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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF THE LAND REGISTRATION (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO.7 OF 2020)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 08 SEP 2020	
DAY: TUESDAY	
TABLED BY:	CHAIRPERSON HON. RACHEL NYAMAI, MP
CLERK-AT THE TABLE:	Ashubw

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

SEPTEMBER, 2020

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CHAIRPERSON'S FOREWORD

The Land Registration (Amendment) Bill, 2020 seeks to amend the Land Registration Act No. 3 of 2012 in order to establish the Office of a Complaints Reviewer who shall be responsible for providing free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services. This is geared towards ensuring the effective delivery of land registration and survey services by giving the public an avenue of lodging complaints and having their complaints resolved effectively.

The Bill underwent first Reading on 14th April, 2020 and was subsequently committed to the Departmental Committee on Lands for consideration pursuant to the provisions of Standing Order 127.

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on 29th April 2020 inviting the public to submit memoranda on the Bill.

By close of business on 5th May 2020 the Committee had received submissions from the Association of Surveyors of Kenya, a Member of the Public, Kipkenda and Company Advocates, the Institution of Surveyors of Kenya, the Law Society of Kenya, the Land Development and Governance Institute, the National Land Commission (NLC) and the Kenya Private Sector Alliance, which are contained in this Report. The Committee also held a meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on Wednesday 10th June, 2020.

The Committee thereafter considered the report of the Bill and made various observations and recommendations as indicated in this Report.

The Committee appreciates the support accorded to the Committee in discussing the Bill by the office of the Clerk and the participation of the Honourable Members of the Committee. This report represents an analysis of the Bill pursuant to Standing Order 127.

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

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
 - (i) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (ii) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (iii) Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (iv) Study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (v) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
 - (vi) Study and review all legislation referred to it.

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects;
 - i. Lands
 - ii. Settlement

1.3 Committee oversight

3. The Committee oversights:
 - i. The Ministry of Lands and Physical Planning; and
 - ii. The National Land Commission.

1.4 Committee membership

4. The Committee membership comprises: -

Chairperson

Hon. Dr. Rachael Nyamai, CBS, MP

MP for Kitui South Constituency

Jubilee Party

Vice Chairperson

Hon. Khatib Mwashetani, MP

MP for Lunga Lunga Constituency

Jubilee Party

Hon. Benjamin Washiali, MP

Member for Mumias East Constituency

Jubilee Party

Hon Joshua Kutuny Serem, MP

Member for Cherangany Constituency

Jubilee Party

Hon. Mishi Mboko, MP

Member for Likoni Constituency

Orange Democratic Movement (ODM)

Hon. Omar Mwinyi, MP

Member for Changamwe Constituency

Orange Democratic Movement (ODM)

Hon. Ahmed Kolosh, MP

Member for Wajir West Constituency

Jubilee Party

Hon. Ali Mbogo, MP

Member for Kisauni Constituency

Wiper Democratic Movement (WDM)

Hon. Babu Owino, MP

Member for Embakasi East Constituency

Orange Democratic Movement (ODM)

Hon. Caleb Kipkemei Kositany, MP

Member for Soy Constituency

Jubilee Party

Hon George Aladwa, MP

Member for Makadara Constituency

Orange Democratic Movement (ODM)

Hon George Risa Sunkuyia, MP
Member for Kajiado West Constituency

Jubilee Party

Hon. John Muchiri Nyaga, MP
Member for Manyatta Constituency

Jubilee Party

Hon. Josphat Gichunge Kabeabea, MP
Member for Tigania East Constituency

Party of National Unity (PNU)

Hon. Lilian Tomitom, MP
Member for West Pokot County

Jubilee Party

Hon. Owen Yaa Baya, MP
Member for Kilifi North Constituency

Orange Democratic Movement (ODM)

Hon. Patrick Munene Ntwiga, MP
Member for Chuka/Igambangombe
Constituency

Jubilee Party

Hon. Samuel Kinuthia Gachobe, MP
Member for Subukia Constituency

Jubilee Party

Hon. Teddy Mwambire, MP
Member for Ganze Constituency

Orange Democratic Movement (ODM)

1.5 Committee secretariat

5. The Committee secretariat comprises:

Lead Clerk

Mr. Leonard Machira

Senior Clerk Assistant

Mr. Ahmad Guliye
Clerk Assistant III

Mr. Adan Abdi
Fiscal Analyst III

Dr. Kefa Omoti
Principal Researcher Officer

Ms. Winnie Kizia
Media Relations Officer III

Ms. Jemimah Waigwa
Legal Counsel I

Mr. Dennis Mawira
Audio Officer

Ms. Peris Kaburi
Serjeant-At-Arms

2.0 INTRODUCTION

6. The Land Registration (Amendment) Bill, 2020 was read a First Time 14th April, 2020. The principal object of this Bill is to amend the Land Registration Act No. 3 of 2012 in order to establish the Office of a Complaints Reviewer who shall be responsible for providing free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services. This is geared towards ensuring the effective delivery of land registration and survey services by giving the public an avenue of lodging complaints and having their complaints resolved effectively.
7. The Bill provides as follows-
 - a) It establishes the office of the Complaints Reviewer in the Lands Registry and Survey of Kenya which shall perform the functions and exercise the powers provided for in the Bill.
 - b) The function of the Complaints Reviewer shall be to provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services.
 - c) The Complaints Reviewer shall have powers to receive, process and resolve all complaints relating to land registration and surveying lodged by public among others.
 - d) The powers of the Complaints Reviewer shall not include complaints relating to the merits of a decision of the Land registry and Director of Survey, by the Land Registry and Survey of Kenya employees concerning their employment or by applicants for employment about recruitment procedures and that are subject of legal proceedings.
 - e) The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and the complainant received a final response and is dissatisfied.
 - f) A Complaints Reviewer shall be appointed by the Cabinet Secretary for a term of three years renewable once.
 - g) A person shall be qualified to be appointed as the Complaints Reviewer if the person—
 - (a) is a citizen of Kenya;
 - (b) is an advocate of the High Court of Kenya with at least ten years' experience; and
 - (c) meets the requirements of Chapter Six of the Constitution.
 - h) The office of the Complaints Reviewer shall become vacant if the holder dies; by notice in writing resigns; or is removed from office by the Cabinet Secretary for gross misconduct among other grounds.
 - i) The Bill further provides that where a vacancy occurs in the office of the Complaints Reviewer, the Cabinet Secretary shall appoint a Complaints Reviewer within fourteen days of occurrence of a vacancy.
 - j) The Public Service Commission may employ such staff for the office of the Complaints Reviewer as may be necessary for the proper discharge of the functions of the Complaints

Reviewer under this

3.0 SUBMISSIONS FROM THE PUBLIC

8. The Committee placed an advert on 29th April 2020 inviting the public to submit their views on the Bill. By close of the period for submission of memorandum, the Committee had received memorandum from the Association of Surveyors of Kenya, a Member of the Public, Kipkenda and Company Advocates, the Institution of Surveyors of Kenya, the Law Society of Kenya, the Land Development and Governance Institute, the National Land Commission (NLC) and the Kenya Private Sector Alliance.
9. The memoranda from the public have been analyzed hereunder as follows-

3.1 Memorandum by the Association of Surveyors of Kenya

10. The Association of Surveyors of Kenya objected to the Bill due to the following reasons-
 - a) The Bill duplicates the role of the Commission of Administrative Justice established under Article 59 of the Constitution. The Commission has the mandate to deal with improper administration in the public sector, investigate complaints including on abuse of power and delay and oversee the implementation of the Access to Information Act, 2016.
 - b) The Bill duplicates the administrative and technical functions of the Chief Land Registrar in implementing the Land Registration Act, the Director of Survey in implementing the Surveyors Act and the National Land Commission in implementing the National Land Commission Act and the Community Land Act.
 - c) Surveyors of Kenya offers surveys services under the Surveys Act Cap. 299 which has prescribed complaints mechanism under the Land Surveyors Board. The Act gives power to the Director of Surveys to investigate unprofessional and fraudulent surveys that leads to disciplining of the land surveyors.
 - d) Most of the complaints at the Ministry relate to corruption and delay of delivery of service and hence the Ministry cannot purport to investigate the complaints internally through a Complaints Reviewer who is appointed by the Cabinet Secretary yet EACC has also capacity and legal framework to deal with the matters.
 - e) The Bill has left out complaints launched in the Ministry relating to the offices of Director of Land Adjudication and Settlement, Director Valuation and Director Physical and Land Use Planning.

3.2 Memorandum by a Member of the Public

11. The Committee received a memorandum from an unnamed Member of the Public. The member

submits that the qualifications listed in the Bill for the Complaints Reviewer do not meet the professional and technical skills and experience required for the holder of such an office. The following amendments are therefore proposed-

“The office holder should be a Kenyan citizen, be a licensed land surveyor with over ten years professional practice experience, holds a masters degree relevant to matters relating to land administration, a doctorate degree be an added advantage and meets the requirement of Chapter Six of the Constitution.”

3.3 Memorandum by Kipkenda and Company Advocates

12. The firm opposed the establishment of the Office of the Complaints Reviewer on the following grounds-

- a) The functions of the Commission on Administrative Justice under the Commission of Administrative Justice Act, 2011 are two-fold, one is to deal with maladministration in the public sector including the Ministry of Lands and also investigating complaints of delay, abuse of power and unfair treatment among others. The Commission also oversees the implementation of the Access to Information Act, 2016.
- b) The existence of a constitutionally mandated body is ground for empowering the body instead of creating another layer of bureaucracy and creating a burden on taxpayers.
- c) The creation of the office of the Complaints Reviewer is a duplication of the roles of the Commission of Administrative Justice. What is required is cooperation between the Ministry and the CAJ.
- d) The Ministry should cooperate with the Ombudsman to enable an office to be housed at the Ministry to handle the complaints. This will not only save taxpayers extra burden but will take advantage of the binding effect of the decisions of the Ombudsman.
- e) In light of the foregoing, the firm proposes the following amendments-
 - 90A. The Cabinet Secretary shall cooperate with the Commission on Administrative Justice in the handling of complaints, investigations, and redress of complaints by the public arising from the Land Registry and Survey of Kenya.
 - 90B. The Cabinet Secretary and the Commission on Administrative Justice shall cooperate on the setting up of a liaison office at the Ministry of Lands, Survey of Kenya and its officials.
 - 90C. The decisions and recommendations of the Commission shall be binding on the Lands, Survey of Kenya and its officials.

3.4 Memorandum by the Institution of Surveyors of Kenya

The ISK opposed the amendments on the following grounds-

- a) The amendment will not address the administrative and technical issues in land management

process. There are two issues at the Survey of Kenya and Land Registries that is technical and administrative issues. The technical issues at the Survey of Kenya includes accuracy of survey plans whereas at the land registries includes legal and technical issues of registration. However, most of the issues at the Survey of Kenya and Land Registries are administrative which can be cured through implementation of an electronic platform that will bring quick, transparent and accountable services to the public.

- b) The amendments introduce unnecessary bureaucracy in land administration process. Section 13(2) of the Land Registration Act empowers the Chief Land Registrar to hear and determine appeals from the registries and sections 79 and 80 of the same Act gives the registrar power to rectify errors. Any person aggrieved by the Act can also file an appeal at the Environment and Land Court. The Survey Act empowers the Land Surveyors Board to hear and determine disputes relating to practice of Survey (Section 9 (e) and (f). Section 18 of the Act provides a person aggrieved by the decision of the Board shall appeal in a court of law.
- c) Between September, 2019 and March, 2020 the Ministry's Public Complaints Committee received 25 complaints of which only 9 complaints were resolved by 1st April, 2020. The number of complaints to be resolved by the Office will be so few to justify the creation of such an office. The office will only serve to create bureaucracy.
- d) The Bill is legally flawed as it seeks to extinguish the functions anchored in the Survey Act through an amendment to the Land Registration Act.
- e) The functions that the Bill seeks to give the Complaints Reviewer are already being carried out by the office of the Ombudsman and this will occasion a wastage of public resources.
- f) The Bill proposes that the Compliant Reviewer shall be appointed by the Cabinet Secretary. An impartial complaint mechanism cannot be achieved with the aforementioned appointment process.
- g) Furthermore, the Bill is silent on what actions the Cabinet Secretary can take upon receipt of the recommendations of the Reviewer. This opaque process gives room for abuse of power where the Cabinet Secretary can overrule the Reviewer.
- h) The requirement of section 90F that lists an advocate as being the sole qualification of a Reviewer discriminates against other qualified land sector professionals.
- i) Section 90K leaves ambiguity, especially with regards to the cadres and qualifications of employees to be seconded to the Office of the Reviewer.
- j) ISK hence recommends that the National Assembly withdraws the Bill, the Ministry reviews the existing internal mechanism including the Complaints Committee, the Ministry implements comprehensive electronic land transactions, strengthen the office of the ombudsman and enliven the moribund Ministry's charter.

3.5 Memorandum by the Law Society of Kenya

13. The LSK submitted as follows on the Bill-

- a) There is need for the Bill to define the terms "land registration" and "survey services" so that there is a clear distinction between the act of registration and mere performance of administrative acts.

- b) There is need to distinguish between the proposed roles of the Complaints Reviewer and those of the Chief Land Registrar as a review of their respective functions reveals that they are nearly the same despite the attempt by the Bill to distinguish between the two.
- c) There is a possibility that the Chief Land Registrar who is statutory mandated to review decisions by the registries will now be subservient to the appointee of the Cabinet Secretary.
- d) Under section 5(2)(b) of the NLC Act the NLC has the function of monitoring the registration of all rights in land. Adding another tier of review is likely to impede the ease of doing business.
- e) There is need to reconsider and change the structure of the Bill to establish an independent and impartial tribunal in line with Article 47 of the Constitution.

3.6 Memorandum by the Land Development and Governance Institute

14. The Land Development and Governance Institute submitted as follows on the Bill-

- a) Section 90A introduces inconsistency in terms of the laws being addressed. The Bill needs to be clear that it is seeking an amendment to the Land Registration Act and the Surveys Act.
- b) Section 90B does not address processes such as adjudication, planning and settlement. The Bill should address complaints from all land administration processes.
- c) Section 90C conflicts with section 86 of the Land Registration Act, 2012 as it gives the function of the Reviewer the decisions of the Registrar. There is need to avoid conflict with section 86. There is also need for clear definition of roles to avoid bureaucracy, duplication and delays in resolving land disputes.
- d) Section 90D gives superfluous powers “receive, process, recommend and advise” which contradicts the subsection which excludes complaints on the merits of the decisions of the Registrar. The value of the office is also in question if the office will only be dealing with administrative functions. The functions also appear to be in duplication with the roles of the Ombudsman. The powers of this office need to be provided with clarity to avoid duplication.
- e) The appointment procedure is not given and is also not clear why the recruitment process has been removed from the Public Service Commission and has been given to the Cabinet Secretary. The Bill should address the issue of independence and impartiality and fairness in the recruitment process. This being a public service, the office should be created by the Public Service Commission.
- f) The qualifications in section 90F do not include any competence in land administration and management and hence the qualifications need to be revised to comprise land administration and management.
- g) The Bill should also give powers to the Public Service Commission to remove a public officer from office not the Cabinet Secretary.
- h) The time that the Bill has stipulated for filling of a vacancy is short.
- i) Section 90I does not address the scenario where loss is caused through negligence. The provision should not cover negligence.

- j) Section 90J gives the Reviewer too much power to decide on the operations of the office hence is subject to abuse.
- k) Section 90K introduces inconsistencies where the PSC is only mandated to employ the staff to work under the reviewer and not the reviewer. The Bill should be clear that the Reviewer and staff are appointed by the PSC to avoid political interference.
- l) The demand for the Office of the Reviewer is not justified.

3.7 Memorandum by the National Land Commission

15. The NLC submitted as follows on the Bill-

- a) There appears to be a conflict and overlap with the functions of the Chief Land Registrar and courts as envisaged under sections 14(2)(e), 79 and 80 of the Land Registration Act.
- b) There is lack of clarity on whether the functions of the Reviewer will be administrative, judicial or quasi/judicial.
- c) There is potential conflict between the functions of the Reviewer with those of the Ombudsman, NLC, Courts and County Governments.
- d) The nature of the complaints contemplated is not sufficiently clear hence there is the likelihood of confusion and overlap of functions.
- e) Section 90A: There is need for clear definition of the term complaints as there are likely to be legal challenges in the exercise of the functions. Survey services touch on the role of the county governments. Registration means bringing of interests in land which touches on the role of the Land Registrar.
- f) Sections 90B and C: The NLC has various functions which affect survey and registration services as envisaged under section 5(5)(b) of NLC Act and section 4(2)(m) of the Land Act which spells the role of the Commission in dispute resolution and extending role in section 14 of the NLC Act. Historical Land Injustices investigations also touch on survey and registration services.
- g) Section 90D(1c): It is unclear on the Reviewer's role as it relates to the roles played by courts, commission and county government which have related constitutional and legislative roles on survey and registration.
- h) Section 90D(1d): The maintenance of a register is premised on the parameters of the exercise of the functions of the proposed Reviewer where there exist potential overlap and duplicity of functions and challenge on constitutionality is likely.
- i) Section 90D(2)(a): The provision that the Reviewer shall process and resolve all complaints is likely to cause confusion and there is need to create clarity on the anticipated complaints being careful that matters of procedure are differentiated from substance.
- j) Section 90D(3): This gives oversight role to a person working within the offices where dissatisfaction occurred as contrasted with an external Ombudsman.
- k) Section 90E and F: The minimum qualifications mirror those of the Chief Land Registrar save for additional 10 years. The Registrar is appointed by the PSC whereas the Reviewer will be an appointee of the Cabinet Secretary. There is need to consider the qualifications

and manner of appointment of the Reviewer as it is likely to impact on the impartiality of the holder of the office.

