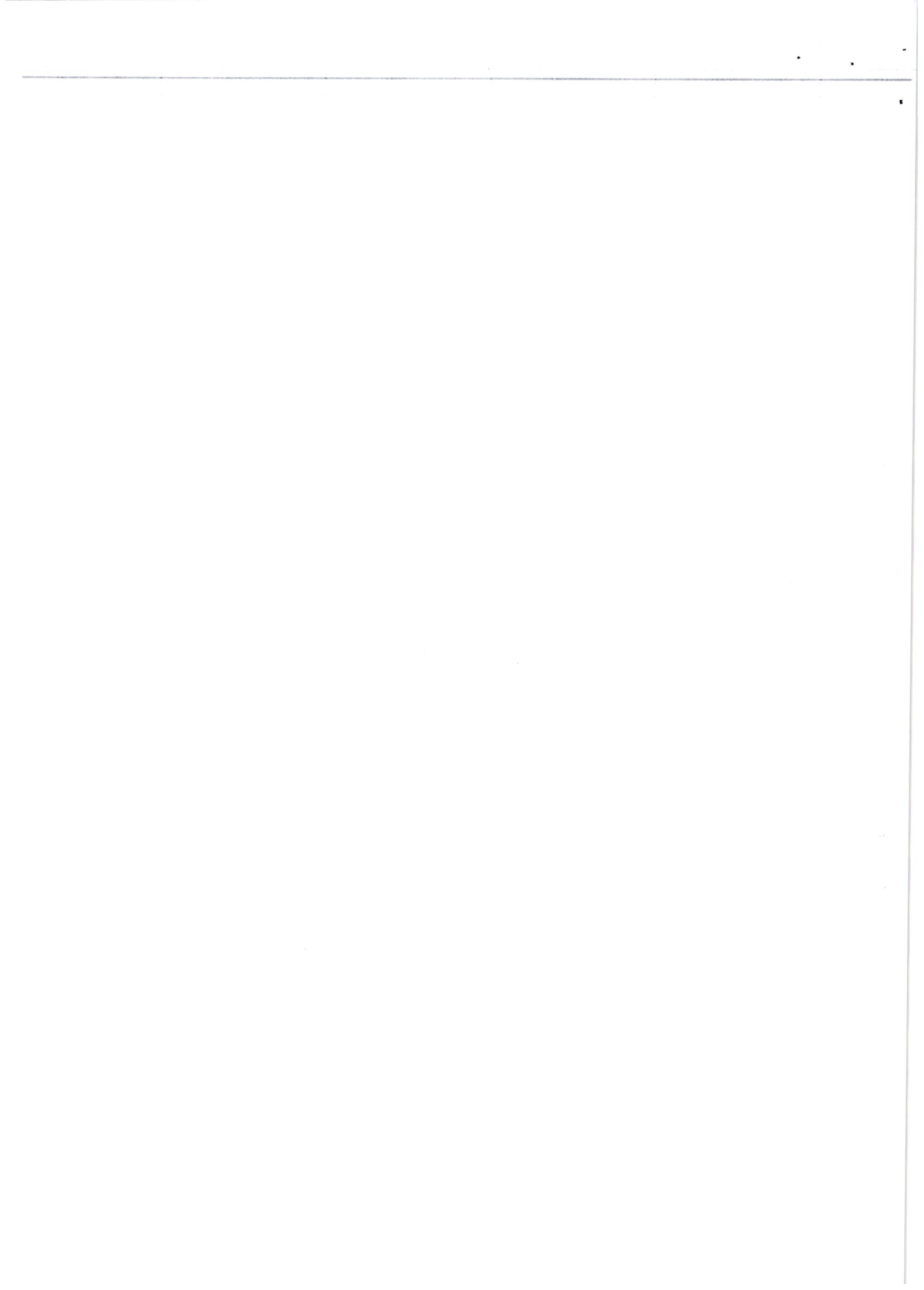
34. (1) In addition to the national physical and land use development plan, the Inter-County Physical and Land Use Development Plan shall inform the preparation of a county physical and land use development plan, a local physical and land use development plan or an urban area physical and land use development plan for the county governments within the planning area covered by the Inter-County Physical and Land Use Development Plan.

Implementation of the Inter-County Physical and Land Use Development Plan.

(2) Where a National Physical and Land Use Development Plan and an Inter-County Physical and Land Use Development Plan have not been prepared or approved, county governments may prepare other physical and land use development plans which will be incorporated into the National Physical and Land Use Development Plan or the relevant Inter-County Physical and Land Use Development Plan after they have been prepared and approved in accordance with this Act.

35. At least three months before the end of a financial year, every county executive committee member in a county covered by an Inter-County Physical and Land Use Development Plan shall submit a report on the

Status Reports on an Inter-County Physical and Land Use Development Plan.



implementation of the Plan to the Commission and the Cabinet Secretary for their purposes.

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

County Physical and Land Use Development Plan.

(2) Each county physical and land use development plan shall be in conformity with the National Physical and Land Use Development Plan and any relevant Inter-County Physical and Land Use Development Plan

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

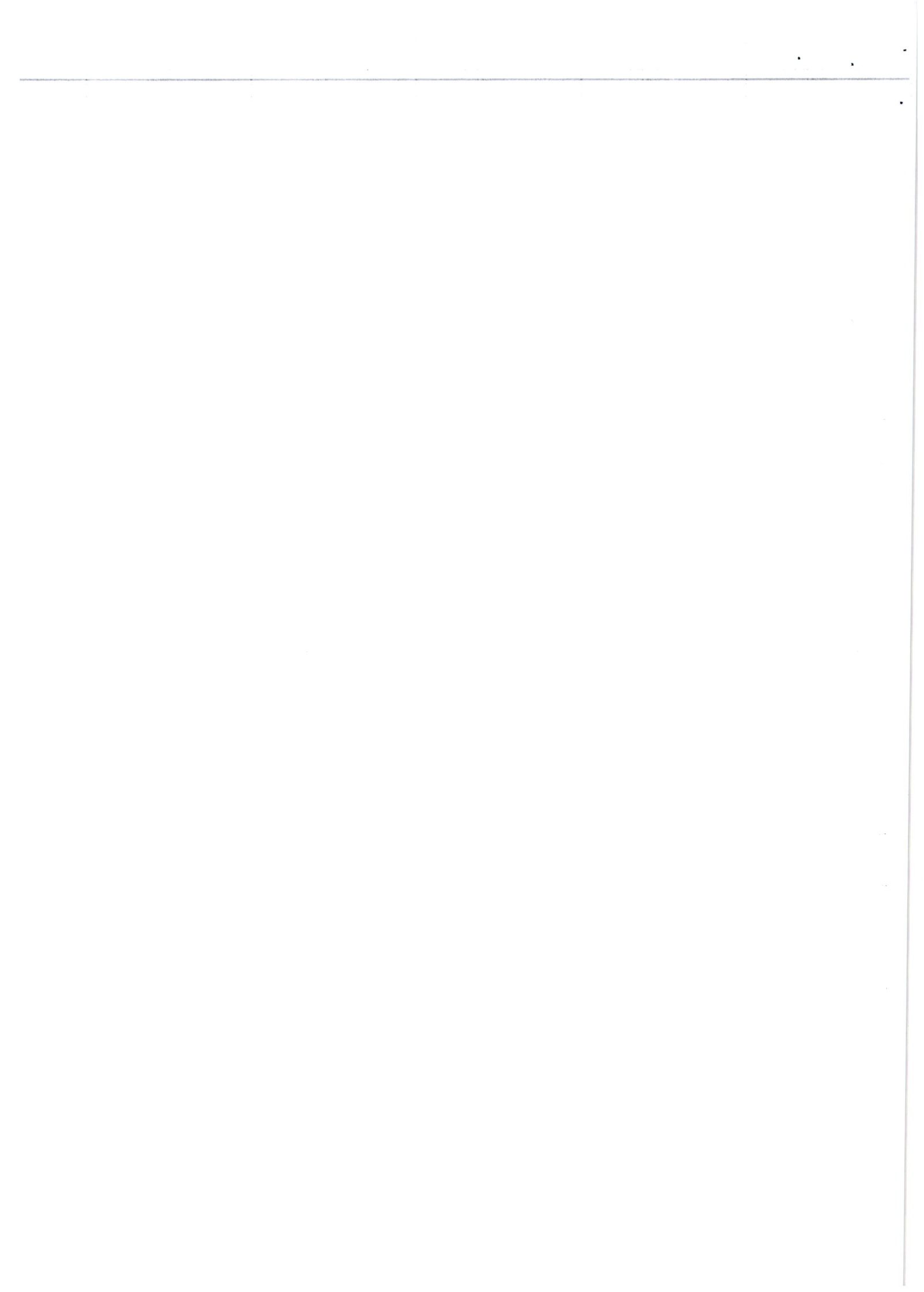
37. The objects of a county physical and land use development plan shall be—

Purpose and objects of a county physical and land use development plan.