- l) The Ministry should initiate a comprehensive review of the Survey Act to align it with the Constitution, Land Registration Act and Land Act within which context the issue of resolutions or disputes of survey will be addressed.

3.8 Memorandum by the Kenya Private Sector Alliance

16. The KEPSA submitted as follows on the Bill-

- a) Section 14 of the Land Registration Act (No. 3 of 2012) confers powers upon the Chief Land Registrar to inter alia formulate practice instructions and guidelines, hear and determine appeals from the registries, and make orders as to treatment of costs incurred in connection with an investigation or hearing held by the Registrar.
- b) The Survey Act (Cap 299), on the other hand, is silent on the mechanism for handling complaints lodged by members of the public (barring disciplinary proceedings against licensed surveyors).
- c) The National Land Commission (NLC) shall have the mandate to conduct investigations and dispute resolution proceedings concerning land matters, along with all other attendant powers. Establishment of a parallel office to handle complaints relating to land matters will effectively: disempower a constitutional office; and lead to duplication of roles of government institutions, hence inflation of government overheads and increase in the tax burden on Kenyans.
- d) The Committee should consider either amending the Land Registration Act (No. 3 of 2012) and Survey Act (Cap 299) to expound on the powers of the Chief Land Registrar and Director of Survey, to waive fees relating to complaint handling, and to provide for such other rules and regulations as may be appropriate regarding complaint handling or amend the National Land Commission Act to expound on the functions of the NLC to include complaint handling.
- e) The Committee should consider withdrawing the Bill in entirety and instead propose suitable amendments to the Land Registration Act (No. 3 of 2012), Survey Act (Cap 299) and/or the National Land Commission Act (No. 5 of 2012).
- f) Owing to the costs associated with the proposed establishment of the Office of the Complaint Reviewer, a regulatory impact statement ought to be prepared and published in accordance with Sections 6 and 8 of the Statutory Instruments Act.
- g) The Bill needs to be clear that it is seeking an amendment of two statutes (The Land Registration Act 2012, and the Survey Act Cap 299). The Bill should address how complaints arising from all land administration processes are handled since they are interlinked.
- h) The Office of the Reviewer is not necessary, since these matters should be addressed by the technical offices of the Land Registry and the Survey of Kenya. Creating such an office adds to the number of people the public must deal with and will require additional expenditure of public funds.

- i) In the alternative the Chief Land Registrar and the Director of Surveys, or even the Ministry's accounting officer (Principal Secretary) can use their administrative discretion to establish a desk to deal through their administrative discretion, without the need for an amendment to the law.
- j) Alternatively, there is need for clarity to avoid conflict with section 86 of the Land Registration Act and introduction of insecurity to title and property rights.
- k) Clause 2: Amend by inserting sub-clause (b) immediately after sub-clause (a):- (b) "to conduct preliminary investigation to determine whether or not the complaint is one which falls within the scope of the Complaints Reviewer." This is to ensure that the Complaints Reviewer make enquiries in the Land Registry and Survey in order to clarify that its internal complaints procedure has been fully completed.
- l) Section 90D(1)(2) and (3): The powers of the Office contradict with those of the Ombudsman, Registrar and of the Environmental and Land Court in terms of section 86 of the Land Registration Act.
- m) There is need to provide the time limitation within which the Office of the Review should consider a complaint for review.
- n) The Bill should address the issue of independence, impartiality and fairness in the recruitment process.
- o) Amend section 90F to insert after the word "experience" the words "or a registered land surveyor of not less than ten years standing" since the office will also be dealing with complaints relating to survey services.
- p) The Bill should give the powers of removal from office to the Public Service Commission and not the Cabinet Secretary.
- q) The time given to fill the office once a vacancy arise is too short. Further, it is not justified why the filling of the vacancy should be done by the Cabinet Secretary.
- r) Section 90I does not address the scenario where loss is as a result of negligence.
- s) Section 90J gives the Complaints Reviewer too much power to decide on the operations of the office hence subject to abuse.
- t) Amend 90k (3) by inserting immediately after the word "officers" the words "from the Land Registry or Survey Department". These staff will bring with them experience and expert knowledge on registration and survey services.
- u) Delete section 90L (1): This can be put in the current Land Registration (general) Regulation 2017 under the Fifth Schedule and allow the Registrar to handle and review complaints.

3.9 Submissions by Cabinet Secretary Ministry of Lands and Physical Planning

The Committee held a meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on Wednesday 10th June, 2020. The Chief Administrative Secretary, who represented the Cabinet Secretary informed the Committee that:

- i) The Bill intends to establish the office of the Complaints Reviewer in the Lands Registry and the Survey of Kenya to provide an independent mechanism for internal complaints resolution

within the Ministry. This was geared towards improving service delivery, encouraging accountability and also strengthening public confidence in the ministry 'administrative processes;

- ii) The Ministry acknowledged that notwithstanding the necessity for an independent internal resolution mechanism, the office of the Ombudsman remains at the apex of the pyramid of grievance resolution mechanisms and is the last port of call when the internal processes are exhausted;

The Ministry proposed the following amendments to the Bill:

Clause 90A

That the scope of clause 90A be expanded to include all departments within the Ministry.

Justification

To enable the Office of the Complaint Reviewer to handle complaints from all departments within the Ministry.

Clause 90B

That a new sub section be included in clause 90 B to allow the Office of the Complaint Reviewer to establish regional offices.

Justification

To enable the Office of the Complaint Reviewer, cover all land registries country.

Clause 90D

That a new sub section be included in clause 90 B to allow the Office of the Complaint Reviewer to follow up and enforce any recommendations made.

Justification

To ensure implementation of recommendations of the Complaints Reviewer.

4.0 OBSERVATIONS

Having considered the submissions from the public, the Committee observes as follows-

Duplication of roles.

1. The functions of the Office of the Complaints Reviewer which is to provide free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding is likely to be a duplication of the functions already being performed by the Ombudsman.

Section 5(3) of the National Land Commission Act also provides that the function of the NLC shall be to monitor the registration of all rights and interests in land. Article 252 of the Constitution gives power to each constitutional commission to conduct investigations on its own initiative or on a complaint made by a member of the public. This means the Office of the Complaints Reviewer may also

2. Section 8 of the Commission of Administrative Justice Act No. 23 of 2011 provide for the functions of the Ombudsman which include investigating complaints in public administration of any public officer, abuse of power and inquire into allegations of delay and maladministration among others duplicate the roles of NLC in dealing with complaints made by the public on land registration matters.
3. Section 14 of the Land Registration Act prescribes the powers of Land Registrar which includes hearing and dealing with appeals from the registries. The Bill as it is likely to create a conflict between the role of the Reviewer and those of Land Registrar as relates to land registration services.
4. It is also worth noting that the decisions of the Registrar are subject to review by the Environmental Land Court. There is therefore likely to be a conflict between the functions of the Complaints Reviewer and those of the Court in terms of section 86 of the Land Registration Act which provides that “if any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.”
5. The Survey Act also gives power to the Land Surveyors Board to take disciplinary proceedings against licensed surveyors and hence it is not clear how the functions of the Reviewer as relates to survey services shall impact on this and whether it excludes complaints against licensed surveyors.

Nature of complaints to be addressed by the Reviewer

6. It is also not clear what types of “complaints” the office shall be dealing with. Section 90D provides that the Complaints Reviewer shall have powers to do among other things receive, process and resolve all complaints relating to land registration and surveying lodged by public. This may create a conflict with the substantive powers of Registrars, Land Surveyors Board and the Environment and Land Court.
7. Although section 90D(2) seeks to provide that the powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints relating to the

merits of a decision of the Land registry and Director of Survey, there are arguments that this may imply the office will therefore be dealing administrative matters which does not justify amendment of the law as administrative matters can be dealt administratively by the Complaints Committee which already exists at the Ministry.

8. The Committee also noted that complaints that are of a technical nature should be handled by technical officers in the registry and survey departments, while administrative issues could be effectively addressed by the land officers currently manning the County land registries under the supervision of the Principal Secretary. Consequently, the same did not merit legislation but would be addressed administratively.

Impartiality and Independence of the Office of the Complaints Reviewer.

9. Article 47 of the Constitution as read with the Fair Administrative Action Act, 2015 provides for the establishment of a body for the review of administrative action by a court or, if appropriate, an **independent and impartial** tribunal. The office of the Complaints Reviewer independence and impartiality may however be questioned due to the fact that the Complaints Reviewer is an appointee of the Cabinet Secretary.
10. The Committee also noted that the challenges facing the registration and survey of land were mainly related to corruption and the Complaints Reviewer would also be susceptible to the vice. The vice may also easily be entrenched in the office of the Complaints Reviewer given that the Reviewer would be an appointee of the Cabinet Secretary.
11. It is not clearly provided for in the Bill if the office of the reviewer will be an office in the public service or just an office created by the Cabinet Secretary to help solve problems created by the Cabinet Secretary's own employees.

Application

12. The Bill applies to complaints relating to land registration services under the Land Registration Act, 2012 and also to survey of land services under the Survey Act. It is not clear how the Bill which is amending the Land Registration Act shall apply to the Survey Act Cap. 299 without amending the Act.

Increased bureaucracy

13. Section 90D (3) provides that the Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and the complainant received a final response and is dissatisfied. This may arguably be said to increase another layer of considering complaints that have already been considered through internal complaints procedures hence creating bureaucracy.
14. The Bill is likely to entrench an existing bureaucratic land registration system. It is also not clear on whether the Ministry is unable to achieve the desired level of efficiency by implementing the existing laws, particularly the survey Act and the Land Registration Act. Further the committee noted that the complaint review mechanism in the Ministry of Lands and Physical Planning can be enhanced administratively instead of introducing another layer of bureaucracy in the land administration process.

Qualifications for appointment

15. The requirement that the Reviewer can only be picked from those in the legal profession was discriminatory since the registration process incorporates involves other professionals including surveyors, registrars, valuers and town planners.

Lack of a comprehensive mechanism

16. The Committee noted that the land registration process benefits from other procedures including land adjudication, town planning, subdivision and valuation. By targeting complaints related to surveying and registration, the Bill aims to partially tackle land related public complaints and does not provide a comprehensive mechanism for the review of complaints relating to the said offices.

Lack of an enforcement mechanism

17. The Bill is silent on the actions the Cabinet Secretary can take upon receipt of the recommendations of the Reviewer. The Bill does not also indicate the enforcement mechanism the Reviewer can use to enforce decisions and whether the Reviewer will exercise quasi-judicial authority such as cancelling title deeds.

Cost of establishing the office of the Complaints Reviewer.

18. The establishment of the office of the Complaints Reviewer will be costly, particularly if the same was to be replicated in all the 47 counties as it would require recruitment of staff and other operational expenses. This will create an unnecessary burden on the taxpayers given that the Ministry has existing internal complaints review mechanisms as provided for in the Land Registration Act and the Survey Act.

Non-accessibility challenges

19. The Bill provided for a centralized office of the Complaint Reviewer based in Nairobi. The same would not be easily accessible to the public as the devolution of the office to the counties was not provided for in the Bill.

Abuse of power.

20. The Bill is silent on what actions the Cabinet Secretary can take upon receipt of the recommendations of the Reviewer. The lack of clarity could give room for abuse of power where the Cabinet Secretary can overrule the Reviewer.

Way forward

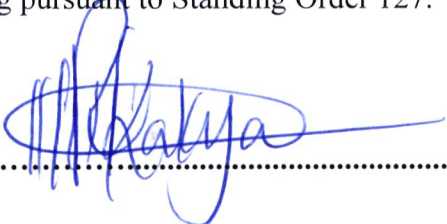
21. In view of the foregoing, the Committee observed that the Bill should be shelved as the office of a Complaints Reviewer is unnecessary because it would just amount to duplication of roles.

22. The Committee further observed that the existing structures at the Ministry of Lands need to be strengthened to deal with the complaints administratively and hence does not warrant the need for legislation.

5.0 COMMITTEE RECOMMENDATION

Having analyzed the Bill, the Committee recommends that the Bill does **NOT** proceed to Second Reading pursuant to Standing Order 127.

Signed.....Date.....



8/09/2020

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

SPECIAL ISSUE

Kenya Gazette Supplement No. 29 (National Assembly Bills No. 7)



REPUBLIC OF KENYA

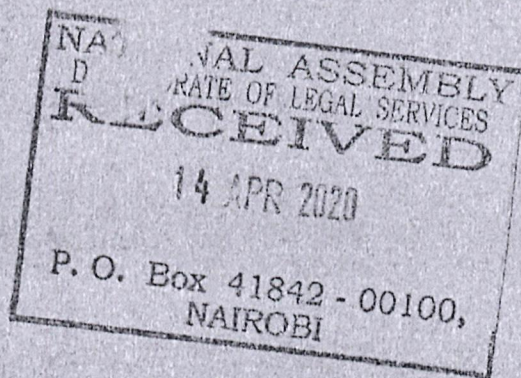
KENYA GAZETTE SUPPLEMENT

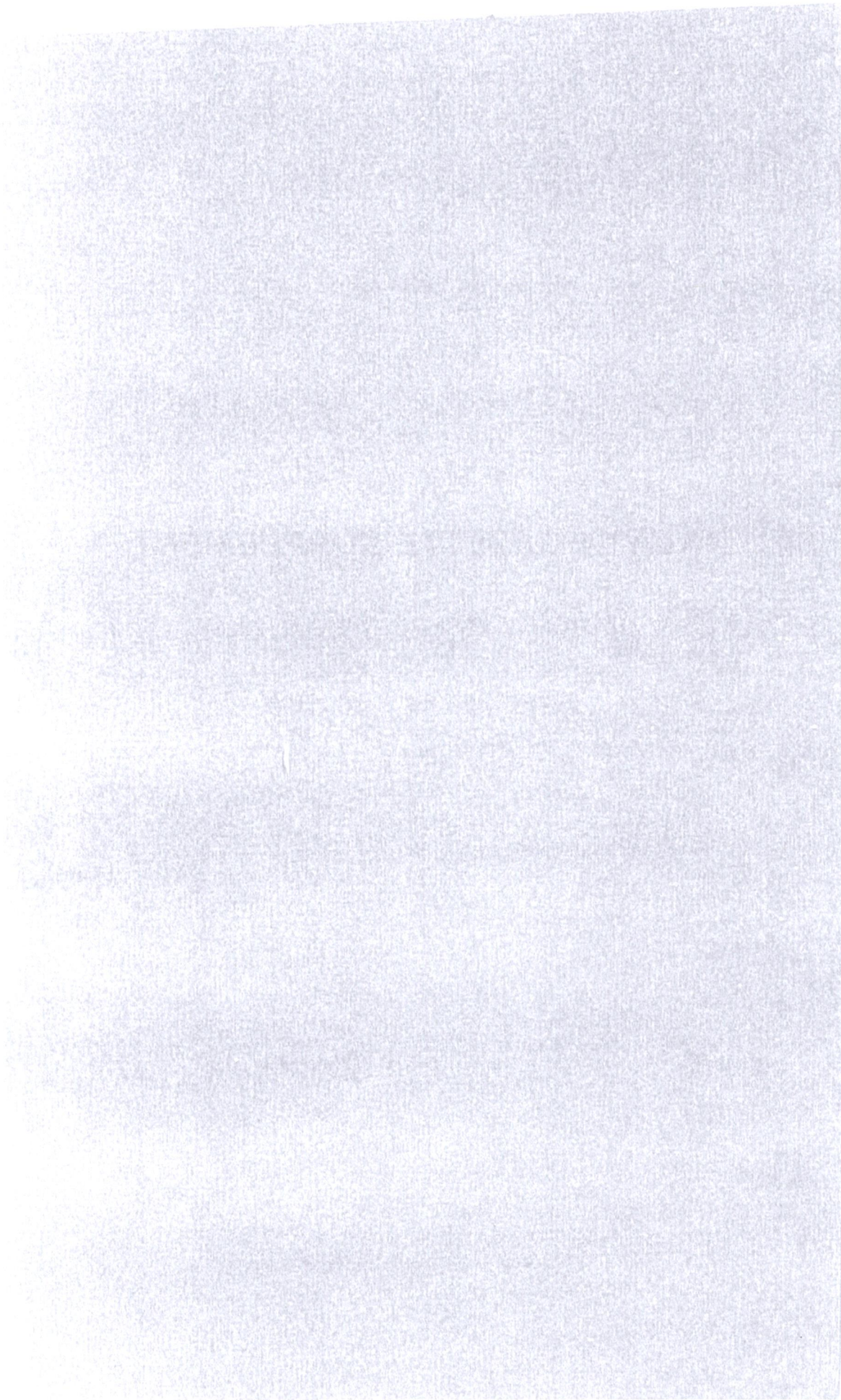
NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 23rd March, 2020

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**THE LAND REGISTRATION (AMENDMENT) BILL,
2020**

A Bill for

AN ACT of Parliament to amend the Land Registration Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Land Registration (Amendment) Act, 2020. Short title

2. The Land Registration Act, 2012 is amended by inserting the following new Part immediately after section 90— Insertion of a new Part into No.3 of 2012.

PART VIII—COMPLAINTS MECHANISM

Application.
No. 3 of 2012.
Cap. 299.

90A. This Part shall apply to complaints relating to land registration services under the Land Registration Act, 2012 and also to survey of land services under the Survey Act.

Establishment of the Office of the Complaints Reviewer.

90B. There is established the office of the Complaints Reviewer in the Lands Registry and Survey of Kenya which shall perform the functions and exercise the powers provided for in this Part.

Function of the Office of the Complaints Reviewer.

90C. The Complaints Reviewer shall provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services.

Powers of the Complaints Reviewer.

90D. (1) The Complaints Reviewer shall have powers to—

- (a) receive, process and resolve all complaints relating to land registration and surveying lodged by public;
- (b) recommend actions to remedy complaints relating to Land

registration and survey services at the Lands Registry and Survey of Kenya;

- (c) provide advisory opinions or proposals on improvement of processes and procedures;
- (d) maintain a register and keep a file of all complaints, including proceedings and determinations;
- (e) submit quarterly and annual reports to the Cabinet Secretary on the complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office; and
- (f) determine frequency of meetings, sittings and venues.

(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints—

- (a) relating to the merits of a decision of the Land registry and Director of Survey;
- (b) by the Land Registry and Survey of Kenya employees concerning their employment or by applicants for employment about recruitment procedures; and
- (c) that are subject of legal proceedings.

(3) The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and the complainant received a final response and is dissatisfied.

Appointment of the
Complaints Reviewer.

90E. There shall be a Complaints Reviewer who shall be appointed by the

Cabinet Secretary for a term of three years renewable once.

Qualifications for appointment.

90F. A person shall qualify to be appointed as the Complaints Reviewer if the person—

- (a) is a citizen of Kenya;
- (b) is an advocate of the High Court of Kenya with at least ten years' experience; and
- (c) meets the requirements of Chapter Six of the Constitution.

Vacancy in the office of Complaints Reviewer.

90G. The office of the Complaints Reviewer shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing resigns; or
- (c) is removed from office by the Cabinet Secretary for—
 - (i) gross misconduct;
 - (ii) violation of any law including a contravention of Chapter Six of the Constitution;
 - (iii) physical or mental incapacity to perform the functions of the office;
 - (iv) incompetence; or
 - (v) bankruptcy.

Filling of vacancy.

90H. Where a vacancy occurs in the office of the Complaints Reviewer, the Cabinet Secretary shall appoint a Complaints Reviewer within fourteen days of occurrence of a vacancy.

Protection from personal liability.

90I. No matter or action done by the Office of the Complaints Reviewer or any officer, employee or agent of the office shall, if the matter or action is done *bona fide* for executing the functions, powers or duties of the office, render the Complaints Reviewer, officer, employee or agent or

any person acting on his directions personally liable to any action, claim or demand.

Conduct of business and affairs of the office.

90J. The office of the Complaints Reviewer shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

Appointment of staff.

90K. (1) The Public Service Commission may employ such staff for the office of the Complaints Reviewer as may be necessary for the proper discharge of the functions of the Complaints Reviewer under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Public Service Commission may determine.

(3) The Cabinet Secretary, upon request by the office of the Complaints Reviewer, shall second such number of public officers as may be necessary for the proper performance of the functions of the office.

(5) A public officer seconded to the office of the Complaints Reviewer shall, during the period of secondment, be deemed to be an officer of the Office and shall be subject only to the direction and control of the Office of the Complaints Reviewer.

Procedure for lodging and handling a complaint.

90L. (1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations relating to the procedure for lodging and handling a complaint and any other matter incidental thereto.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Land Registration Act No. 3 of 2012 in order to establish the Office of a Complaints Reviewer who shall be responsible for providing free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services. This is geared towards ensuring the effective delivery of land registration and survey services by giving the public an avenue of lodging complaints and having their complaints resolved effectively.

Statement on whether the Bill concerns county governments

This Bill is not a Bill concerning county governments within the meaning of Article 110(1)(a) and the Fourth Schedule to the Constitution.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

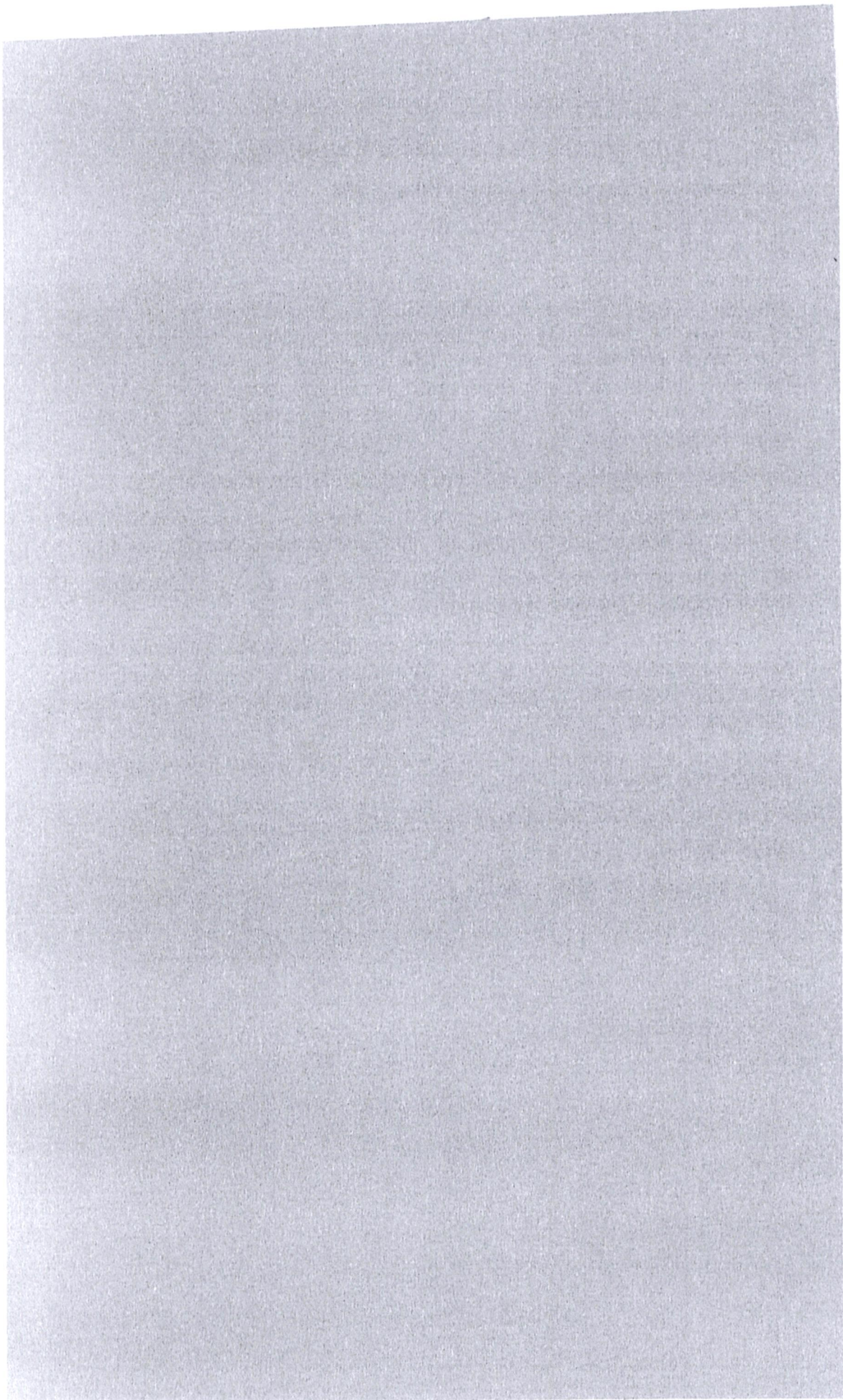
This Bill does not limit any fundamental rights and freedoms but it delegates legislative power to the Cabinet Secretary to make regulations on the procedure for lodging and handling complaints and any other matter incidental thereto.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 13th March, 2020.

ADEN DUALE,
Leader of the Majority Party.



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FRIEND IN NEED >

LANDS

EU supports Kenya's Covid-19 effort

The European Union's €300 million support to Kenya is Europe's statement of friendship and partnership in these difficult times. This is part of an overall Sh1.75 trillion (€15 billion) package that the EU mobilised on April 6 to help its partners in developing countries to face a virus that affects us all.

And this is only the start, because the EU and its member states will be providing additional support to Kenya in the coming weeks and months. The EU is speeding up its approval procedures to deliver on the full package. It has already provided the first tranche of humanitarian aid at the beginning of this month.

Last Friday, together with our 'Team Europe' colleagues from Denmark, Sweden and Finland, we mobilised Sh211 million towards water sanitation, provision and awareness raising, thus fighting Covid-19 across hotspots in 25 counties. These are mainly under-resourced areas that also face water scarcity.

The Government of Kenya is providing an additional Sh200 million.

A further Sh1.1 billion of EU support in this domain has gone to supporting

women and vulnerable households, shielding them from the financial impact of measures to contain the coronavirus.

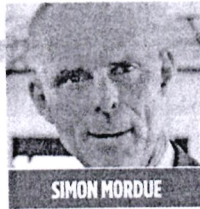
The EU is also increasing its support to the government to enhance access to agricultural inputs such as seeds and saplings to ensure that Kenyans have access to food and hygiene standards in markets and storage facilities are met.

Simultaneous efforts are being made to keep the borders open so that trade can flow between Kenya and its neighbouring countries while keeping the virus out. Some Sh1 billion will be disbursed in these sectors.

Drawing on experience

The EU has been working with the Ministry of the East African Community, TradeMark East Africa and the Intergovernmental Authority on Development (Igad) in this area, drawing on Europe's common market experience and its own recent cross-border challenges with Covid-19.

Amid the Judiciary's search for innovative ways to maintain its essential workflow, the ongoing EU Plead programme is facilitating its use of new tools, such as video



SIMON MORDUE

"We share the knowledge gathered in Europe in this field and stand ready to lend a helping hand where appropriate."

conferencing and e-filing. We are also supporting the distribution of protective equipment to frontline workers and prisons.

We will also be providing Sh25 billion in direct support for the National Covid-19 Emergency Response Plan — either through the National Treasury or the Covid-19 Emergency Response Fund, to tackle both the health and socioeconomic challenges.

Finally, we are working with the European Investment Bank (EIB), the

EU bank, to both increase and facilitate access to affordable credit for small and micro enterprises, at Sh23.2 billion, to help them to cope with the hard times.

Support, however, does not only come in monetary form. Our staff have been in close touch on economic and business matters with the Ministry of Industry and Trade, the Kenya Association of Manufacturers and the Kenya Private Sector Alliance and other Kenyan organisations, giving advice and information when requested.

In this respect, we applaud the enormous success of the local production of protective gear and other materials necessary in the war against the pandemic.

Wherever possible, and it is helpful, we share the knowledge gathered in Europe in this field and stand ready to lend a helping hand where appropriate.

Since the EU is Kenya's largest export market for horticultural goods, and the Netherlands is the European hub for these goods, the union has actively worked with organisations like the Fresh Produce Exporters Association of Kenya and the Kenya Flower Council

to ensure as much Kenyan produce, including flowers, reach consumers across the EU and beyond. This will help Kenyan producers to maintain their access to vital European markets.

Thanks to these combined efforts, we saw available cargo capacity increase last week and Kenya Airways engaged in its first dedicated cargo flight to Europe since the onset of the crisis, helping to protect a significant segment of local agricultural and horticultural workers in jobs. Unfortunately, even after the addition of three more weekly freight flights to the Netherlands, the available capacity is still insufficient; so, we pledge to continue our full support to increase the export volume.

We cannot afford to rest on our laurels. We must all continue to work together if we are to emerge from this stronger. The people of Europe, for their part, have shown their commitment to the people of Kenya in these times of crisis. I can assure you that we will continue to do so.

Komesha Koronal

Mr Mordue is the EU ambassador to Kenya; @EUMordue, @EUinKenya.

HEALTH AND SAFETY >

Let's protect workers on the frontline

The annual World Day for Safety and Health at Work was celebrated yesterday. The event is meant to promote the prevention of occupational accidents and diseases. It is an awareness campaign to focus international attention on the magnitude of the problem and how a safety and health culture can reduce work-related deaths and injuries.

This year's tagline will focus on infectious disease outbreaks, particularly the Covid-19 pandemic. The International Labour Organization is raising awareness on the adoption of safe practices in workplaces and the role of occupational safety and health.

Now that we are grappling with the highly infectious Covid-19, it is important that the health and safety of health workers be considered. Frontline health workers are at the highest risk of contracting the contagion as they are exposed to the virus every second. The hazards they face — such as pathogen exposure, long working hours, psychological distress, fatigue, occupational burnout and stigma — are also likely to affect them.

Reports came out recently that the government had not given health workers enough protective gear and training on how to handle suspected or confirmed Covid-19 patients. Cases of harassment and intimidation have also been reported. The government should enhance their safety and health.

DOROTHY PAMELLA, Kisumu

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FOURTH SESSION

In the matter of consideration by the National Assembly:-
Land Registration (Amendment) Bill (National Assembly Bill No. 7 of 2020)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Land Registration (Amendment) Bill (National Assembly Bill No.7 of 2020) seeks to amend the Land Registration Act No 3 of 2012 in order to establish the office of a Complaints Reviewer who shall be responsible for providing free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services. This is geared towards ensuring the effective delivery of land registration and survey services by giving the public an avenue of lodging complaints and having their complaints resolved effectively.

The Land Registration (Amendment) Bill (National Assembly Bill No.7 of 2020) has undergone First Reading pursuant to Standing Order 127(3) and stand committed to the Departmental Committee on Lands for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bill. The Bill can be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills.

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday, 6th May, 2020 at 5.00 pm.

MICHAEL R. SIALAL EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



COUNCIL OF GOVERNORS

29th April 2020

PRESS STATEMENT ON COUNTY GOVERNMENTS' RANKING TO COVID RESPONSE BY STANDARD MEDIA GROUP

The Council of Governors attention has been drawn to the story published by The Standard Media on Saturday 25th April, 2020 ranking County Governments in response to dealing with the COVID -19 Pandemic under the headline "Heroes and Villains in COVID -19 fight" - The Doers verses The Talkers.

Fellow Kenyans, we would like you to note that, there is no County Government in the Republic of Kenya that has not put in place mechanisms to deal with the pandemic. Each of the County Governments have put in place measures just to mention but a few:

- Isolation Wards.
- Quarantine Facilities Set up ICU beds.
- Procured Ventilators.
- Training Health Workers at the County, Sub-County, Ward and village level.
- Procured PPE kits.
- Raised awareness about the virus in the Counties and nationally. Availled IEC Materials.
- Fumigated and decontaminated public spaces.
- Installed sanitation points in markets, bus parks, public offices among others.
- Distributed face masks.
- Set up County, Sub-County, Ward and Village Response Committees. Set up incident command centers.
- Set up County war rooms to monitor food situations. Set up hotlines.
- Set up temperature check points and;
- Cumulatively as 47 Governments set aside Ksh 6.2 billion as emergency fund to deal with COVID

Fellow Kenyans,

It is therefore not true to insinuate that some County Governments have not done anything in response to the fight and mitigation against COVID -19 and report the same in the media. If anything, different Counties have responded differently to this pandemic depending on their risk factor.

We hope that the media will not cause panic among residents of certain Counties and discredit efforts made so far in the fight against the pandemic.

The Council of Governors takes great exception of this kind of journalism. We therefore urge the media to instead use their important platform to inform, educate and create awareness to the public by highlighting preparations made by County Governments so that Kenyans are informed and not panicked on this matter.

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



MINISTRY OF LANDS AND PHYSICAL PLANNING

SUBMISSIONS TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS ON THE LAND REGISTRATION (AMENDMENT) BILL, NO. 7 OF 2020

Introduction

Honourable Chair,

Pursuant to a letter Ref: NA/DC/LANDS/2020 (024) dated May 18, 2020, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to consider the Land Registration (Amendment) Bill (National Assembly Bill No. 7 of 2020).

The principal object of the Bill is to amend the Land Registration Act (No. 3 of 2012) in order to establish the office of a Complaints Reviewer who shall be responsible for providing a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services by giving the public. The office would be an avenue for lodging complaints and having their complaints resolved effectively.

Background

The Ministry has been undertaking various reforms to support the Government's ease of doing business reform agenda. Registration of property is a key indicator in the World Bank's ease of doing business rankings. The ranking of economies on the ease of registering property is determined by the assessment of four (4) property registration component indicators including processes, timelines, cost of registration and the quality of land administration system in each economy.