- (a) to provide an overall physical and land use 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;
- (h) to promote the safeguarding of national security; and
- (i) any other purposes that may be determined by the planning authority.

38. (1) At least twenty-one days before commencing the preparation of a county physical and land use development plan, the county executive member shall

Notice of intention to prepare a county physical and land use development



publish a notice in the *Gazette* and the notice shall include the intention to prepare a county physical and land use development plan, the objects of the plan and the matters to be considered in the plan and the address to which any comments on the plan may be sent.

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 and land use development plan.

39. (1) A county physical and land use development plan shall consist of—

Contents of a county physical and land use development plan.

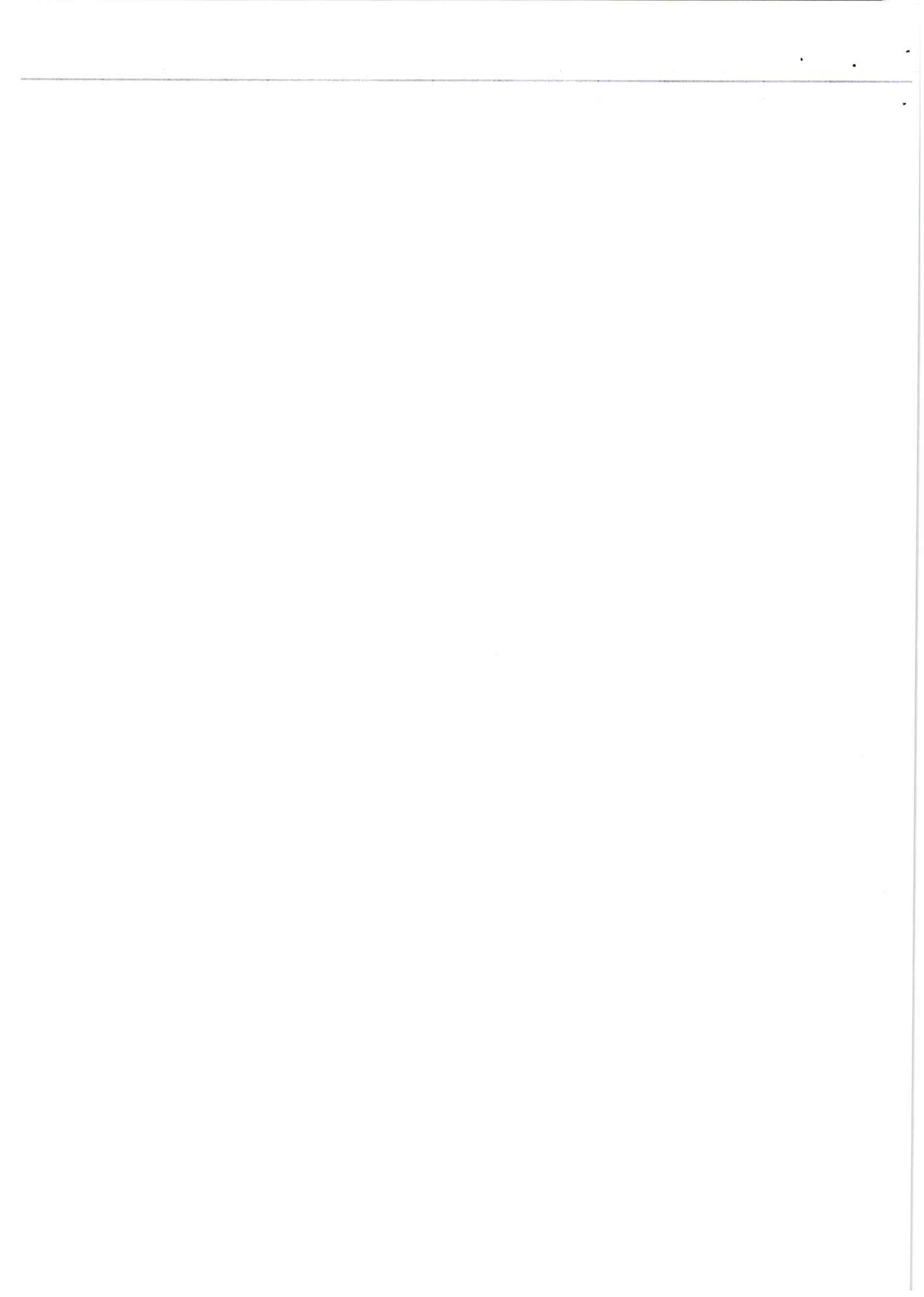
- (a) policies, strategies and general proposals for the development and use of land;
- (b) a summary of the situational analysis;
- (c) proposals for proper county development, resource utilization and linkage with neighboring counties;
- (d) diagrams, illustrations and description of current and anticipated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

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

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

(2) The county executive committee member shall



facilitate public participation.

(3) The county executive committee member shall consider the comments made about the draft county physical and land use development plan and may incorporate the comments in the plan.

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

(5) Subject to sub-section (4), the county physical and land use 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 and land use 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.