The quality of land administration system index assesses the legal framework for property registration and the accessibility of dispute resolution mechanisms. Towards this end, the Ministry is in the process of reviewing land related legislations to support electronic land transactions making it easier to register properties. We have also made structural reforms to our complaints resolution system to provide for independent internal review/appeal process.

Establishment of the Office of the Complaints Reviewer

The rationale for establishment of the Office the Complaints reviewer in the Lands Registry and Survey of Kenya is to provide for an independent complaint review mechanism for an internal complaints resolution system within the Ministry. The aim is to enable resolution of complaints at the lowest level possible and in a timely and cost-effective manner. This would in effect lead to improvements in service delivery, encourage accountability and also strengthen public confidence in the Ministry's administrative processes.

As an independent complaints reviewer, the office will provide independent and impartial investigation of public complaints at the Ministry where the internal complaints procedures have failed to achieve a satisfactory outcome. It is vital to independence that the office is not part of the ministry management structure.

Honourable Chair, Notwithstanding the necessity for an independent internal dispute resolution mechanism, the Office of the Ombudsman remains at the apex of the pyramid of grievance resolution mechanisms and is the last port of call when the internal processes are exhausted.

Honourable Chair, we have reviewed the Bill and propose various amendments as shown in the matrix annexed herewith.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

June 9, 2020

Clause Provision	Proposal for Amendment	Justification
<p>90A This Part shall apply to complaints relating to land registration services under the Land Registration Act, 2012 and also to survey of land services under the Survey Act.</p>	<p>Expand the scope to include all departments within the ministry</p>	<p>This will enable the Office of the Complaints Reviewer to handle complaints from all departments within the Ministry</p>
<p>90E There is established the office of the Complaints Reviewer in the Lands Registry and Survey of Kenya which shall perform the functions and exercise the powers provided for in this Part.</p>	<p>Inclusion of a sub-section in the bill to allow the Office to establish regional offices</p>	<p>To enable the complaints reviewer, cover all land registries countrywide</p>
<p>90D (i) The Complaints Reviewer shall have powers to — (a) receive, process and resolve all complaints relating to land registration and surveying lodged by public; (b) recommend actions to remedy complaints relating to Land registration and survey services at the Lands Registry and Survey of Kenya; (c) provide advisory opinions or proposals on improvement of processes and procedures; (d) maintain a register and keep a file of all complaints, including proceedings and determinations; (e) submit quarterly and annual reports to the Cabinet Secretary on the complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office; and (f) determine frequency of meetings, sittings and venues.</p>	<p>Inclusion of a sub-section in the bill to authorize the Office of the Complaints Reviewer to follow up and enforce any recommendations made</p>	<p>To ensure implementation of recommendations of the complaints reviewer</p>

<p>(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints —</p> <p>(a) relating to the merits of a decision of the Land registry and Director of Survey;</p> <p>(b) by the Land Registry and Survey of Kenya employees concerning their employment or by applicants for employment about recruitment procedures; and</p> <p>(c) that are subject of legal proceedings.</p> <p>(3) The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and the complainant received a final response and is dissatisfied.</p>		
<p>New proposal for inclusion</p>	<p>Inclusion of a section in the bill providing for source of funding for the Office of the Complaints Reviewer as follows</p> <p>Funds of the Office of the Independent Complaints reviewer shall consist of-</p> <ul style="list-style-type: none"> i) monies that is appropriated by Parliament. ii) Such monies or assets as may accrue to the Office in the course of its performance of its functions under this Act; iii) All monies from any other 	<p><i>If monies are appropriated by Parliament - the money will be channelled through the Ministry so as to not assure independence.</i></p>

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ASSOCIATION OF LAND SURVEYORS OF KENYA

② MAEMRA
please deal
FA
06/5/20

P.O. BOX 62093,
Phone: +254 723 949 600,
Email: alsk@yahoo.com,
NAIROBI.
5th May, 2020

Ref: COMPL/VOL.1/21

The Clerk of National Assembly,
Main Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.
Email: clerk@parliament.go.ke

① D/curt/DLS
6/5/20

Dear Sir,

RE: SUBMISSION OF MEMORANDA IN THE MATTER OF CONSIDERATION BY NATIONAL ASSEMBLY: LAND REGISTRATION (AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2020).

Association of Land Surveyors of Kenya (ALSK) is the professional organization that brings together all licensed surveyors under Survey Act, Cap 299 of the Laws of Kenya. ALSK is registered under the Societies Act, Cap 108 of the Laws of Kenya. Our members are engaged in cadastral (title) surveys, engineering topographical and Geospatial information systems (GIS) services, who are managed through ALSK on professional practice, advise public and private entities on land survey matters, discipline, resolving disputes and the general welfare of members.

We refer to the above subject matter which appeared in the Special Issue of Kenya Gazette Supplement No. 29 (National Assembly Bills No. 7) of 23rd March, 2020), and subsequent public notices in the media on diverse dates, inviting submissions of memoranda from the general public.

THE NATIONAL ASSEMBLY
RECEIVED
06 MAY 2020
DIRECTOR COMMITTEE SERVICES
Time:.....Sign:.....

RECEIVED
06 MAY 2020
P. O. Box 41842, NAIROBI

ALSK is aware that, Ministry of Lands and Physical Planning receives a lot of complaints from various Government agencies and members of the public on various issues such as land corruption, illegal land allocation, double allocation, disappearance of land records, delay in registration and processing of titles etc.

ALSK objects the intent of the Bill due to the following reasons:

1. The Bill duplicates the mandate of The Commission on Administrative Justice, more commonly known as (Office of the Ombudsman), which is a constitutional commission established under Article 59(4) of the Constitution, and the Commission on Administrative Justice Act, 2011. The mandate of Office of the Ombudsman is two-fold, and extends to both national and county governments. Firstly, the Commission has the mandate of tackling maladministration (improper administration) in the public sector. In this regard, the Commission is empowered to, among other things, investigate complaints of delay, abuse of power, unfair treatment, manifest injustice or discourtesy. Secondly, the Commission has the mandate of overseeing and enforcing the implementation of the Access to Information Act, 2016.
2. The Bill duplicates the administrative and technical functions of the Chief Land Registrar in implementing the Land Registration Act, the Director of Surveys in implementing the Survey Act, Cap 299, the National Land Commission (NLC) in implementing the NLC Act, 2012 and the Community Land Act, 2016.
3. Survey of Kenya, offers survey services under the Survey Act, Cap 299, which has prescribed complaints and disciplinary mechanism under the Land Surveyor Board of Kenya. The Act empowers the Director of Surveys to investigate fraudulent and unprofessional surveys that leads to disciplining of the concerned land surveyor, cancellation of deed plans and registry index maps used in preparation of land titles.
4. Most of the complaints received in the Ministry of Lands amount to corruption and delay in service delivery to the citizens. In this regard, the Ministry cannot purport to internally handle these complaints through a Complaint Reviewer

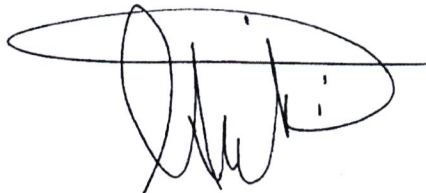
appointed by Cabinet Secretary, while the Ethics and Anti-Corruption Commission has the capacity and legal framework in handling such matters.

5. The Bill has inadvertently excluded some of the major land complaints launched in the Ministry, particularly in the offices of the Director of Land Adjudication and Settlement, Director of Physical Planning and Director of Valuation while implementing the Land Adjudication Act, Cap 284, Physical Planning Act, 1996 and the Land Act, 2012 respectively.

Please find here attached is a matrix (Annex I) that demonstrates our comments in each of clauses of the Bill for your consideration.

In this regard, we humbly request that Parliament rejects the Bill in totality.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Julius K. Rotich', enclosed within a large, hand-drawn oval shape.

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

ANNEX I

ASSOCIATION OF LAND SURVEYORS' COMMENTS ON LAND REGISTRATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2020)

The Object: The object of the Bill is to amend the Land Registration Act No 3 of 2012 in order to establish the office of a Complaints Reviewer who shall be responsible for providing free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services. The amendment is aimed at ensuring the effective delivery of land registration and survey services by giving the public an avenue for lodging complaints and having them resolved effectively.

Clause No	Current Clause	Proposed Amendments	Comments
90A (after old clause 90)	N/A	A new clause introduced to apply to complaints relating to land registration services under the Land Registration Act and also to survey of land services under the Survey Act	<ul style="list-style-type: none"> • It is indeed true that the Ministry receives a flood of complaints from members of the public frustrated by the lack of, or unacceptable services in both the land registries and Survey of Kenya offices. • The question is whether the introduction of this new office will be suitable remedy to this problem, which is largely administrative since all technical matters are resolved through the offices of the Chief Land Registrar and the Director of Surveys. • Currently, County Land Registries have a Land Officer in charge, who ordinarily deals with overall administrative issues. The Headquarters have the office of the Land Secretary which can handle administrative issues outside the statutory functions of the Chief Land Registrar and the Director of Surveys. • It is also not clear how an amendment introduced through the Land Registration Act will amount to an amendment of the

② MABURA
Please do it
FAA
04/5/20

30TH April, 2020.

① D/ants / DLS,
4/5/20

Michael R. Sialai, EBS,
CLERK OF THE NATIONAL ASSEMBLY,
NAIROBI.

**SUBMISSION ON NECESSARY CHANGES REQUIRED IN THE PROPOSED
LAND REGISTRATION (AMENDMENT) BILL 2020,**

The purpose of the bill is highly supported by the actors in land registration train since public complaints on various land issues is enormous. Despite it urgency, the qualification of the office holder as proposed does not meet professional technical skills and experience in relevant for the important proposed establishment.

From my interpretation, matters land registration is a process initiated by the owner of the property then handed over to a Licenced Surveyor who carries out all the land registration process (Cadastral Surveys) to completion. An advocate of High court only gets underway the process to witness the execution of various instruments of land registration. To me this means that an advocate of high court is not professionally and technically fit to hand the huge assignment that the bill presents.

Since Licenced Surveyors are mandated to handle land registration (Cadastral Surveys) matters, s/he is in a position to trace a process of land registration in a bid to establish the cause of the raised complaint. - Consultation with Licenced Surveyors Board will be of help.

In my conclusion, for the efficiency and effectiveness of the Land Complaint Reviewer's office, I suggest changes of the required qualifications of the office holder as follows:

1. S/he Must be a Kenyan Citizen,
2. Be a Licenced Land Surveyor with over 10 year of professional practise,

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3. Holds a Master degree relevant for matters land administration. Phd holder will added advantage.
4. Meet the requirement of Chapter 6 of the Constitution of Kenya 2010.



INPUT ON THE LAND REGISTRATION (AMENDMENT) BILL, 2020

Clause Number	Current Clause	Proposed Amendment	Rationale/Justification
1 and 2	<p>Clause 1 of the Bill reads; This Act may be cited as the Land Registration (Amendment) Act, 2020</p> <p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p>	<p>Section 14 of the Land Registration Act (No. 3 of 2012) confers powers upon the Chief Land Registrar to <i>inter alia</i> formulate practice instructions and guidelines, hear and determine appeals from the registries, and make orders as to treatment of costs incurred in connection with an investigation or hearing held by the Registrar. The Survey Act (Cap 299), on the other hand, is silent on the mechanism for handling complaints lodged by members of the public (barring disciplinary proceedings against licensed surveyors).</p> <p>The Memorandum to the Land Registration (Amendment) Bill, 2020 indicates that the objective of the Bill is to establish the Office of the Complaints Reviewer who shall be "<i>responsible for providing <u>free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services. This</u></i></p>	<p>Withdraw the Bill in entirety and instead propose suitable amendments to the Land Registration Act (No. 3 of 2012), Survey Act (Cap 299) and/or the National Land Commission Act (No. 5 of 2012).</p>

		<p><i>is geared towards ensuring the effective delivery of land registration services by giving the public an avenue of lodging complaints and having their complaints resolved effectively”.</i></p> <p>It is contemplated, in the letter and spirit of the Constitution of Kenya, that the National Land Commission (NLC) shall have the mandate to conduct investigations and dispute resolution proceedings concerning land matters, along with all other attendant powers. Establishment of a parallel office to handle complaints relating to land matters will effectively:</p> <ul style="list-style-type: none">(i) disempower a constitutional office; and(ii) lead to duplication of roles of government institutions, hence inflation of government overheads and increase in the tax burden on Kenyans. <p>It is our humble and considered opinion that any gaps or deficiencies in the Land Registration Act (No. 3 of 2012) and Survey Act (Cap 299) concerning the mechanism for handling complaints relating to procedural or administrative matters, would best be addressed by:</p> <p>A. Amending the Land Registration Act (No. 3 of 2012) and Survey Act (Cap 299) to expound on the powers of the Chief Land Registrar and Director of Survey, to waive fees relating to complaint handling, and to provide for such other rules and regulations</p>	
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		<p>as may be appropriate regarding complaint handling.</p> <p>AND / OR</p> <p>B. Amending the National Land Commission Act (No. 5 of 2012) to expound on the functions of the NLC to include complaint handling, which amendments can be proposed pursuant to Articles 67(3) and 252(1)(d) of the Constitution of Kenya.</p> <p>Article 67 National Land Commission</p> <p>(1) <i>There is established the National Land Commission.</i></p> <p>(2) <i>The functions of the National Land Commission are— ...</i></p> <p>(e) <i>to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress; ...</i></p> <p>(h) <i>to monitor and have oversight responsibilities over land use planning throughout the country.</i></p> <p>(3) <i>The National Land Commission may perform any other functions prescribed by national legislation.</i></p> <p>Article 252 General functions and powers</p> <p>(1) <u>Each commission, and each holder of an independent office –</u></p> <p><u>(a) may conduct investigations on its own initiative or on a complaint made by a member of the public;</u></p>
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		<p><i>(b) has the powers necessary for conciliation, mediation and negotiation;</i> <i>(c) shall recruit its own staff; and</i> <i>(d) may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.</i></p>	
1 and 2	<p>Clause 1 of the Bill reads: This Act may be cited as the Land Registration (Amendment) Act, 2020</p> <p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p>	<p>Owing to the costs associated with the proposed establishment of the Office of the Complaints Reviewer, a regulatory impact statement ought to be prepared and published in accordance with Sections 6 and 8 of the Statutory Instruments Act (No. 23 of 2013).</p>	<p>Regulatory impact statement to be prepared and published.</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>PART VIII A - COMPLAINTS MECHANISM</p> <p>90A. This Part shall apply to complaints relating to land registration services under the Land Registration Act, 2012 and also to survey of land services under the Survey Act.</p>	<p>The Bill needs to be clear that it is seeking an amendment of two statutes (The Land Registration Act 2012, and the Survey Act Cap 299).</p>	<p>This introduces inconsistency in terms of the laws being addressed. This section affects two of Statutes (the Survey Act and Land Registration Act, 2012) but the memorandum of objects and reasons of the bill addresses only one legislation (Land Registration Act)</p> <p>Or in the alternative:-</p>

1. It is indeed true that the Ministry receives a flood of complaints from members of the public frustrated by the lack of, or unacceptable services in both the land registries and Survey of Kenya offices.

2. The question is whether the introduction of this new office will be suitable remedy to this problem, which is largely administrative since all technical matters are resolved through the offices of the Chief Land Registrar and the Director of Surveys.

3. Currently, County Land Registries have a Land Officer in charge, who ordinarily deals with overall administrative issues. The Headquarters have the office of the Land Secretary which can handle administrative issues outside the statutory functions of the Chief Land

			<p>Registrar and the Director of Surveys.</p> <p>4. It is also not clear how an amendment introduced through the Land Registration Act will amount to an amendment of the Survey Act, or have effect on functions under it.</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90B. There is established the office of the Complaints Reviewer in the Lands Registry and Survey of Kenya which shall perform the functions and exercise the powers provided for in this Part.</p>	N/A	<p>The Survey of Kenya runs under the Director of Surveys, an office established under the Survey Act, how then does such an amendment apply to Survey of Kenya?</p> <p>Or in alternative:-</p> <p>The Bill should address how complaints arising from all land administration processes are handled since they are interlinked.</p> <p>The office established in this section targets two processes in land</p>

			<p>administration covered by two departments in the Ministry of Lands and Physical Planning. The other processes under other departments involved in land administration such as Adjudication, Planning and Settlement are not addressed.</p> <p>It is unclear how this office will handle complaints from the other departments</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90C. The Complaints Reviewer shall provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services.</p>	N/A	<p>We do not think a new office is necessary, since these matters should be addressed by the technical offices of the Land Registry and the Survey of Kenya.</p> <p>Creating such an office adds to the number of people the public must deal with and will require additional expenditure of public funds.</p>

			<p>Make the current offices efficient.</p> <p>Or in the alternative:-</p> <p>1. Land Registries get direction from the office of the Chief Land Registrar while Survey of Kenya gets direction from the office of the Director of Surveys. Will this Complaints Reviewer therefore be answerable to the Chief Land Registrar and the Director of Surveys? If not, won't there be a legal and administrative conundrum?</p> <p>2. If the office is indeed desirable, can't each of the Chief Land Registrar and the Director of Surveys, or even the Ministry's accounting officer (Principal Secretary), use their administrative discretion to establish a desk to deal through their administratively</p>
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		<p>discretion, without the need for an amendment to the law?</p> <p>Or in the alternative:-</p> <p>There is need for clear need to avoid conflict with Section 86 of the Land Registration Act and introduction of insecurity to Title and property rights. Clear definition of roles to avoid bureaucracy, duplication and delays in resolving land disputes is necessary.</p> <p>These functions clash with the current functions of the Registrar and Director of Survey.</p> <p>This provision is in conflict with section 86 of the Land Registration Act 2012 which gives the function of Reviewing the decisions of the Registrar only to the Environment and Land Court. The terms review</p>
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			<p>and determine complaints confers powers to review all registration processes and functions including issuance of title and certificates of lease. This function makes interests registered on land subject to review by another person other than court and introduces insecurity to property rights. The function of determining the efficacy of the Registrars decision has been left to Court and Judicial mechanisms principally for the reason of security of title and land rights. It is also not clear whether the reviewers scope is on decisions made by all registrars and all surveyors or by Chief Land Registrar or the Director of Survey. Will the function be an appellate one or one that handles complaints in the first instance?</p>
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2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90D. (1) The Complaints Reviewer shall have powers to-</p> <p>(a) receive, process and resolve all complaints relating to land registration and surveying lodged by public;</p> <p>(b) recommend actions to remedy complaints relating to Land registration and survey services at the Lands Registry and Survey of Kenya;</p> <p>(c) provide advisory opinions or proposals on Improvement of processes and procedures;</p> <p>(d) maintain a register and keep a file of all complaints, including proceedings and determinations;</p> <p>(e) submit quarterly and annual reports to the Cabinet Secretary on the complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office; and</p>	<p>Amend by inserting sub-clause (B) immediately after sub-clause (a):- (B) “ to conduct preliminary investigation to determine whether or not the complaint is one which falls within the scope of the Complaints Reviewer ”</p>	<p>This is to ensure that the Complaints Reviewer make enquiries in the Land Registry and Survey in order to clarify that its internal complaints procedure has been fully completed.</p> <p>This may also involve discussion with the complainant to find out more about their dissatisfaction, and to gain an understanding of the outcome the complainant is hoping to achieve.</p> <p>If the complaint is not within the scope of the Office, advice will be offered to the complainant on options for pursuing the matter.</p> <p>Or in the alternative:-</p> <p>The powers of this office needs to be provided with clarity avoiding a duplication with the</p>
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	<p>(f) determine frequency of meetings, sittings and venues.</p> <p>(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints-</p> <p>(a) relating to the merits of a decision of the Land registry and Director of Survey;</p> <p>(b) by the Land Registry and Survey of Kenya employees concerning their employment or by applicants for employment about recruitment procedures; and</p> <p>(c) that are the subject of legal proceedings.</p> <p>(3) The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and the complainant received a final response and is dissatisfied.</p>	<p>powers and functions of the Commission on Administrative Justice.</p> <p>This Sub- Section seems to give very superfluous powers i.e “Receive, Process, Resolve, Recommend, and Advise”. The Sub- Section seems to contradict with Section 90D(1) which excludes complaints on the merits of the decisions of the Registrar or the Director of Survey.</p> <p>If the merits of decisions of the Registrar and the Director of Survey is not in the scope of powers, then the office is left with handling of administrative process issues which brings the question of value of the office.</p> <p>The Powers of this office appears as a duplication of the powers and functions of the</p>
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		<p>Commission on Administrative Justice (Ombudsman).</p> <p>This means the Reviewers powers are only limited to administrative complaints and not complaints on substantive matters this contradicts with section 90D (1) above which states that the reviewer has powers to resolve all complaints relating to land registration and surveying lodged by the public.</p> <p>The Bill needs to address the contradiction of clause (3) with the provisions in section 86 of the Land Registration Act, 2012:-</p> <ul style="list-style-type: none">• This office is not replacing the existing complaint mechanisms but rather creating a new layer of handling the same issues without tackling the question of merits of the decisions of the Registrar and the Director of Survey.
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		<p>Amend by inserting sub-clause (j) immediately after clause (3) to read:-</p> <p>i)“The Complaints Reviewer shall not accept a complaint made more than six months after the date of the final complaint response from the procedures at the Land Registry and Survey of Kenya and the complainant is dissatisfied”</p> <p>Or</p> <p>Delete clause (3)</p>	<p>This will lead to delay of justice and introduce new levels of bureaucracy and inefficiencies.</p> <ul style="list-style-type: none"> • There is a contradiction with section 86 of the Land Registration Act, 2012 which gives the Environment and Land court the powers to review decisions of the Registrar. <p>To provide the limitation period in which the Office shall consider a complaint for review to ensure expedition of complaint resolution.</p> <p>Or in the alternative:-</p> <p>The Director of Survey in the Survey Act Section 3(1) already has the power to establish a complaints desk.</p> <p>The Chief Land Registrar under the Land</p>
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Registration Act Section 14 read together with the amendments in the Land laws Act Section 8 and Section 18 of the Land Registration Act has the power to oversee registries including:

- The formulation of practice instructions and guidelines for the implementation of land registration policies and strategies
- Set standards for registries
- Oblige, summon or administer oaths in discharging his functions
- Determine boundary disputes

However some registrars are unable to do their daily functions (of e.g. set standards for registries) because of the current status of records –

Once you have a proper Land Information System then a lot of the complaints will end (The

		<p>PS and CS must make sure this happens).</p> <p>Or in the alternative:-</p> <p>1. In its section 3(1), the Survey Act provides that there shall be appointed a Director of Surveys and such other officers as may be deemed to be necessary for the purpose of this Act. Section 3(2) further provides that the Director may delegate in writing all or any part of his powers, duties or functions under the provisions of the Act to any officer so appointed, and may at any time revoke or vary any such delegation.</p> <p>2. No such delegation shall be deemed to divest the Director of all or part of his powers and duties.</p> <p>3. The above powers allow the Director to establish a complaints desk</p>
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		<p>without a legal amendment.</p> <p>4. The Land Registration Act Section 14, read together with amendments in the Land Laws (Amendment) Act Section 8 and also Section 18 of the Land Registration Act, provide the Chief Land Registrar with broad powers to oversee land registries, including: -</p> <p>a) The formulation of practice instructions and guidelines for the implementation of land registration policies and strategies</p> <p>b) Set standards for registries</p> <p>c) Prepare and submit annual reports on the state of land registration to the National Land Commission and the Cabinet Secretary</p> <p>d) Hear and determine appeals from registries</p>
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			<p>e) Oblige, summon or administer oaths in discharging his functions f) Determine boundary disputes.</p> <p>5. Unless they are of a very general nature, all land registration complaints will be covered under these broad powers. But if general and outside the latitude of the Chief Land Registrar and the other officers, then such matters would be administrative and should be referred to administrative officers like the Land officer in charge (for the County Registries) or the Land Secretary (for the Head office)</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90E. There shall be a Complaints Reviewer who shall be appointed by the Cabinet Secretary for a term of three years renewable once.</p>	N/A	<p>The appointment procedure for the Complaints Reviewer is not given.</p> <p>It is not justified why the function of recruitment has been removed from the Public Service Commission</p>

			<p>and given to the Cabinet Secretary.</p> <ul style="list-style-type: none"> The Bill should address the issue of independence, impartiality and fairness in the recruitment process. This being a public service office should be subject to recruitment by the Public Service Commission. The office of the Reviewer if needed can be created by the Public Service Commission without amending the law given that it is only serving administrative functions.
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90F. A person shall qualify to be appointed as the Complaints Reviewer if the person-</p> <p>(a) is a citizen of Kenya;</p>	<p>Amend sub-clause (b) by inserting immediately after the word "experience" the words "or a registered land surveyor of not less than ten years standing"</p>	<p>Since the complaints to be resolved arise from land registration and Survey the qualifications of the Office should include both an expert in the legal field or the Survey field.</p> <p>Or in the alternative:-</p>

	<p>(b) is an advocate of the High Court of Kenya with at least ten years' experience; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution.</p>	<p>If this person was appointed and is a lawyer, they will still have to consult with the Directorates in Lands for technical advice, especially Survey before making a decision. Why duplicate functions?</p> <p>Or in the alternative:-</p> <p>The Qualifications given do not include any Competence in matters of Land Administration and Management, Surveying and Geospatial Engineering. The qualifications stated therefore do not match the skills and competencies required to comprehend, Review, Determine or Advice on the processes of Surveying and Land Management under the Survey Act Cap 299 and the Land Registration Act 2012.</p>
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			<p>The Qualifications should be revised to comprise Land Administration and Management; Surveying with requisite experience and due certification of the Institution of Surveyors of Kenya and the requisite statutory registration boards.</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90G. The office of the Complaints Reviewer shall become vacant if the holder-</p> <p>(a) dies; (b) by notice in writing resigns; or (c) is removed from office by the Cabinet Secretary for-</p> <p>(i) gross misconduct; (ii) violation of any law including a contravention of Chapter Six of the Constitution; (iii) physical or mental incapacity to perform the functions of the office; (iv) incompetence; or (v) bankruptcy.</p>	N/A	<p>It is not clear why the Cabinet Secretary is given powers to terminate the services of a public officer as opposed to the Public Service Commission.</p> <p>The Bill should give the powers of removal from office to the Public Service Commission and not the Cabinet Secretary.</p>

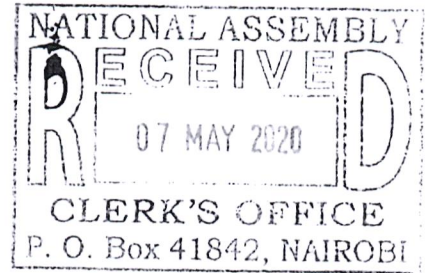
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90I. No matter or action done by the Office of the Complaints Reviewer or any officer,</p>	N/A	<ul style="list-style-type: none"> • The time provided by this section is too short for the recruitment processes which entails advertisement, shortlisting, interviews and appointment. • It's not Justified why the filling of the vacancy should be done by the Cabinet Secretary. • The filling of any vacancy in this office should be by the Public Service Commission following the established procedures for ensuring, fairness, impartiality and integrity. Timeliness should allow reasonable periods for competitive recruitment process.
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90H. Where a vacancy occurs in the office of the Complaints Reviewer, the Cabinet Secretary shall appoint a Complaints Reviewer within fourteen days of occurrence of a vacancy.</p>	N/A	<ul style="list-style-type: none"> • The time provided by this section is too short for the recruitment processes which entails advertisement, shortlisting, interviews and appointment. • It's not Justified why the filling of the vacancy should be done by the Cabinet Secretary. • The filling of any vacancy in this office should be by the Public Service Commission following the established procedures for ensuring, fairness, impartiality and integrity. Timeliness should allow reasonable periods for competitive recruitment process.

	<p>employee or agent of the office shall, if the matter or action is done bona fide for executing the functions, powers or duties of the office, render the Complaints Reviewer, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand</p>		<p>This provision should not cover negligence, lack of good faith or illegality.</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90J. The office of the Complaints Reviewer shall;</p> <p>a) Determine rules and procedure for the conduct of its business</p> <p>b) Keep minutes of its proceedings and decisions</p>	N/A	<ul style="list-style-type: none"> • This section gives the Complaints Reviewer too much power to decide on the operations of the office hence subject to abuse. • It is not clear if the Complaints Reviewer's offices will be spread across the country or only based in Nairobi. • This office should be subject to opening, operating and closure during all times other than during public holidays, Weekends subject to public service rules and regulations
2	<p>Clause 2 of the Bill reads:</p>	<p>Amend Clause (3) by inserting immediately after the word "officers" the words "from the Land Registry or Survey Department"</p>	<p>These staff brings to the office the benefit of their expert knowledge of</p>

<p>The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90K. (1) The Public Service Commission may employ such staff for the office of the Complaints Reviewer as may be necessary for the proper discharge of the functions of Complaints Reviewer under this Act.</p> <p>(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Public Service Commission may determine.</p> <p>(3) The Cabinet Secretary, upon request by the office of the Complaints Reviewer, shall second such number of public officers as may be necessary for the proper performance of the functions of the office.</p> <p>(5) A public officer seconded to the office of the Complaints Reviewer shall, during the period of secondment, be deemed to be an officer of the Office and shall be subject only to the direction and control of the Office of the Complaints Reviewer.</p>		<p>Registry practice and procedure and the legislation under which the Land Registry and Survey operates, as well as their commitment to customer service.</p> <p>Or in the alternative:-</p> <p>Such staff employed under 90K would be staff who have the technical skill already available in the Ministry (which is what is indicated under 90K (3)).</p> <p>The Cabinet Secretary upon request by the Office of the Complaints Reviewer, shall second such number of Public officers as maybe necessary)</p> <p>Or in the alternative:-</p> <p>This section introduces inconsistencies where the Public Service Commission is only being mandated to employ the staff to work</p>
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			<p>under the Reviewer but not the Complaint Reviewer.</p> <p>The Bill should be clear that the Reviewer and the staff serving in this office shall only be recruited by the Public Service Commission. This will cushion the process from political interference</p>
2	<p>Clause 2 of the Bill reads: The Land Registration Act, 2012 is amended by inserting the following new part immediately after section 90-</p> <p>90L. (1) The Cabinet Secretary may make regulations for the better carrying into effect the provisions of this Part.</p> <p>(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations relating to the procedure for lodging and handling a complaint and any other matter incidental thereto.</p>	<p>Delete section 90L (1).</p> <p>Amend by inserting Clause 3 immediately after Clause 2-</p> <p>3 "if the Complainant is dissatisfied with the decision by the Complaints Reviewer he may refer</p>	<p>This can be put in the current Land Registration (general) Regulation 2017 under the Fifth Schedule and allow the Registrar to handle and review complaints.</p> <p>Have a schedule within these regulations on the Procedure of lodging and handling a complaint.</p> <p>Where a complainant remains dissatisfied with how the Complaints Reviewer has investigated they may be able to refer</p>

		<p>the complaint to the Office of the the Office of the Ombudsman"</p>	<p>to the complaint Ombudsman.</p> <p>However, the Ombudsman should put up measures to ensure that the complaint has been referred to the Complaints Reviewer first and not make it possible to refer the complaint to the Complaint Reviewer during or following investigation by the Ombudsman.</p> <p>Alternatively the Complaints Reviewer's decision should be a final decision and not allow a dissatisfied complainant to refer the complaint elsewhere.</p>
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INSTITUTION OF SURVEYORS OF KENYA

6th May, 2020

REF: ISK/COU/AS/20/027

Mr. Michael Sialai, EBS
Clerk of the National Assembly
P.O. Box 41842-00100
Nairobi, Kenya.

① D/contracts/DLS.
7/3/20


Dear Sir,

RE: ISK Memorandum on Land Registration (Amendment) bill (National Assembly Bill No. 7 of 2020)

We write in reference to the above subject further to your notice on Daily Nation of 29th April 2020.

Please find herein our memorandum for your kind consideration.

Yours sincerely,


Abraham Samoei
President, ISK

② MAETHRA
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FA
08/5/20



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INSTITUTION OF SURVEYORS OF KENYA

MEMORANDUM FROM THE INSTITUTION OF SURVEYORS OF KENYA (ISK)

ON

PROPOSED LAND REGISTRATION (AMENDMENT) BILL, 2020

PRESENTED TO

CLERK OF THE NATIONAL ASSEMBLY

6TH MAY 2020

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1.0 Introduction

The National Assembly has published the Land Registration (Amendment) bill, 2020. The bill seeks to amend Section 90 of the Land Registration Act, 2012 by introducing a new section 90A on the complaints mechanism.

Section 90B of the bill establishes the office of complaints reviewer to provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya so as to determine complaints regarding registration and survey services.

2.0 ISK Position

The Institution of Surveyors of Kenya (ISK) opposes the proposed amendments to the Land Registration Act, 2012 based on the following grounds:

(a) The amendment will not address the administrative and technical issues in Land Management Process.

There are two issues in the Land Registries and Survey of Kenya that the amendment bill is trying to address: Technical and Administrative.

The technical issues in surveying such as accuracy of survey plans, overlap of boundaries and size of parcels are handled by the Director of Survey and the Land Surveyors Board both mandated by the Survey Act, Cap 299. While the Chief Land Registrar handles the legal and technical issues of registration under the Land Registration Act, 2012 which specifically stipulates that the decisions of the Chief Land Registrar are equivalent to the decision of the High Court. It is important to note that most of complaints in the Land Registries and Survey offices are not due to technical problems but are administrative.

The administrative issues at Survey of Kenya and the Land Registries are mainly due to delays in the ever increasing and large volumes of land transactions in the country, caused by the current manual processes and procedures which brings about inefficiencies of staff, long and cumbersome procedures, and lack of transparency and problems of missing files. To remedy this, the National Land Policy of 2009 envisaged the re-engineering of the internal land transaction processes and the creation of an electronic National Land Information Management System.