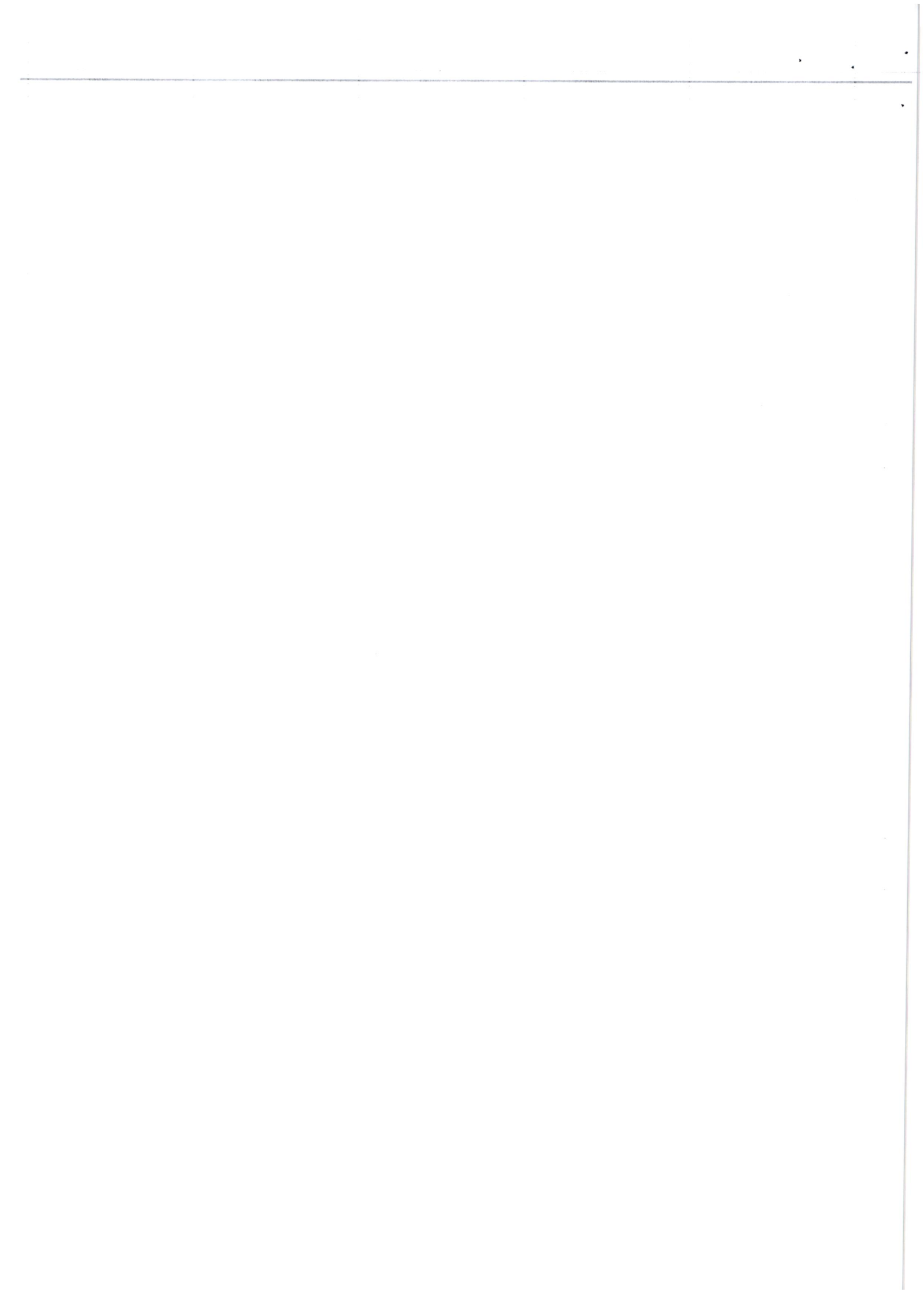
(7) Any person aggrieved by a decision of the County Physical and Land Use Planning Liaison Committee under this section may appeal to the Environment and Land Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court.

41. (1) If there are no applications for the review of a county physical and land use development plan or if all applications for review have been heard and determined, the county executive committee member shall submit the draft county physical and land use development plan to the County Physical and Land Use Planning Consultative Forum for comments.

Completion and approval of a county physical and land use development plan.

(2) The County Physical and Land Use 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



County Physical and Land Use Planning Consultative Forum, the county executive committee member shall submit the completed county physical land use development plan to the county governor who shall cause it to be placed before the county assembly for approval.

(4) On the approval of the county physical and land use development plan by the respective county assembly, the county executive committee member shall publish the approved plan in the *Gazette* and in at least two newspapers with a national circulation within fourteen days of the approval and no development shall take place on any land unless it is in conformity with the approved plan.

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

42. (1) A county executive committee member, on his own motion or on recommendation of the county government, may initiate the modification of a county physical and land use development plan if—

Modification of a
County Physical
and Land Use
Development
Plan.

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

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

(3) A proposal for amending a county physical and land use 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 and

No. 17 of 2012.

Land Use Development Plan and all relevant Inter-County Physical and Land Use Development Plans.

(4) Where a county executive committee member determines that a proposed amendment to the county physical and land use development plan shall affect other counties, the county executive committee member shall consult the county executive committee members in the counties that are likely to be affected and shall take into account their comments before incorporating the amendment to the county physical and land use development plan.

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

(6) The amended county physical and land use development plan shall be published by the county planning authority in accordance with section 41 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 and land use development plan.

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

Revision of a county physical and land use development plan.

(2) The provisions of section 42 of this Act shall apply with the necessary modifications to the revision of a county physical and land use development plan.

44. In addition to the provisions of sections 24, 30 and 39, the National, Inter-County and the County Physical and Land Use Development Plans shall provide for the matters specified in the First Schedule.

Contents of the National, Inter-County and County Physical and Land Use Development Plans.
Local Physical and Land Use Development Plan.

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

(2) A local physical and land use development plan

may be for long-term physical and land use development, short-term physical and land use development, urban renewal or redevelopment and for the purposes set out in the Second Schedule in relation to each type of plan.

(3) A local physical and land use 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.

No.13 of 2011.

46. A county government shall prepare a local physical and land use development plan for—

Purpose of a Local Physical and Land Use Development Plan.

- (a) zoning, urban renewal, or redevelopment;
- (b) 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; and
- (e) 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.

47. The preparation of a local physical and land use development plan may be initiated by the county executive committee member .

Initiation and preparation of local physical and land use development plan. Contents of a Local Physical and Land Use Development Plan.

48. (1) A local physical and land use development plan shall consist of—

- (a) a survey report in respect of the area to which the plan relates carried out as the manner specified in the Second 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 Second Schedule.

(2) The survey report in a local physical and land use 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.



49. (1) Within thirty days of the preparation of a local physical and land use development plan, a county planning authority shall publish a notice in the *Gazette*, in at least two newspapers of national circulation and through electronic media 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, objections and approvals to a Local Physical and Land Use Development Plan.

(2) The provisions of section 40 relating to the making of representations or objections to the county physical and land use planning liaison committee concerning county physical and land use 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 41 relating to the approval or disapproval of a county physical and land use development plan shall apply *mutatis mutandis* to the approval or disapproval of a local physical and land use development plan.

50. The County Executive Committee member shall within fourteen days after the approval of a local physical and land use development plan publish a notice in the *Gazette*, in at least two newspapers of national circulation and through electronic media 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.

Publication of Local Physical and Land use Development Plans.

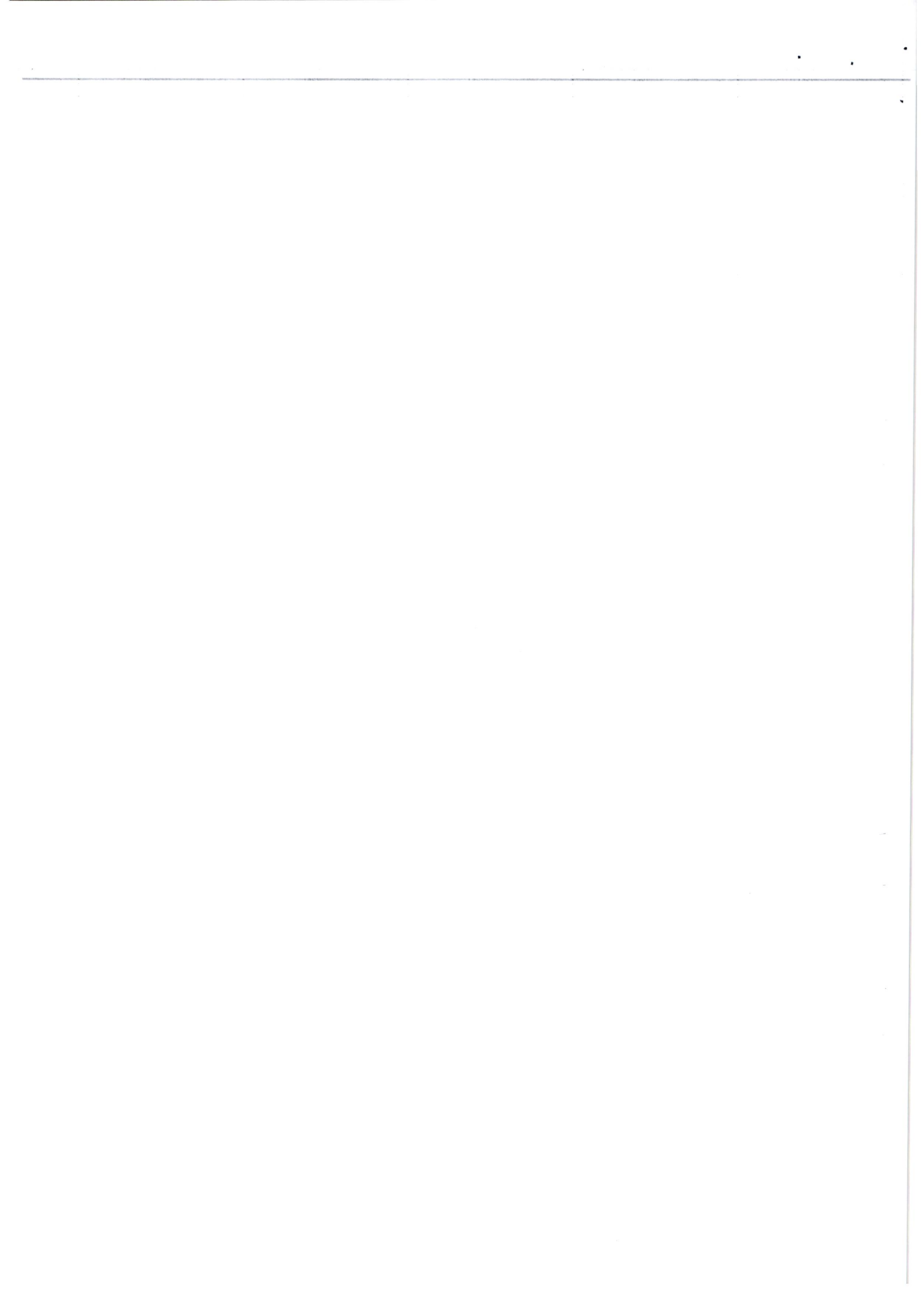
51. (1) A county executive committee member may amend or revise a local physical and land use development plan where—