Furthermore, the Ministry is currently working to setup online land transactions that are meant to enhance transparency, accountability and efficiency in land administration and management. The Ministry has setup a Taskforce that is working on Regulations that will facilitate electronic land transactions. The Taskforce was appointed vide Kenya Gazette Notice No. 2170 of 13th March 2020 and is expected to complete its work within the next few weeks.

It is therefore our considered view that the cure to the administrative issues and challenges in land transactions and surveying services is the implementation of an electronic platform that will bring about quick, transparent and accountable services to the public and not the creation of the position of Complaints Reviewer which, tries to remedy only the symptoms of systemic internal problems.

(b) The amendments introduces unnecessary bureaucracy in Land Administration Process

The Land reform process envisaged timely, efficient and affordable dispute resolution mechanisms within the land management process. This was to facilitate efficient land markets, tenure security and investment stability in the land sector.

The Land Registration Act, 2012 provides sufficient mechanism that ensures that the any complaints and disputes are dispensed with expeditiously and in a transparent manner. Section 13 (2) of the Land Registration Act, 2012 empowers the Chief Land Registrar to "hear and determine appeals from the registries." In the event of a complaints or a dispute, The Land Registrars are further empowered by Section 79 and 80 of the act to rectify any errors, mistakes or omissions in the register that that does not affect materially affecting the interests of any proprietor or upon an order of Court. Any person aggrieved from the administration of the Act can file an appeal to the Environment and Land Court as provided for in Section 101.

The Survey Act, *Cap 299* on the other hand empowers the Land Surveyors Board to hear determine disputes and lodged by any person regarding to the practice of Survey (Sections 9 (e) and (f)). Section 18 of the Act provides that any person aggrieved by the decision of the Board can appeal to the Court of law for redress.

In order to promote the principles of Alternative Dispute Resolution mechanism, the Ministry established a Public Complaints Committee to deal with complaints arising from land administration and management. It is instructive to note that between September 2019 to March 2020 there were only 25 complaints received, of which nine of the complaints were resolved by 1st April 2020 as per information on the Ministry of Lands and Physical Planning website. Noting that the amendment bill proposes that the Reviewer will only consider complaints that have already been fully considered within the internal complaint procedures, clearly the number of complaints to be handled by the office of the reviewer will be so limited to justify the creation of such an office.

The proposed office of the Complaints Reviewer will only serves to introduce additional level of bureaucracy.

(c) The bill is legally flawed

The bill seeks to amend the Land Registration Act, 2012 and shall apply to complaints relating to land registration services under the Land Registration Act, 2012 and also survey of land services under the Survey Act, Cap 299.

As explained above, Survey of land and respective complaints resolution mechanism is anchored under the Survey Act, *Cap 299*. The bill therefore cannot purport to extinguish these functions through an amendment to the Land Registration Act, 2012.

(d) Duplicates the role of Commission of Administrative Justice (Ombudsman)

The Commission of Administrative Justice Act, No 23 of 2011 establishes the office of the Commission of Administrative Justice (Ombudsman) to undertake some of the following functions as stipulated under section 8 of the Act:

- a. investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- b. investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector; and
- c. inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service;

The functions that the bill gives to the Complaints Reviewer is already being carried out by the office of Ombudsman as highlighted above. The proposed amendment not only duplicates these functions and confuse members of public, but will also occasion wastage of public resources.

(e) Perceived lack of transparency and independence in the land administration process

One of the main objectives of the bill is to establish an impartial complaints review mechanism. The bill however proposes the Reviewer to be appointed by the

Cabinet Secretary and at the same time make recommendations to the Cabinet Secretary on complaints received for action. An impartial complaint review mechanism cannot be achieved with the aforementioned appointment and reporting of the Complaints Reviewer.

Furthermore, the bill is silent on what actions the Cabinet Secretary can take upon the receipt of the recommendations from the Complaints Reviewer. This opaque process therefore gives room for abused power, where the Cabinet Secretary can overrule the valid decision of the Chief Land Registrar, Director of Survey or the Land Surveyors Board.

3.0 Conclusion

The Institution of Surveyors of Kenya, as highlighted above, is opposed to the proposed amendments to the Land Registration Act, 2012. Additional comments to specific sections of the bill, have been provided overleaf.

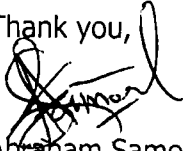
While taking into consideration the challenges that may exist in the current dispute resolution process mechanism, the proposed Complaints Reviewer will not be a solution. Moreover, legislating each and every issue and introducing more offices is against best practice in ensuring effective land management.

4.0 Recommendations

From the foregoing, we recommend as follows:

- (a) The National Assembly withdraws the bill as currently drafted;
- (b) The Ministry reviews the existing internal mechanism including the Complaints Committee with a view of strengthening them and making them more responsive;
- (c) The Ministry implements comprehensive electronic land transactions in the Ministry of Lands and Physical Planning;
- (d) Strengthen the office of Ombudsman so as to have relevant technical expertise to address land related complaints and have an impartial review mechanism; and
- (e) Enliven the hitherto moribund Ministry service charter on its existence by:
 - i. Sharing it and sensitizing the public of its existence; and
 - ii. Translating it in work processes timelines and deliverables and key performance indicators of staff.

Thank you,

A handwritten signature in black ink, appearing to read 'Abraham Samoei', written over a printed name.

Abraham Samoei
President, ISK

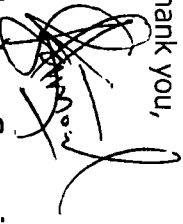
Specific comments on the Land Registration (Amendment) Bill, 2020

Section of the bill	Proposed Amendment	Comments
90A	The Section states that the bill shall apply to Land Registration Services under the Land Registration Act, 2012 and Survey of Land Services under the Survey Act, Cap 299.	<p>a) The bill cannot purport to amend the relevant provisions of the Survey Act, Cap 299 relating to complaints redress mechanism through an amendment to the Land Registration Act, 2012.</p> <p>b) Commencement of registration of land rights starts with mapping, land adjudication, planning, then survey and finally registration of interest in land at the Land Registry. The bill does not address complaints arising during the enumerated land administration processes.</p> <p>We therefore reject the amendment.</p>
90B	Establishes the office of the Complaints Reviewer in the Lands Registry and survey of Kenya to undertake the various roles specified in the bill	<p>The Land Registration Act, 2012 provides sufficient mechanism that ensures that the any complaints and disputes are dispensed with expeditiously and in a transparent manner through the office of Chief Land Registrar.</p> <p>Section 13 (2) of the Land Registration Act, 2012 empowers the Chief Land Registrar to "hear and determine appeals from the registries." In the event of a complaints or a dispute, The Land Registrars are further empowered by Section 79 and 80 of the Act to rectify any errors, mistakes or omissions in the register that that does not affect materially affecting the interests of any proprietor or upon an order of Court.</p> <p>Furthermore, Sections 9 and 18 of the Survey Act, Cap 299 provides comprehensive redress complaints mechanism through the Director of Survey and the Land Surveyors Board.</p> <p>There amendment is therefore not necessary because it creates</p>

	<p>90D</p> <p>The section provides for the functions of the office of the reviewer as follows;</p> <ul style="list-style-type: none"> a) Receive, process and resolve all complaints relating to land registration and surveying lodged by public b) Recommend actions to remedy complaints relating to land registration and survey services at the Land Registry and Survey of Kenya c) Provide advisory opinions or proposals on improvement of processes and procedures d) Maintain a register and keep a file of all complaints, including proceedings and determinations e) Submit quarterly and annual reports to the Cabinet Secretary on complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office 	<p>bureaucracy and conflicts with existing laws.</p> <p>The powers given to the Complaints Reviewer is already with the office of Ombudsman as highlighted under section 8 of the Commission of Administrative Justice Act, No 23 of 2011.</p> <p>The proposed amendments is therefore a duplication of the functions of the Ombudsman and will confuse members of public further bearing in mind that the provisions of the Survey Act, Cap 299 and the Land Registration Act, 2012 as explained above have addressed the redress mechanism comprehensively.</p> <p>It is therefore not necessary to amend the law to create more offices with no distinct role.</p>
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90E	Provides that the Complaints Reviewer shall be appointed by the Cabinet Secretary for a term of three years renewable once	This section read together with section 90D (b) and (e) raises serious issues on the independence of the office of the Complaints Reviewer. Under such circumstances, an impartial complaint review mechanism cannot be achieved with the proposed mechanism for appointment and reporting of the Complaints Reviewer. Due to the lack of independence of the office, it is not necessary to amend the law since the objective of the office will not be achieved.
90F	The Section provides for the qualification for appointment as the complaints reviewer as follows; (a) is a citizen of Kenya (b) is an advocate of the High court of Kenya with at least ten years' experience; and (c) meets the requirements of Chapter Six of the	The requirement of section 90F (b) that lists an advocate being the sole qualification of this role discriminates against other qualified land sector professionals including Land Surveyors, Land Administration Managers, Valuers, Building Surveyors, Geospatial Information Managers, Property Managers, Estate Agents, and Engineering Surveyors. The Land Registration Amendment Act, 2016 set the precedence by allowing these cadres of professionals to be appointed as Land Registrars. It is therefore unnecessary to introduce other qualification with minimal understanding of matters land.
90K	Provides for the appointment of staff of the office of the complaints reviewer	The section leaves ambiguity, especially with regards to the cadres and qualifications of employees to be seconded to the office of the reviewer. The appointment of such staff should be a preserve of Land Professionals and other related qualifications.

Thank you,

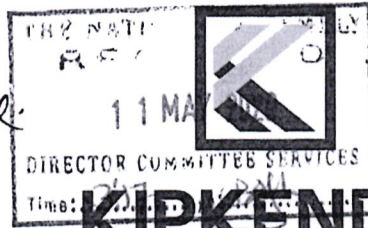
A handwritten signature in black ink, appearing to read 'Abraham Samoei', written over a horizontal line.

Abraham Samoei
President, ISK

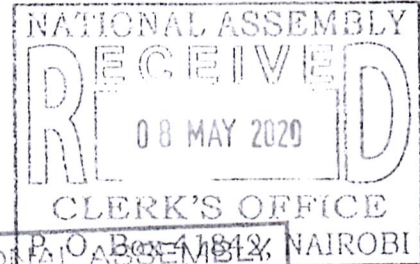
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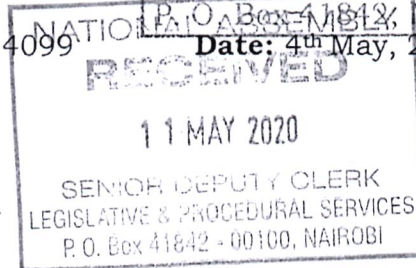


Your Ref: TBA

Our Ref: SK/18/PAL/4099

Date: 4th May, 2020

The Clerk of the National Assembly,
Office of the Clerk, 1st Floor,
Main Parliament Buildings,
P.O. Box 41842 - 00100,
NAIROBI, KENYA



By Email: clerk@parliament.go.ke

Dear Sir/Madam,

RE: IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE LAND REGISTRATION (AMENDMENT) BILL, 2020

Reference is made to the above subject matter, your invitation to submit memoranda and article 118 (1) (b), 119 of the *Constitution of Kenya, 2010*. We submit our comments and proposals as follows:

1. The Proposed Office of the Complaints Receiver is a Duplication of Roles due to the existence of another Office that can handle Complaints

The Bill seeks to establish the office of the Complaints Receiver within the Ministry of Lands. We note that the proposed office is purely an administrative office for handling internal complaints after all mechanisms within the lands ministry have been exhausted. The powers of the Official Complaints Receiver are administrative and advisory and do not extend to inquiring into the merits of a decision complained. In essence, his recommendations are not binding and he has no concrete powers to enforce a decision made. It is a position for checks and balances and for processing complaints.

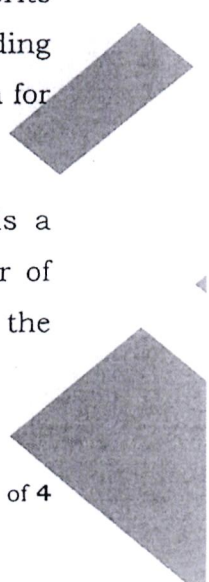
The existence of a constitutionally established and competent body is a ground for empowering that body as opposed to creating another layer of bureaucracy and further burdening the tax payer. The office of the

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Ombudsman (Commission on Administrative Justice) established pursuant to Article 59 (4) performs most of the functions contemplated under the amendment. The Commission is capable of subsuming and performing most of the functions contemplated to be performed by the Complaints Receiver.

The functions of the Commission on Administrative Justice are stipulated under Section 8 of the *Commission on Administrative Justice Act*, No. 23 of 2011. The mandate is two-fold, and extends to both national and county governments. The Ombudsman has the mandate of tackling maladministration and other administrative concerns in the public sector (including the Ministry of Lands). To achieve that, the commission is empowered to, investigate complaints of delay, abuse of power, unfair treatment, manifest injustice or discourtesy. The Commission also has the mandate of overseeing and enforcing the implementation of the *Access to Information Act*, No. 31 of 2016.

2. Need for Cooperation with the Ombudsman rather than Creation of another Layer of Bureaucracy

Taking into account the above basis as the grounds against the creation of another layer of bureaucracy to the detriment of the tax payer, the solution lies in cooperation. Considering that the proposed functions of the proposed Complaints Receiver are a duplication of the roles of the office of the Ombudsman, the proposed amendment takes shape as an unnecessary bureaucracy.

We therefore propose that the Ministry of Lands cooperates with the office of the Ombudsman to enable an office be set up and housed at the Ministry of Lands for handling the complaints. In doing so, the Ministry will not only have saved the tax payer an extra burden but will take advantage of the binding effect of the decisions of the Ombudsman. The Court of Appeal in the case of **Commission on Administrative Justice v Kenya Vision 2030 Delivery Board & 2 others** [2019] eKLR held that:-

“Our take on the construction of the above provisions of both regimes of law is that Article 254 relates to the exercise of mandate by the appellant for the year in respect of which the report is being made. It is our view that these fall into what have come to be known as accountability reports required of public entities in the discharge of their constitutional and statutory mandates as provided for in both regimes of the law. In our view, it has nothing to do with the reporting of each and every investigative report undertaken by the appellant in the discharge of its mandate under the regimes in any given year. We therefore find nothing in the above Article to suggest that the only remedy available to a beneficiary of the appellant’s recommendations for redress to a public entity in the discharge of its undoubted public investigative and oversight mandate is limited to reporting of such findings to the National Assembly. Neither do we find anything in the said Article to suggest that such recommendations have no force of law and are therefore not amenable to enforcement by a court of law.”

That being the case, we propose that in order to streamline the public complaints mechanisms and at the same time take advantage of the powers and the role of the office of the ombudsman, we oppose the idea of establishing the office of the Complaints Receiver. We propose that you consider an amendment in the following terms:-

PART VIIIA – COMPLAINTS MECHANISM

90A. The Cabinet Secretary shall cooperate with the Commission on Administrative Justice in the handling of complaints, investigations and redress of complaints by the public arising from the Lands Registry and the Survey of Kenya.

90B. The Cabinet Secretary and the Commission on Administrative Justice shall cooperate on the setting up of a liaison office at the Ministry of Lands for handling such public complaints.

90C. The decisions and recommendations of the Commission shall be binding on the Ministry of Lands, Survey of Kenya and its officials.

We strongly oppose the establishment of the office of the Complaints Receiver as the same would be unnecessary duplication of roles and further bureaucracy. It would further burden the tax payer as indicated in the Memorandum of Objects and Reasons would occasion additional expenditure of public funds. Our position is guided by the principles of Public Finance as articulated in Article 201 of the Constitution (See Article 201 (d) which provides that "public money shall be used in a prudent and responsible way.") We opine that the Commission on Administrative justice would be better suited to handle, process and give binding decisions on the complaints. Cooperation between the two offices would offer a better solution and at a minimal cost to the tax payer whilst cutting down on administrative bureaucracy by utilising available mechanisms.

Yours Faithfully,



S. K. KIPLAGAT
KIPKENDA AND COMPANY ADVOCATES
/it



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4th May 2020

Mr. Michael Sialai,
 Clerk of the National Assembly,
 P.O Box 41842 – 00100,
 Nairobi.

① Diana/DLS
 S/S/20

Dear Sir,

RE: SUBMISSION OF MEMORANDA ON LAND REGISTRATION (AMENDMENT) BILL, 2020

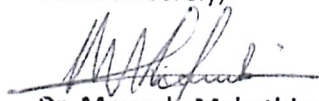
Reference is made to your notice published in the Daily Nation (P. 18) of 29th April 2020 inviting members of the public to submit memoranda on the above Bill.

We hereby submit a memorandum with detailed views and recommendations on behalf of the members of International Land Coalition in Kenya.

We will be pleased to engage in further consultation with the National Assembly as the Bill continues to be developed. For any clarifications you may contact M/S Lucy Mwangi on 0720428307 info@ldgi.org or the undersigned on makathimo@ldgi.org

Thank you.