Amendment or Revision of Local Physical and Land Use 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 intends to amend or revise a local physical and land use development plan, the provisions of section 42 shall apply with the necessary modifications.

(3) A County Executive Committee member may initiate the revision of a local physical and land use



development plan after a period of three years after the plan has been approved in accordance with section 51 of this Act or as the need may arise.

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

Declaration of a
Special Planning
Area.

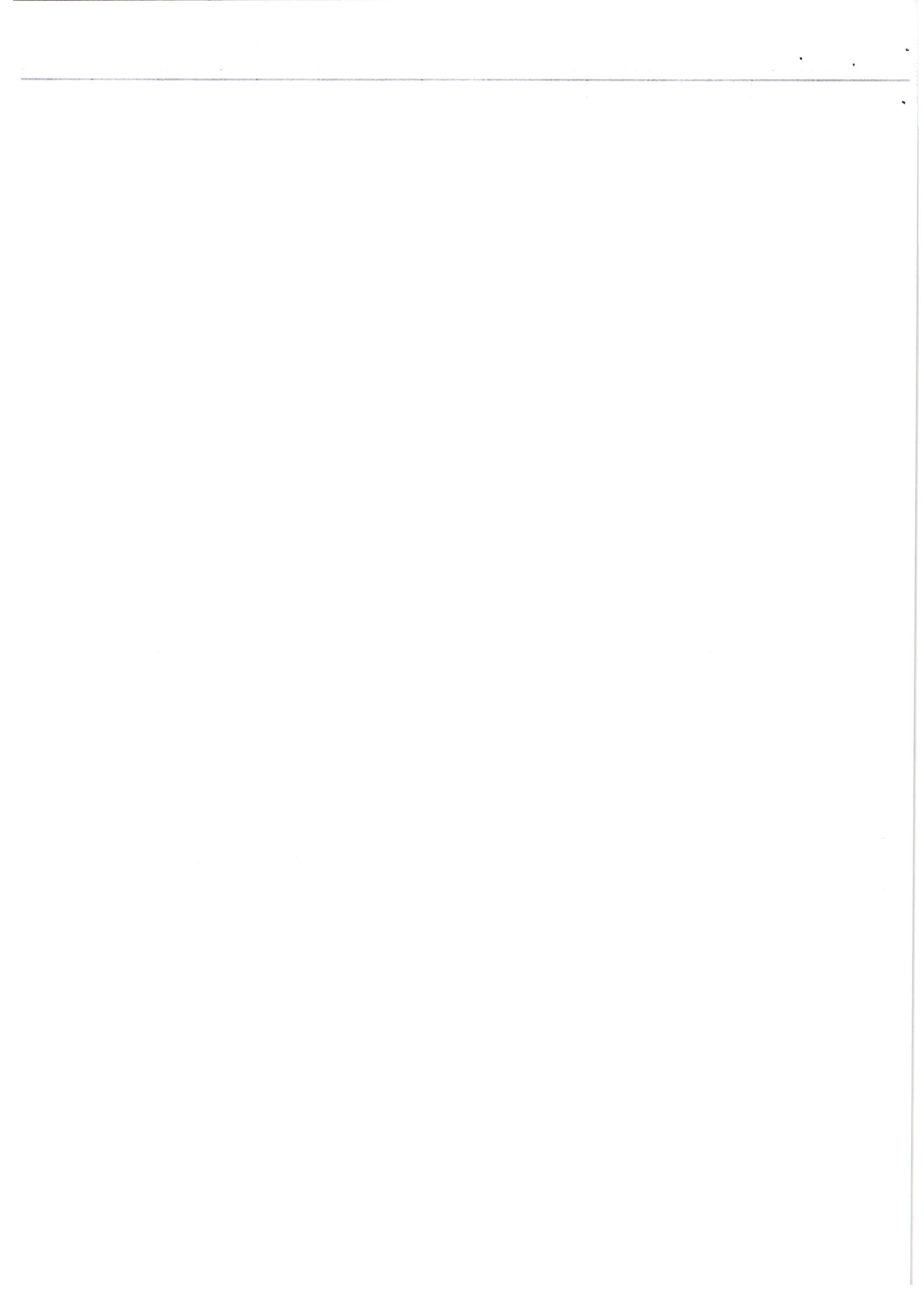
- (a) that area has unique development, natural resource, environmental potential or challenges;
- (b) that area has been identified as suitable for intensive and specialized development activity;
- (c) the development of that area might have significant effect beyond that area's immediate locality;
- (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 and land use 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 and land use development plan prepared for a special planning area shall undergo the process of approval in accordance with section 49 of this Act.

53. A special area plan shall contain—

Contents of a
Special Area Plan.

- (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.

54. All plans formulated under the Urban Areas and Cities Act shall, with necessary modifications, be prepared and approved in accordance with this Act.

Plans to be made
in accordance
with this Act.

PART IV – DEVELOPMENT CONTROL

55. (1) The objectives of development control are—

Objectives of
development
control.

- (a) to ensure orderly physical and land use development;
- (b) to ensure optimal land use;
- (c) to ensure the proper execution and implementation of approved physical and land use development plans;
- (d) to protect and conserve the environment;

- (e) to promote public safety and health
- (f) to promote public participation in physical and land use development decision-making;
- (g) to ensure orderly and planned building development, planning, design, construction, operation and maintenance; and
- (h) to promote the safeguarding of national security.

(2) In addition to the provisions of sub-section (1), development control may also relate to the matters specified in the Third Schedule.

56. Subject to the provisions of this Act, the Urban Areas and Cities Act, 2011, and the County Governments Act, 2012, the county governments 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 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 and land use development plans;
- (e) formulate by-laws to regulate zoning in respect of use and density of development;
- (f) reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical and land use development plans; and
- (g) consider and determine development planning applications made in respect of land adjoining or within reasonable vicinity of safeguarding areas.

57. (1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.

(2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding

Power
undertake
development
control

No.13 of 2011
No.17 of 2012

Development
permission.

five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

(3) A county executive committee member shall 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 relevant county executive committee member may undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.