Yours Sincerely,


 Dr. Mwenda Makathimo
 Executive Director

THE NATIONAL ASSEMBLY
RECEIVED
 05 MAY 2020
 DIRECTOR COMMITTEE SERVICES
 Time:.....Sign:.....

04 MAY 2020
 P.O. Box 41842, Nairobi



Empowering Society

REVIEW OF THE LAND REGISTRATION (AMENDMENT) BILL, 2020

BY

INTERNATIONAL LAND COALITION MEMBERS IN KENYA

4 MAY 2020



Empowering Society

Detailed Review of the Land Registration (Amendment) Bill, 2020

Section	Provision	Commentary	Recommendation
90A	Applies to complaints relating to land registration services under the Land Registration Act, 2012 and to survey of land services under the Survey Act	<ul style="list-style-type: none"> This introduces inconsistency in terms of the laws being addressed. This section affects two of Statutes (the Survey Act and Land Registration Act, 2012) but the memorandum of objects and reasons of the bill addresses only one legislation (Land Registration Act) 	<ul style="list-style-type: none"> The Bill needs to be clear that it is seeking an amendment of two statutes (The Land Registration Act 2012, and the Survey Act Cap 299).
90B	Establishes the office of the Complaints Reviewer in the Land Registry and Survey of Kenya which shall perform the functions and exercise the powers provided in this Part	<ul style="list-style-type: none"> The office established in this section targets two processes in land administration covered by two departments in the Ministry of Lands and Physical Planning. The other processes under other departments involved in land administration such as Adjudication, Planning and Settlement are not addressed. It is unclear how this office will handle complaints from the other departments 	<ul style="list-style-type: none"> The Bill should address how complaints arising from all land administration processes are handled since they are interlinked.

[Signature]
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<p>90C</p>	<p>The Complaints Reviewer shall provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services</p>	<ul style="list-style-type: none"> • These functions clash with the current functions of the Registrar and Director of Survey. • This provision is in conflict with section 86 of the Land Registration Act 2012 which gives the function of Reviewer the decisions of the Registrar only to the Environment and Land Court. The terms review and determine complaints confer powers to review all registration processes and functions including issuance of title and certificates of lease. This function makes interests registered on land subject to review by another person other than court and introduces insecurity to property rights. The function of determining the efficacy of the Registrars decision has been left to Court and Judicial mechanisms principally for the reason of security of title and land rights. It is also not clear whether the reviewer's scope is on decisions made by all registrars and all surveyors or by Chief Land Registrar or the Director of Survey. Will the function be an appellate one or one that handles complaints in the first instance? 	<ul style="list-style-type: none"> • There is need for clear need to avoid conflict with Section 86 of the Land Registration Act and introduction of insecurity to Title and property rights. Clear definition of roles to avoid bureaucracy, duplication and delays in resolving land disputes is necessary
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<p>90D</p>	<p>1. The Complaints Reviewer shall have powers to;</p> <p>a) <i>Receive, process and resolve all complaints relating to land registration and surveying lodged by public</i></p> <p>b) <i>Recommend actions to remedy complaints relating to Land registration and survey services at the Land Registry and Survey of Kenya</i></p> <p>c) <i>Provide advisory opinions or proposals on improvement of processes and procedures</i></p> <p>d) <i>Maintain a register and keep a file of all complaint, including proceedings and determinations</i></p> <p>e) <i>Submit quarterly and annual reports to the Cabinet Secretary on complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office</i></p> <p>f) <i>Determine frequency of meetings, sittings and venues</i></p>	<p>• The powers of this office needs to be provided with clarity avoiding a duplication with the powers and functions of the Commission on Administrative Justice</p>
	<p>• This Sub- Section seems to give very superfluous powers ie "Receive, Process, Resolve, Recommend, and Advise". The Sub-Section seems to contradict with Section 90D(1) which excludes complaints on the merits of the decisions of the Registrar or the Director of Survey.</p> <p>• If the merit of decisions of the Registrar and the Director of Survey is not in the scope of powers, then the office is left with handling of administrative process issues which brings the question of value of the office.</p> <p>• The Powers of this office appears as a duplication of the powers and functions of the Commission on Administrative Justice (Ombudsman).</p>	

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	<p>2. The powers of the Complaints Reviewer are limited to matters listed in subsection (1) and shall not include complaints-</p> <p>a) <i>Relating to the merits of a decision of the Land registry and Survey of Kenya</i></p> <p>b) <i>By the Land Registry and Survey of Kenya employees concerning their employment or by applicants for employment about recruitment procedures</i></p> <p>c) <i>That are subject of legal proceedings</i></p>	<p>This means the Reviewers powers are only limited to administrative complaints and not complaints on substantive matters this contradicts with section 90D (1) above which states that the reviewer has powers to resolve all complaints relating to land registration and surveying lodged by the public</p>	<ul style="list-style-type: none"> The matters canvassed in the Bill should therefore be addressed administratively and not by amendment of any Act of Parliament
<p>3. The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and the complainant received a final response and is dissatisfied</p>	<ul style="list-style-type: none"> This office is not replacing the existing complaint mechanisms but rather creating a new layer of handling the same issues without tackling the question of merits of the decisions of the Registrar and the Director of Survey. This will lead to delay of justice and introduce new levels of bureaucracy and inefficiencies. There is a contradiction with section 86 of the Land Registration Act, 2012 which gives the Environment and Land court the powers to review decisions of the Registrar. 	<ul style="list-style-type: none"> The Bill needs to address the contradiction of this provision with the provisions in section 86 of the Land Registration Act,2012 	

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90E	Complaints Reviewer shall be appointed by the Cabinet Secretary for a term of three years renewable once	<ul style="list-style-type: none"> • The appointment procedure for the Complaints Reviewer is not given • It is not justified why the function of recruitment has been removed from the Public Service Commission and given to the Cabinet Secretary. 	<ul style="list-style-type: none"> • The Bill should address the issue of independence, impartiality and fairness in the recruitment process • This being a public service office should be subject to recruitment by the Public Service Commission. • The office of the Reviewer in needed can be created by the Public Service Commission without amending the law given that it is only serving administrative functions.
90F	A person shall qualify to be appointed as the Complaints Reviewer if the person; <ul style="list-style-type: none"> a) is a citizen of Kenya b) is an advocate of the High Court of Kenya with at least ten years' experience c) meets the requirements of Chapter six of the Constitution 	<ul style="list-style-type: none"> • The Qualifications given do not include any Competence in matters of Land Administration and Management, Surveying and Geospatial Engineering. • The qualifications stated therefore do not match the skills and competencies required to comprehend, Review, Determine or Advice on the processes of Surveying and Land Management under the Survey Act Cap 299 and the Land Registration Act 2012. 	<ul style="list-style-type: none"> • The Qualifications should be revised to comprise Land Administration and Management; Surveying with requisite experience and due certification of the Institution of Surveyors of Kenya and the requisite statutory registration boards..

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90G	<p>The office of the Complaints Reviewer shall become vacant if the holder;</p> <p>(a) dies</p> <p>(b) by notice in writing resigns or</p> <p>(c) is removed from the office by the Cabinet Secretary for;</p> <p>i. Gross misconduct</p> <p>ii. Violation of any law</p> <p>iii. Physical or mental incapacity to perform</p> <p>iv. Incompetent</p> <p>v. bankruptcy</p>	<ul style="list-style-type: none"> It is not clear why the Cabinet Secretary is given powers to terminate the services of a public officer as opposed to the Public Service Commission 	<ul style="list-style-type: none"> The Bill should give the powers of removal from office to the Public Service Commission and not the Cabinet Secretary.
90H	<p>Where a vacancy occurs in the office of the Complaints Reviewer, the Cabinet Secretary Shall appoint a Complaints Reviewer within fourteen days of occurrence of a vacancy</p>	<ul style="list-style-type: none"> The time provided by this section is too short for the recruitment process which entails advertisement, short listing, interviews and appointment. It's not Justified why the filling of the vacancy should be done by the Cabinet Secretary 	<ul style="list-style-type: none"> The filling of any vacancy in this office should be by the Public Service Commission following the established procedures for ensuring, fairness, impartiality and integrity. Timeliness should allow reasonable periods for competitive recruitment process.



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90I	<p>No matter or action done by the Office of the Complaints Reviewer or any officer, employee or agent of the office shall, if the matter or action is done bona fide for executing the functions, powers or duties of the office, render the Complaints Reviewer, officer, employee or agent any person acting on his directions personally liable to any action, claim or demand</p>	<ul style="list-style-type: none"> The section does not address a scenario where the loss is caused through personal deliberate actions, or negligence. 	<ul style="list-style-type: none"> This provision should not cover negligence, lack of good faith or illegality
90J	<p>The office of the Complaints Reviewer shall;</p> <ol style="list-style-type: none"> Determine rules and procedure for the conduct of its business Keep minutes of its proceedings and decisions 	<ul style="list-style-type: none"> This section gives the Complaints Reviewer too much power to decide on the operations of the office hence subject to abuse It is not clear if the Complaints Reviewer's offices will be spread across the country or only based in Nairobi 	<ul style="list-style-type: none"> This office should be subject to opening, operating and closure during all times other than during public holidays, Weekends subject to public service rules and regulations.
90K	<p>(1) The Public Service Commission may employ such staff for the office of the Complaints Reviewer as may be necessary for the proper discharge of the functions of the Complaints Reviewer</p> <p>(2) The staff appointed shall serve on such terms and conditions as the public Service Commission may determine</p> <p>(3) The Cabinet Secretary, upon request by the office of the Complaints Reviewer, shall second such number of public officers as may be necessary for the proper</p>	<ul style="list-style-type: none"> This section introduces inconsistencies where the Public Service Commission is only being mandated to employ the staff to work under the Reviewer but not the Complaint Reviewer 	<ul style="list-style-type: none"> The Bill should be clear that the Reviewer and the staff serving in this office shall only be recruited by the Public Service Commission. This will cushion the process from political interference



	<p>performance of the functions of the office</p> <p>(4) A public officer seconded to the office of the Complaints Reviewer shall, during the period of secondment, be deemed to be an officer of the Office and shall be subject only to the direction and control of the Office of the Complaints Reviewer</p>		
90L	<p>(1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions</p> <p>(2) Without prejudice to the generality of subsection(1), the Cabinet Secretary may make regulations relating to the procedure for lodging and handling a compliant and any other matter incidental thereto</p>		

[Signature]



Empowering Society

Summary of the findings:

1. The demand for the office is not justified
2. The creation of the Complaints Reviewer's office introduces bureaucracy, inefficiency and lack of accountability
3. The office is traversing several laws hence adding confusing to the land administration systems
4. The Bill introduces conflicts with the other provisions of the Land Registration Act, 2012, the Survey Act
5. The Bill claims not to address Devolved Government Matters, yet it addresses Surveying which is a devolved function under schedule four of the Constitution of Kenya 2010. It affects registration of all land including Community Land and Public Land.
6. The Bill introduces risks of causing insecurity of Title to Land and other Property Interests by taking review powers from the Environment and Land Court
7. The Qualifications provided are inappropriate since they don't comprise skills and Competence in Land Management and Surveying which are core to performance of functions provided.
8. The recruitment process is unjustifiably placed outside the Public Service Commission and lacks transparency and accountability mechanisms.
9. The Bill, vests powers of removal on the Cabinet Secretary. This introduces the risk of political interference in the operations of the office and compromise on the requirement for impartiality.
10. There is no clarity with regard to the relationship between the office of the Complaints Reviewer and other independent institutions such as Commission on Administrative Justice
11. The Bill introduces the requirement for recruitment of other members of staff by the Public Service Commission without clarity of their functions, numbers or roles.

For and on behalf of International Land Coalition members in Kenya.

Signed:

Dr. Mwenda Makathimo
Executive Director

NATIONAL ASSEMBLY
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23 APR 2020
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

NATIONAL ASSEMBLY
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23 APR 2020
DIRECTOR COMMITTEE SERVICES



Law Society of Kenya

Mr. Michael Sialai CBS
Clerk of the National Assembly
Parliament of Kenya
P. O. Box 41842-00100
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23/4/20

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Our Ref: S/20

Our Ref: TBA

Date: 20th April, 2020

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cmf
23/4

Dear Mr Michael Sialai,

RE: LAND REGISTRATION (AMENDMENT) BILL 2020

We refer to the Land Registration (Amendment) Bill, 2020 (the "Bill"), whose principal object is to amend the Land Registration Act, 2012 (the "Act") in order to establish the office of a "Complaints Reviewer" who shall be responsible for providing a complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services.

As you are aware, the Law Society of Kenya is a significant stakeholder in the land sector and our members support initiatives intended to ensure efficient delivery of services. Furthermore, our mandate as set out in section 4 of the Law Society of Kenya Act, 2014 includes assisting the Government and the Courts in all matters affecting legislation and the administration of justice and practice of the law in Kenya, and to protect and assist the public in Kenya in all matters touching, ancillary or incidental to the law.

We have accordingly reviewed the said Bill and have highlighted below some of its shortcomings and the proposed amendments for your consideration:

1. Missing Definitions in the Bill

According to the Memorandum of Objects and Reasons, the Bill is intended to establish the "office of a Complaints Reviewer", who will be a person tasked with reviewing complaints arising from "land registration and survey services". The Bill does not define the expressions "land registration and survey services" which are at the core of the amendment.

Nelson Havi (President), Carolyne Kamende (Vice-President)
Herine Kabita, George Omwansa, Roseline Odede (General Membership Representatives)
Caroline Mutheu, Faith Odhiambo, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ng'etich, Esther Ang'awa, Beth Michoma (Upcountry Representatives)
Riziki Emukule (Coast Representative)

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This is particularly relevant since section 2 of the Act specifically defines "registration" as set out below:

"registration" means bringing of an interest in land or lease under the provisions of the Act and includes making of an entry, note or record in the land register;

There should be a clear distinction between the act of "registration" which vests interests in land and mere performance of administrative duties by the staff of the Ministry of Lands and Physical Planning.

It is therefore critical that the terms "land registration" and "survey services" are clearly defined in the Bill.

2. The Role of the office of the Complaints Reviewer versus the Chief Land Registrar

There is a need to distinguish the proposed roles of the office of the Complaints Reviewer in the Bill from those of the Chief Land Registrar under the Act.

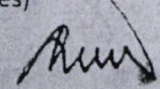
The powers of the office of the Complaints Reviewer as set out in the proposed section 90D of the Bill are as follows:

- (a) receive, process and resolve all complaints relating to land registration and surveying lodged by public;
- (b) recommend actions to remedy complaints relating to Land registration and survey services at the Lands Registry and Survey of Kenya;
- (c) provide advisory opinions or proposals on improvement of processes and procedures;
- (d) maintain a register and keep a file of all complaints, including proceedings and determinations;
- (e) submit quarterly and annual reports to the Cabinet Secretary on the complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office; and
- (f) determine frequency of meetings, sittings and venues.

The powers of the Chief Land Registrar as set out in section 14(2) of the Act, include, *inter alia*:

- (a) formulating practice instructions and guidelines for implementation of the land registration policies and strategies;
- (b) setting standards for the registries;
- (c) supervising the registries;

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- (d) preparing and submitting an annual report on the state of land registration to the National Land Commission and the Cabinet Secretary for Lands and Physical Planning (the "Cabinet Secretary");
- (e) hearing and determining appeals from the registries; and
- (f) performing such other functions or duties as may be provided under any written law.

From a review of the functions of the two offices, it seems like they will be exercising the same or similar functions.

The proposed section 90D(2) and (3) of the Bill however state that:

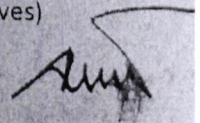
- (a) the powers of the office of the Complaints Reviewer shall not include complaints relating to the merits of a decision of the Land Registry and Director of Survey; and
- (b) the office of the Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints' procedures at the land's registry and Survey of Kenya and the complainant received a final response and is dissatisfied.

It is clear that despite the attempt to separate the powers of the Chief Land Registrar under the Act and those of the office of the Complaints Reviewer, there is still a duplication of roles as well as a possibility that the office of the Chief Land Registrar (who is statutorily mandated to adjudicate and review many decisions by the registrars generally) will now be subservient to a nominee of the Cabinet Secretary.

This would be unfortunate considering *firstly*, the qualification required for appointment to be a Chief Land Registrar vis a vis those proposed for the Complaints Reviewer and *secondly*, the heavy statutory responsibilities bestowed upon the Chief Land Registrar under the various land statutes. Indeed, in reformed registries, The Chief Land Registrar is responsible for keeping the registers established for the purposes of the land Acts and has all the powers, responsibilities and duties conferred and imposed on the registrar by those Acts and by the rules and other secondary legislation made under them.

In carrying out those specific operational functions the Chief Land Registrar is subject to supervision by the Court through the judicial review jurisdiction, moreover the determination of disputes in respect to land is the function of the Court. Our land statutes have similar provisions and we should endeavor to strengthen the office of the Chief Land Registrar rather than compromise its functionality.

Nelson Havi (President), Carolyne Kamende (Vice-President)
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3. Consultation with the National Land Commission

As you are aware, the National Land Commission has, as part of its functions, oversight responsibilities and specifically (per section 5 (2) (b) of the National Land Commission Act) has been tasked to monitor the registration of all rights and interest in land. It is again our observation that adding another tier of review and oversight may impede the ease of doing business.