(5) A county executive committee member 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) A county executive committee member may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

58. (1) A person shall obtain development permission from the respective county executive committee member by applying for development permission from that county executive committee member 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 respective county executive committee member 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 respective county executive committee member at the time of applying for development permission.

(5) The development permission granted by a county executive committee member 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.

(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 county executive committee member for consideration.

59. (1) A person applying for development permission shall ensure that any documents, plans and particulars that are provided to the respective county executive committee member while applying for development permission have been prepared by the relevant qualified, registered and licensed 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 a county executive committee member and shall be required to authenticate the copies of the documents, plans or particulars provided to the county executive committee member in that person's name.

60. (1) Within seven days of receiving an application for development permission, the county executive committee member 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;
- (g) urban development;
- (h) national security in respect of land adjoining or within reasonable vicinity of safeguarding areas; and
- (i) any other relevant authority.

(2) Within fourteen days of receiving the copy of the development permission from a county executive committee member, the relevant authorities or agencies shall submit their comments to the respective county executive committee member.

61.(1) When considering an application for development permission, a county executive committee member —

Decision making
and
communication.

- (a) shall be bound by the relevant approved national, county, local, city, urban, town and special areas plans;
 - (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;
 - (d) 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; and
 - (e) 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 county executive committee member may—

- (a) grant the applicant the development permission in the prescribed form and may stipulate any 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 a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.

(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.

62. (1) Each county executive committee member 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) Each county executive committee member 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 a county executive committee member under this Act shall be open to the public for scrutiny and the Cabinet Secretary shall publish guidelines for public access to that register.



63. (1) A county executive committee member 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, a county executive committee member 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.

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

Lapse of development permission.

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

(3) Where a county executive committee member extends development permission, it may impose further conditions on the applicant that he or she considers fit.

65. A county executive committee member 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.

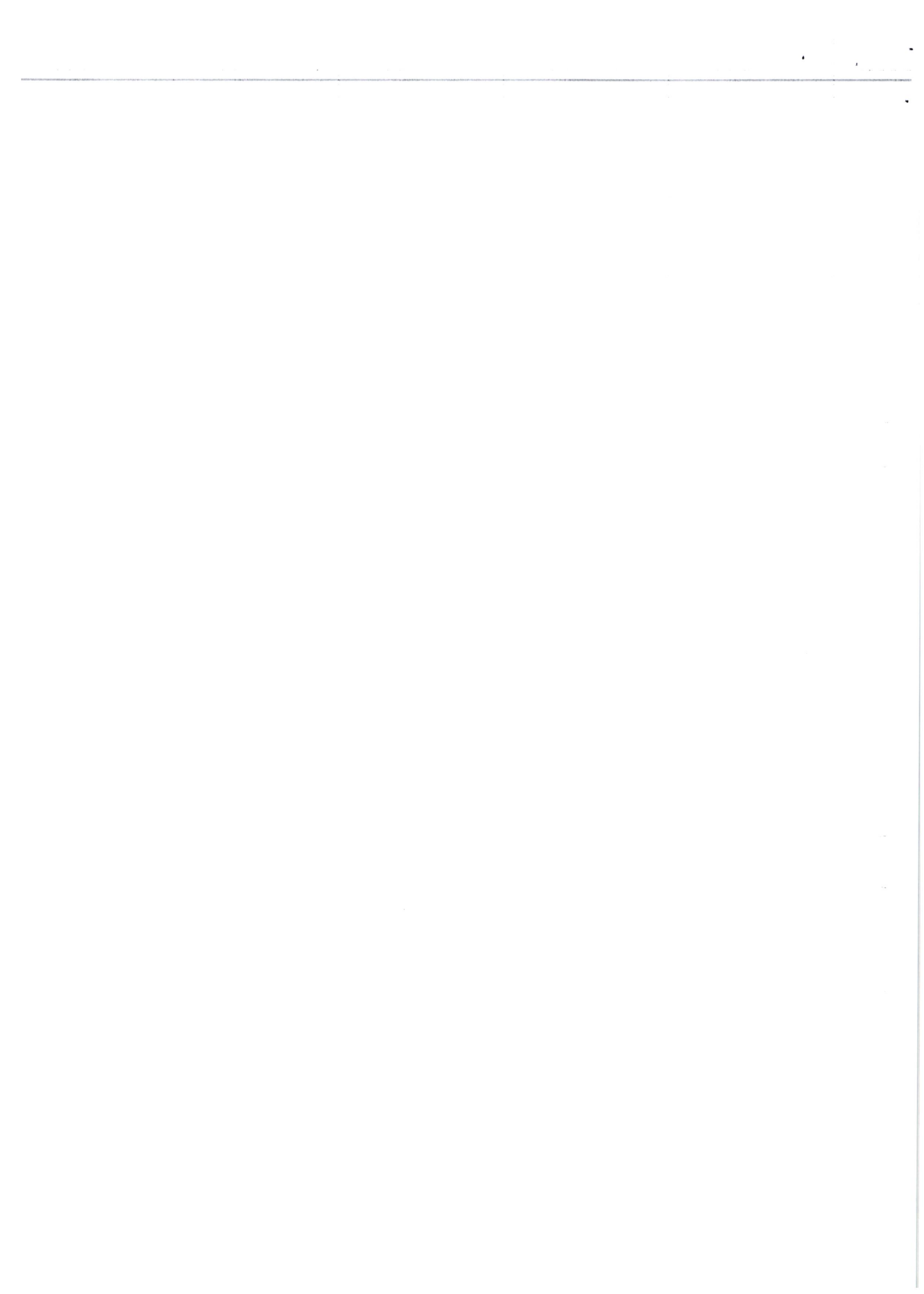
66. A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building, or in respect of any premises or land, for which development permission has not been granted by the relevant county executive committee member.

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

67. (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

Offences relating to development permission.



county executive committee member when granting development permission; or

- (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
 - (iii) a development where the building works are inconsistent with the plans approved by the county executive committee member.
- (c) being a public officer, grants development permission or comments on an application for development permission contrary to this Act or any other law.

(2) 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 county executive committee member for development permission.

(3) A person who commits an offence under this section is liable, on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both.

68. (1) A county executive committee member 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 and land use development plan.

Access to information.

(2) The information obtained by a county executive committee member 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.

69. (1) The Cabinet Secretary shall consider and offer policy guidance to any public institution proposing a

Strategic national or inter-county

project of strategic national importance.

projects

(2) Any inter-county physical and land use development projects shall be approved in accordance with section 33.

(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.

(4) The Cabinet Secretary may consider and approve development permission for any development to be carried out within the prescribed projects of strategic national importance.

70. This Part shall not apply in respect of a development by or on behalf of the Kenya Defence Forces and other national security installations.

Exemption from application of this Part.

71. (1) Subject to the provisions of National Museums and Heritage Act, 2006, a 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 prohibiting the demolition, alteration or extension of such building.

Preservation of heritage sites. No.6 of 2006.

(2) All physical and land use 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.

No. 6 of 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

72. (1) A county executive committee member shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that county executive committee member that—

Enforcement notice.

(a) a developer commences development on any land 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 and Land Use 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.

(4) Any party aggrieved with the determination of the county physical and land use 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.

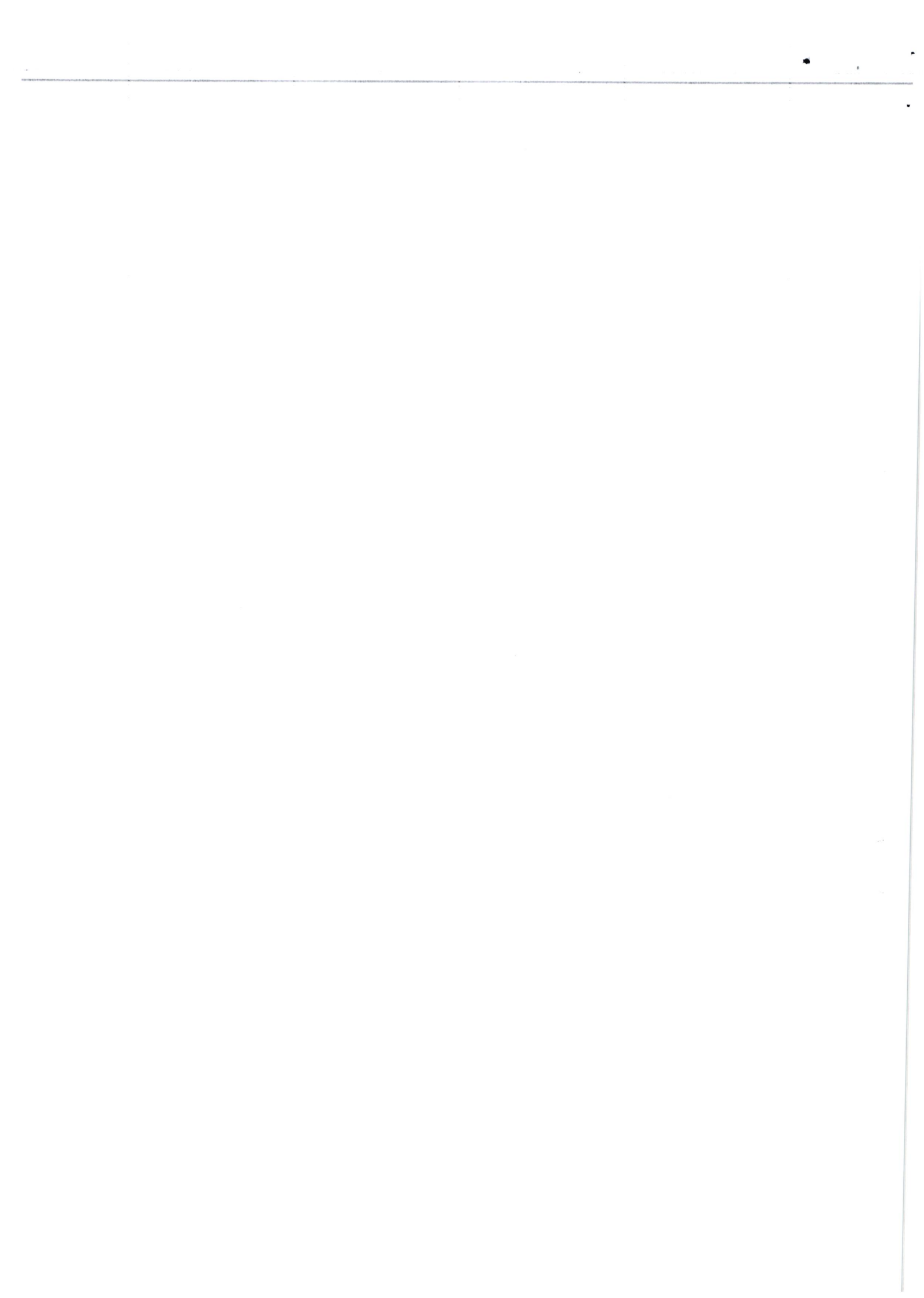
(5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

PART VI – PHYSICAL AND LAND USE PLANNING LIAISON COMMITTEES

73. There is established the National Physical and Land Use Planning Liaison Committee.

74. (1) The National Physical and Land Use Planning

Establishment of
the National
Physical and Land
Use Planning
Liaison
Committee.
Composition of



Liaison Committee shall consist of-

National Physical
and Land Use
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 the Kenya Defence Forces or a designated representative;
- (g) the National Director of Urban Development;
- (h) two representatives of the Council of County Governors;
- (i) a person nominated by the Kenya Private Sector Alliance and appointed by the Cabinet Secretary;
- (j) a registered architect nominated by the Architectural Association of Kenya and appointed by the Cabinet Secretary;
- (k) a registered physical planner nominated by the Kenya Institute of Planners and appointed by the Cabinet Secretary;
- (l) a registered surveyor nominated by the Institution of Surveyors of Kenya and appointed by the Cabinet Secretary; and
- (m) 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 and Land Use Planning Liaison Committee appointed under sub-



section (1)(h), (i), (j), (k), (l) and (m) 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), (l) or (m).

(5) The National Physical and Land Use 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 and Land Use 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 and Land Use Planning Liaison Committee.

75. (1) The National Physical and Land Use Planning Liaison Committee shall—

- (a) advise the Cabinet Secretary on broad physical and land use 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 and Land Use 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 inter-county physical and land use development plans; or
- (d) the environmental impacts on ecologically sensitive areas by the implementation of strategic projects.

76. There is established a County Physical and Land Use Planning Liaison Committee for each county.

Functions of the National Physical and Land Use Planning Liaison Committee.

Establishment of County Physical and Land Use Planning Liaison Committees.

77. (1) The County Physical and Land Use 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 who shall be the chairperson;
- (b) a representative of the National Land Commission;
- (c) a representative of the National Construction Authority;
- (d) a registered physical planner with seven years' post-qualification experience nominated by the Kenya Institute of Planners and appointed by the County Executive Committee member;
- (e) a registered architect with seven years' post-qualification experience nominated by the Architectural Association of Kenya and appointed by the County Executive Committee member;
- (f) a registered surveyor with seven years' post-qualification experience nominated by the Institution of Surveyors of Kenya and appointed by the County Executive Committee member; and
- (g) two members, being one male and one female, nominated by the county chamber of commerce and appointed by the County Executive Committee member.

(2) The county physical and land use planning liaison committee may co-opt a maximum of five experts to assist in its deliberations.

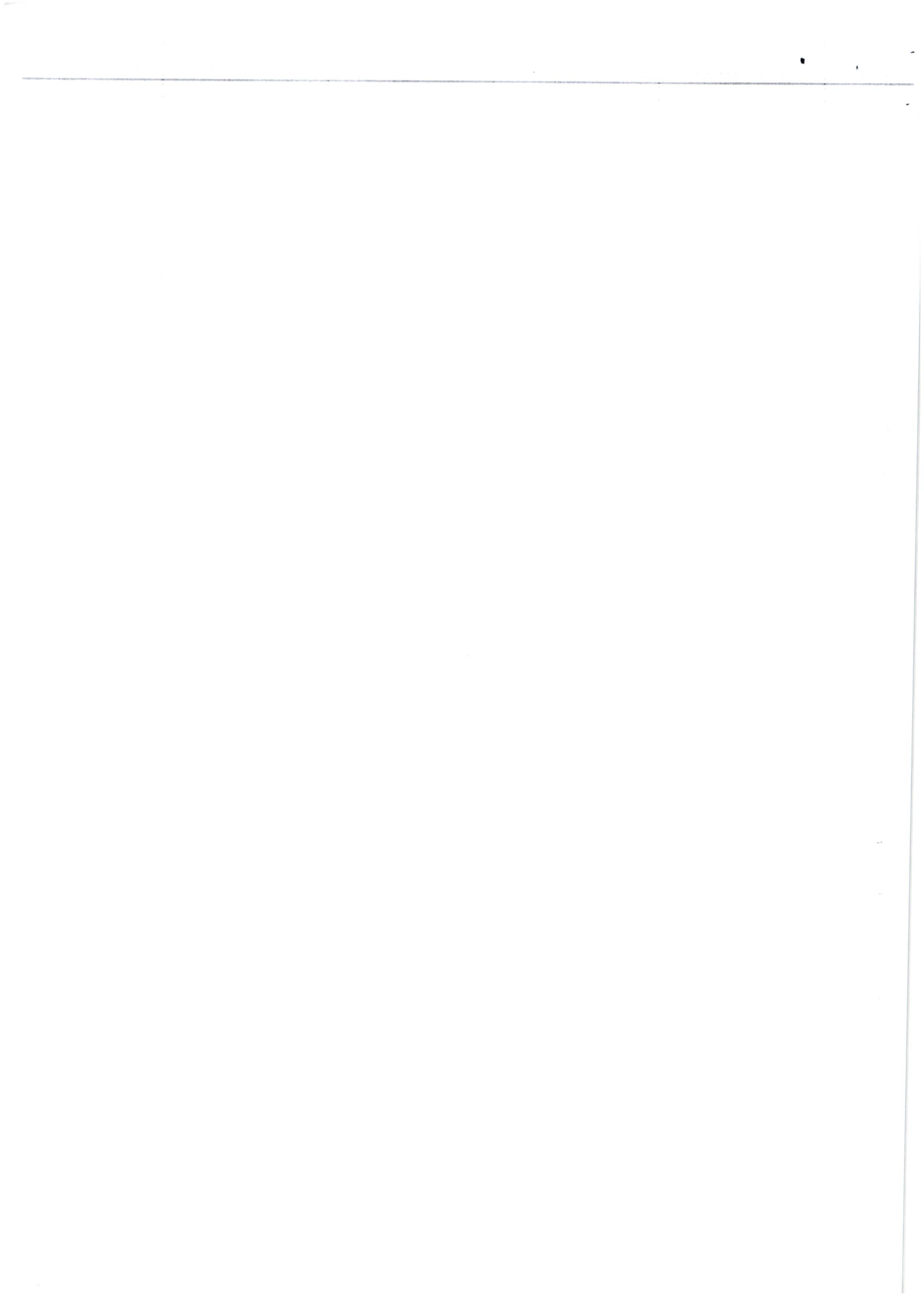
(3) The County Executive Committee member shall provide secretariat services to the committee.

(4) The members of the County Physical and Land Use Planning Liaison Committee appointed under subsection (1)(a), (d), (e), (f) and (g) shall serve for a term not exceeding three years, renewable once.

78. The functions of the County Physical and Land Use Planning Liaison Committee shall be to—

Composition of the County Physical and Land Use Planning Liaison Committee.

Functions of the County Physical and Land Use Planning Liaison



- (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 and land use development plans in the county;
- (c) advise the County Executive Committee Member on broad physical and land use planning policies, strategies and standards; and
- (d) hear appeals with respect to enforcement notices.

Committee.

79. (1) The County Physical and Land Use Planning Liaison Committee shall, subject to this Act or any other written law, determine its own procedure.

Procedure of the County Physical and Land Use Planning Liaison Committees.

(2) Despite sub-section (1), the quorum of the County Physical and Land Use Planning Liaison Committee shall be half the members of the Liaison Committee.

(3) Every decision of a County Physical and Land Use 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 and Land Use 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 and Land Use Planning Liaison Committee shall meet at least four times in a year.

80. (1) A person who appeals to County Physical and Land Use Planning Liaison Committee shall do so in writing in the prescribed form.

Appeal to a County Physical and Land Use Planning Liaison Committee

(2) A County Physical and Land Use 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 and Land Use 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 and published in the *Gazette* or in at least one newspaper of national circulation.

81. (1) A person who has been summoned to appear before a County Physical and Land Use Planning Liaison Committee 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 and Land Use 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.

82. All summons issued or notices issued, or awards or orders made, under this Act by a County Physical and Land Use Planning Liaison Committee may be issued or made in electronic form or written form.

Communication.

83. (1) A person who has made an appeal before a County Physical and Land Use 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 and Land Use 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 and Land Use 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 and Land Use 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 and Land Use Planning



Liaison Committee shall maintain written records of all its proceedings.

84. The provisions of sections 80, 81, 82 and 83 shall apply with the necessary modifications in the case of appeals to the National Physical and Land Use Planning Liaison Committee.

Appeals to
National Physical
and Land Use
Planning Liaison
Committee.

85. (1) A member of the National Physical and Land Use Planning Liaison Committee or a County Physical and Land Use 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 and Land Use Planning Liaison Committee who makes a disclosure under subsection (1) shall not take part in any proceedings related to that matter.

(3) A member of a physical and land use 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.

86. (1) A person shall not disclose, without the consent of the National Physical and Land Use Planning Liaison Committee or a County Physical and Land Use 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 subsection (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 and Land Use Planning Liaison Committee or a County Physical and Land Use Planning Liaison Committee in the performance of their duties to a person authorized by any written law to be given that information or as may be required by a court of law.



87. (1) Each Physical and Land Use 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 and Land Use Planning Liaison Committees to keep registers.

(2) Each register maintained by Physical and Land Use 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 and Land Use Planning Liaison Committee to examine a register maintained by that committee and that party may, after paying a prescribed fee, 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.

88. The remuneration of the members of the Physical and Land Use Planning Liaison Committees shall be recommended by the Salaries and Remuneration Commission.

Remuneration.

89. A public officer acting under the Act shall not be liable in an action or a proceeding for or in respect of an act 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.

Indemnity for public officers acting under this Act.

PART VII-PROVISIONS ON DELEGATED POWERS

90. (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.

Regulations.

(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 and land use planning services across the country;
- (c) guidelines for operations of Inter-County Physical

and Land Use Planning Committees;

- (d) procedures for the conduct of Physical and Land Use 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.

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

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

23 of 2013.

Cap 2.

PART VIII – MISCELLANEOUS PROVISIONS

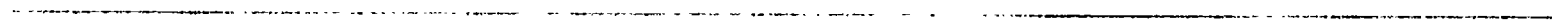
91. The Physical Planning Act, 1996, is hereby repealed.

Repeal of No. 6 of 1996

92. (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



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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, Inter-County 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.

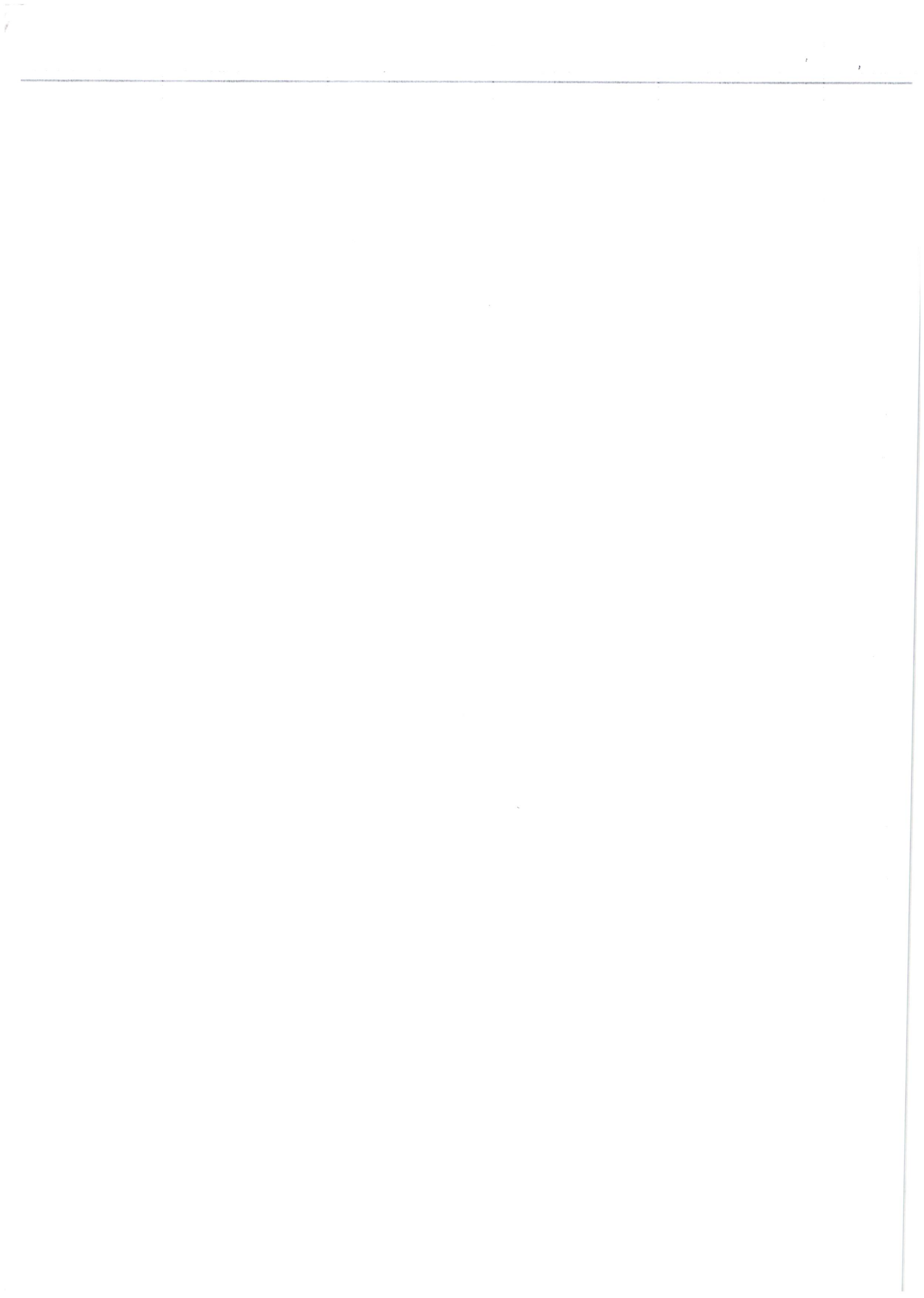
(9) any other matter that may be prescribed

12. Adoption of the survey report

(1) The County Executive Committee Member shall submit the survey report to the relevant County Assembly 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).



SECOND SCHEDULE (s. 48)

CONTENTS OF LOCAL PHYSICAL AND LAND USE DEVELOPMENT PLANS

PART A – MATTERS WHICH MAY BE DEALT WITH IN A LOCAL PHYSICAL AND LAND USE 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.
 - (c) Combating climate change.
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 land use 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;



11. Land use pattern analysis and proposals
12. Project objectives including specifications of all proposed redevelopment and detailed job creation and retention estimates
13. A financial Plan including cost estimates and a project budget
14. Local approvals
15. Site preparations including land protections and measures to address environmental or flood problems, conservation of areas of historic, architectural significance
16. Traffic systems including safe pedestrian movement, access to buildings convenient and ample public car parks as well as efficient road links
17. Public improvements including how the improvements will help achieve the objectives of the Plan
18. A relocation Plan
19. Redeveloper's obligations (restrictions that are or will be placed on owners of individual parcels)
20. Disposition for each parcel including any known redeveloper
21. A report on citizen participation describing meaningful citizen participation in the Planning process and expected citizen participation during project execution

THIRD SCHEDULE (s.55)
DEVELOPMENT CONTROL

1. The development control process and procedures may relate to any of the following—

Aspects of development control.

- (a) Change of user
- (b) Extension of users
- (c) Extension of lease
- (d) Subdivision scheme and amalgamation proposals
- (e) Building Plans
- (f) Processing of easements and way-leaves
- (g) Siting of education institutions, base transmission station, petrol stations, eco lodges, camp sites, power generation Plants, factories
- (h) Advertisement
- (i) Any other as the county executive committee member may prescribe from time to time

2. A county government shall, when considering a development application submitted—

Consideration of development application.

- (a) be bound by approved physical and land use 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 Section 60 ;
- (e) in the case of a leasehold, have regard to any special conditions stipulated in the lease.

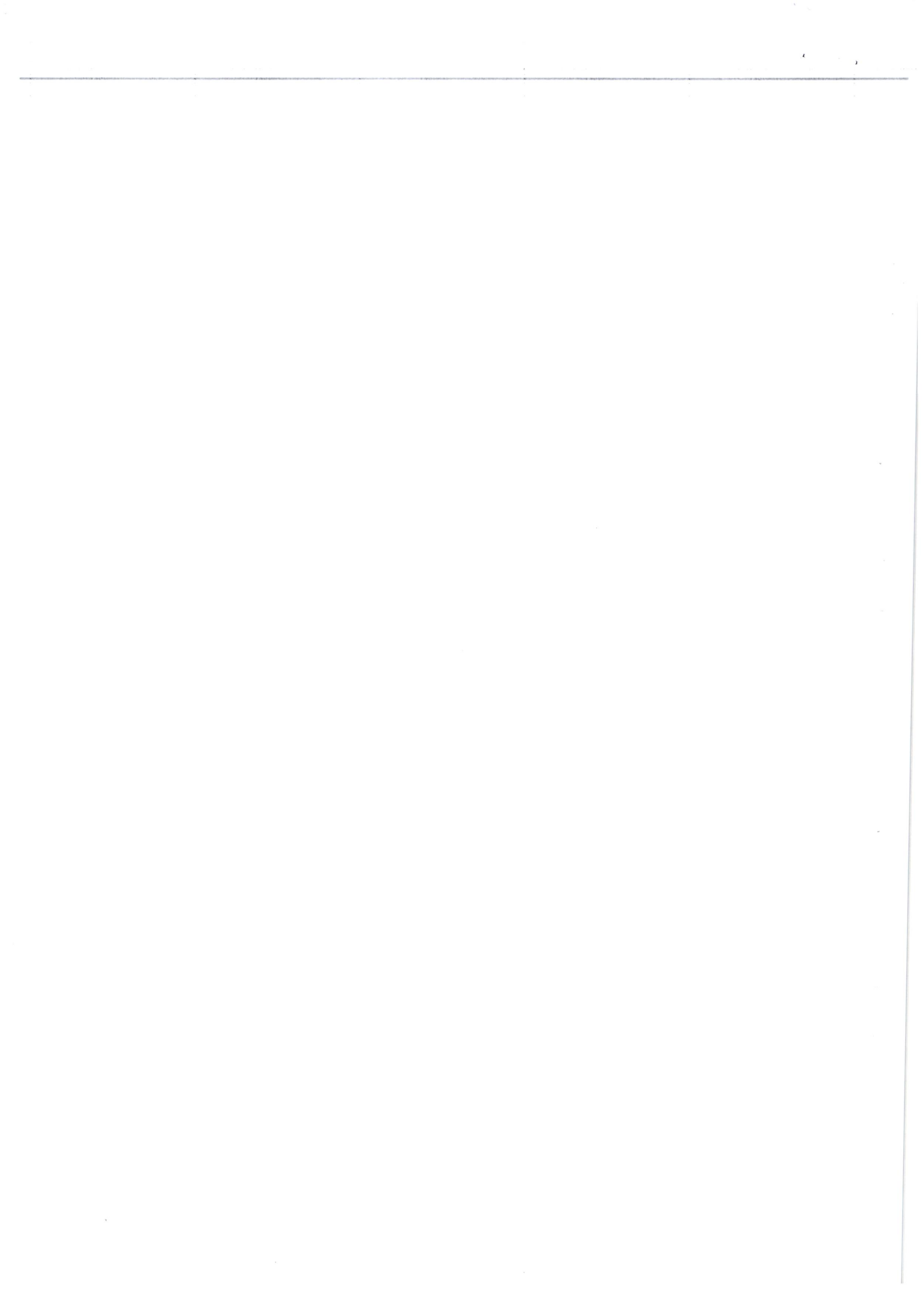
3. If any development application requires subdivision or change of user of any agricultural land, the county government shall require the applicant to obtain consent from the relevant Board.



- (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 county government 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



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;

15. The display of advertisements not mentioned in (1) shall require permission from the relevant county government.

(1) The grant of permission under paragraph (1) 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 county government may consider necessary.

16. A county government 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.

17. Authorities responsible for licensing educational facilities shall not issue licenses without advice from the relevant county government.

18. 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.