4. Alternative to the office of the Complaints Reviewer

If despite our concerns and reservations, it is still found relevant to proceed with this office then it will be advisable to reconsider and change the structure. It is typical for most statutes to establish an *independent and impartial* tribunal for purposes of handling appeals in respect of administrative actions and decisions in line with Article 47 of the Constitution of Kenya, 2010.

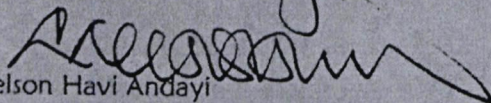
However, the Bill proposes the appointment of the Complaints Reviewer by the Cabinet Secretary. Furthermore, the Complaints Reviewer shall be an individual and not a committee or a tribunal. This may prejudice the independence and impartiality of the office, noting that it will handle appeals from the registries.

Therefore, the office of the Complaints Reviewer, if found necessary, should be in the form of a tribunal rather than an individual. This calls for a more robust Bill than what is currently proposed and the exercise will warrant greater stakeholder input and public participation to ensure alignment with the Constitution, the laws and best practices.

We urge you to consider addressing the above-mentioned issues in reviewing or amending the Bill to ensure the efficient delivery of services to the Public.

Yours

Sincerely,



Nelson Havi Andayi
President, Law Society of Kenya

Nelson Havi (President), Carolyn Kamende (Vice-President)
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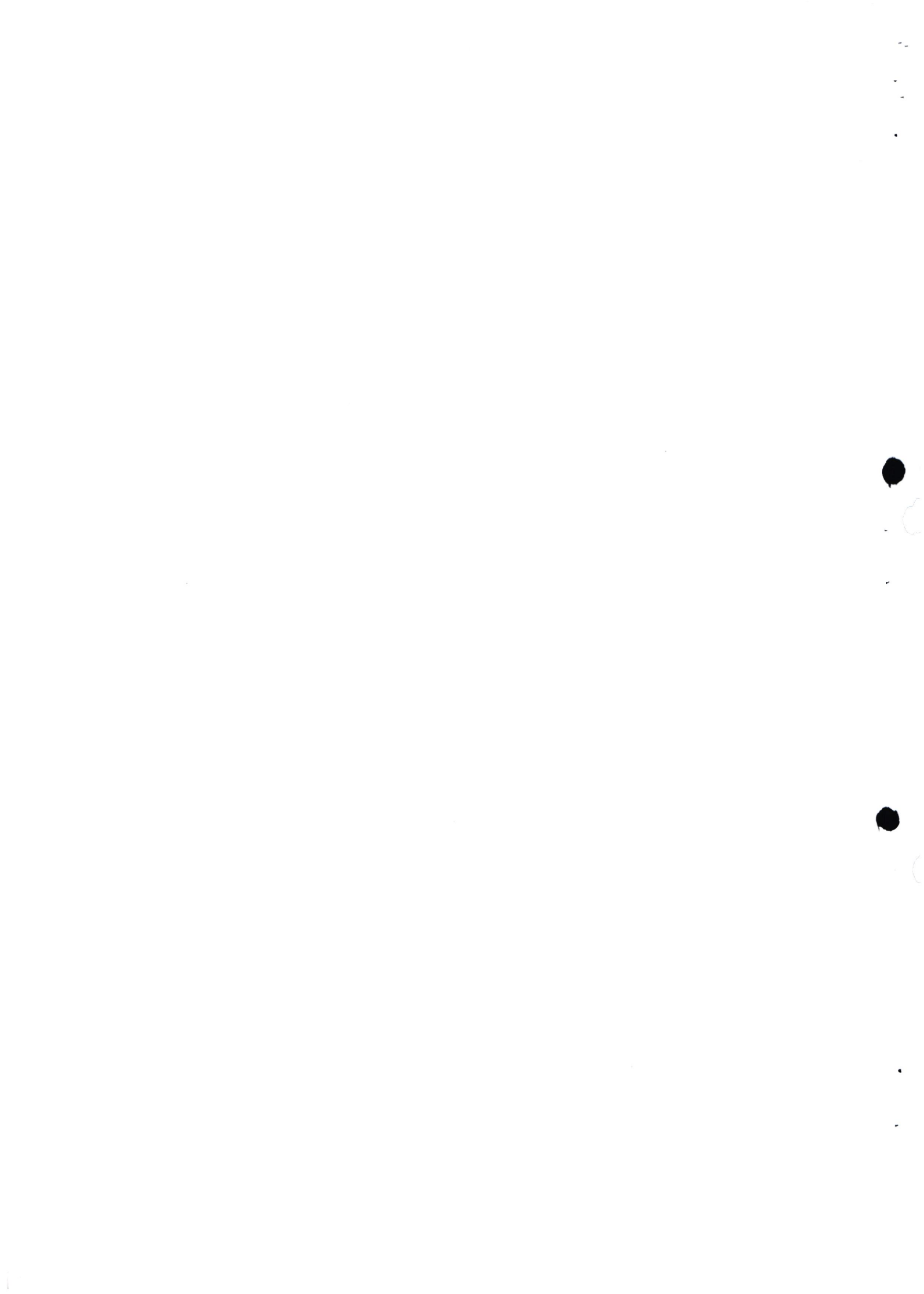
CC

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Hon. Farida Karoney
The Cabinet Secretary
Ministry of Lands and Physical Planning
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Mr. Gershom Otachi
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② MACHRA

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07/5/20



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Ref: NLC/CHAIR 05-20/6

5th May, 2020

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

① D/ants / DLS
6/5/20

Dear *Mr. Sialai,*

RE: LAND REGISTRATION (AMENDMENT) BILL 2020 (NATIONAL ASSEMBLY BILL NO. 7)

We make reference to our letter Ref. No. NLC/CHAIR 04-20/16 dated 29th April, 2020 on the above subject matter. Please note this letter supersedes the aforementioned letter.

We agree with the spirit and purpose of the proposed amendment as it seeks a free, effective and impartial complaints review mechanism of Land Registry and Survey of Kenya services. However, upon studying the Land Registration (Amendment) Bill 2020 in relation to the proposed amendments that insert new Sections 90(A to L) after Section 90 of the Land Registration Act, 2012 we make the following observations and proposals in line with the Constitution 2010, Legislation and the National Land Policy (2009).

We respectfully submit that, whereas it is well intentioned as providing administrative redress, the proposed office of Reviewer might well turn out to be confusing to ordinary members of the public who will mostly view it as an Appeals Tribunal that will be swamped with claims of a substantive nature and whose recommendations may well be interpreted as binding "Judgements" or Awards.

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06 MAY 2020

More significantly, absent a strict and clear definition of the nature of the Complaints and the Reviewer proposed will entertain and the remedies he can provide, we make the following key observations:

1. There appears to be a potential conflict and/or overlap with the functions of the Chief Land Registrar and Courts of Law as envisaged under Sections 79 and 80 of the Act as well as Section 14 generally (and, more specifically 14 (2)(e)) of the Act;
2. There is lack of clarity as to whether the functions of the proposed Reviewer are intended to be purely administrative or judicial/ quasi-judicial. Thus, anchoring it within the MOLPP without distinctly defining its place hierarchically vis-a-vis that of Chief Land Registrar may potentially cause overlap of functions and possibly confuse the public;
3. There is potential conflict with regard to functions constitutionally conferred on other bodies, such as the Commission on Administration of Justice (Ombudsman), National Land Commission, the Courts and County Governments; and
4. The nature of Complaints contemplated is not sufficiently clear hence the likelihood of confusion and overlap of functions as members of the public are likely to present any manner of complaints.

SPECIFIC OBSERVATIONS

1. Proposed insertions of section 90A

Section	Proposed insertions of a new subsection
90A	This Part shall apply to <i>complaints</i> relating to land <i>registration services</i> under the Land Registration Act, 2012 and also to survey of land services under the <i>Survey Act</i> .

As pointed out above, there is need for clear definition of the term "Complaint" absent which there are likely to be legal challenges to the exercise of functions. Survey services touch on the role of the County Government under Part 2(8) of the 4th Schedule of the Constitution and Article 110 (1) (a) of the constitution. Section 2 of the Land Registration Act, No. 3 of 2012 defines the role of a registrar i.e. "registration," to mean 'bringing of an interest in land or lease under the provisions of the Act" and that includes but is not limited to the Land Registrar's role of making of an entry, note or record in the land register. Significantly, registration is an act that confers a legal right on a person. The Constitution and legislation have addressed related review of the court and the Commission. The Constitution has also addressed the administrative functions of the county and national governments in different stages of vesting land interests and an unclear parallel review system may face Constitutional hurdles.

2. Proposed insertions of section 90B and C

Section	Proposed insertions of a new subsection
90B and C	<p>There is established the office of the Complaints Reviewer in the Lands Registry and Survey of Kenya which shall perform the functions and exercise the powers provided for in this Part.</p> <p>The Complaints Reviewer shall provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services.</p>

The Complaints Reviewer is a person established within the Land Registry and Survey of Kenya offices to decide on undefined complaints of unspecified nature of land at different administrative stages of survey and registration of land. Article 62 (3) of the Constitution specifies that Public land shall be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the Commission. In its administrative role, the Commission has various roles that affect vesting and monitoring of all land rights and interests under section 5 (5) (b) of the National Land Commission Act. These roles affect survey and registration services. Parliament has already specified the Commission's roles in undertaking land dispute resolutions under Sections 4(2) (m) of the Land Act, reviewing complaints and extending that role under section 14 of the National Land Commission Act. Historical land injustice investigations and provisions of recommendations touch on issues of survey and registration and this is a constitutional function of the Commission under Article 67 (2) (e) of the Constitution. Given this background, there appears a potential overlap of functions between the proposed office and other Constitutional bodies. There would need to be a closer look at the functions of the proposed office to ensure harmonization of roles.

3. Proposed insertions of section 90D (1a and b)

Section	Proposed insertions of a new subsection
90D	<p>(1) The Complaints Reviewer shall have powers to –</p> <ul style="list-style-type: none">(a) receive, process and resolve <i>all complaints</i> relating to land registration and surveying lodged by public;(b) recommend actions to remedy complaints relating to land registration and survey services at the Lands Registry and Survey of Kenya;

This is the most critical part of the proposed legislation. The lack of specificity will most likely, in practice, lead to various complications as summarized in the introduction. It is inherently unclear on criteria for receipt, nature of processes and nature of resolutions and complaints. It is silent on the parties that can bring claims. It is unclear on the

Reviewer's role as it relates to the roles played by the Courts, the Commission and County Government which have related constitutional and legislative roles touching on survey and registration as discussed. The danger in creation of overlap of functions as aforesaid is, in the Commission's view, real.

4. Proposed insertions of section 90D (1) (c)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – provide advisory opinions or proposals on improvement of processes on improvement of processes and procedures;

This role, unless defined in very concise terms, creates a potential overlap with those of NLC under Article 67 (1) (c) of the Constitution which requires the Commission to advise the National Government on a comprehensive programme for the registration of title in land throughout Kenya, and Section 5 (5) (b) of National Land Commission Act which empowers the Commission to monitor the registration of all rights and interests in land. Article 67 (h) of the constitution gives the Commission powers to monitor and have oversight responsibilities over land use planning throughout the country, issues on survey inherently included. County governments equally make decisions on survey and planning. This function would need to be considered with the overall background of these other various legal provisions in mind.

5. Proposed insertions of section 90D (1) (d)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – maintain a register and keep a file of all complaints, including proceedings and determinations;

The maintenance of a register is premised on the parameters of the exercise of the functions of the proposed Reviewer discussed above, and in respect of which potential overlap and duplicity of functions and challenge on Constitutionality appear likely. For instance, the Commission maintains a register of specified complaints of constitutionally specified nature and has made over 5000 recommendations related to survey and registration issues that include recommendations on revocation of title decisions and on steps of title regularization.

6. Proposed insertions of section 90D (2) (a)

Section	Proposed insertions of a new subsection
90D	(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints – relating to the merits of a decision of the Land registry and Director of Survey;

The provision that the Reviewer shall not deal with matters relating to the merits of a decision is laudable and minimizes the risk of conflict in exercise of functions. However, the provision that the Reviewer .. shall.. "*process and resolve all complaints*" as anticipated in 90D (1)(a) poses a complication. Whereas a juxtaposition of the two subsections might lead to an inference that the complaints contemplated would relate to *procedure*, the proposed amendment nevertheless needs to be clear and set out the anticipated complaints, being careful to ensure matters of procedure and substance are differentiated and set out with clarity. This is in view of the fact that an ordinary complainant would most probably not easily make such distinctions.

7. Proposed insertions of section 90D (3), E

Section	Proposed insertions of a new subsection
90D	(3) The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and complainant received a final response and is dissatisfied.

Firstly, contrary to what is envisaged in the National Land Policy of 2009, this gives oversight role to a person working within the offices where dissatisfaction occurred, as contrasted with the scenario of an external Ombudsman. Secondly, the nature of complaints has not been defined as already discussed. More significantly, the dissatisfaction would that would be the basis of an Appeal, as discussed above, is unclear.

8. Proposed insertions of section 90E and F

Section	Proposed insertions of a new subsection
90E	There shall be a Complaints Reviewer who shall be appointed by the Cabinet Secretary for a term of three years renewable once.
90F	A person shall qualify to be appointed as the Complaints Reviewer if the person – (a) is a citizen of Kenya; (b) is an advocate of the High Court of Kenya with at least ten years' experience; and (c) meets the requirements of Chapter Six of the Constitution.

The minimum qualifications set out mirror those of a Chief Land Registrar (Section 13 of the Act) save for the additional ten years' experience required for the latter. The fundamental difference is that the appointment of the Chief Land Registrar is by a competitive process by PSC whereas for the Reviewer, a direct appointment by the cabinet Secretary. Considering the apparently superior role in the exercise of functions by the proposed Reviewer, the qualifications and manner of appointment may have to be reconsidered. The manner of appointment and removal have an impact on the impartiality of the holder of the office.

PROPOSAL

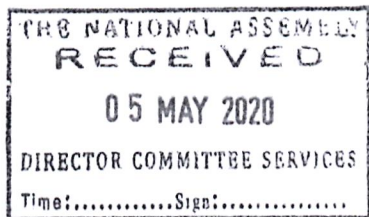
The Commission's respectful view is that the proposed office is likely to attract legal challenges as set out above.

The Commission is of the view that, as proposed by the National Land Policy and envisaged by various stakeholders, the Ministry of Lands and Physical Planning should initiate a comprehensive review of the Survey Act Cap 299 to align it with the Constitution, Land Registration Act No. 3 of 2012 and Land Act No. 5 of 2012, within which context the issue of resolutions or disputes on survey will be addressed.

Yours *Sincerely,*

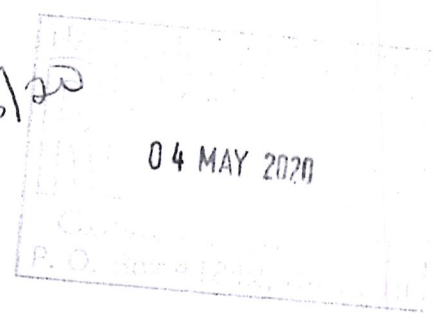


Mr. Gershom Otachi Bw'omanwa
CHAIRMAN



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Ref: NLC/CHAIR 04-20/15

29th April, 2020

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① D/CMS/DLS

TMA, CNA

5/5/20

Dear *Mr Sialai,*

RE: LAND REGISTRATION (AMENDMENT) BILL 2020 (NATIONAL ASSEMBLY BILL NO. 7)

We make reference to the above subject matter and take the opportunity to submit our views on the Land Registration (Amendment) Bill 2020.

We agree with the purpose of the proposed amendment as it seeks a free, effective and impartial complaints review mechanism of Land Registry and Survey of Kenya services. However, upon studying the Land Registration (Amendment) Bill 2020 in relation to the proposed amendments that insert new Sections 90(A to L) after Section 90 of the Land Registration Act, 2012 we make the following observations and proposals in line with the Constitution, Legislation, National Land Policy, Best Practice and other Government Policies and Directives:

OBSERVATIONS

1. Proposed insertions of section 90A

Section	Proposed insertions of a new subsection
90A	This Part shall apply to complaints relating to land registration services under the Land Registration Act, 2012 and also to survey of land services under the Survey Act.

The nature of complaints relating to land registration and survey services is unclear and not in line with Article 68(a) of the Constitution. Survey services touch on the role of the

county government under Part 2(8) of the 4th Schedule of the Constitution and Article 110 (1) (a) of the constitution. Section 2 of the Land Registration Act, No. 3 of 2012 defines the role of a registrar i.e. "registration," to mean 'bringing of an interest in land or lease under the provisions of the Act" and that includes but is not limited to the Land Registrar's role of making of an entry, note or record in the land register. The Constitution and legislation has addressed related review of the court and the Commission. The constitution has also addressed the administrative functions of the county and national governments in different stages of vesting land interests and an unclear parallel review system is not only unconstitutional, but will also create an unnecessary duplication and conflict of roles.

2. Proposed insertions of section 90B

Section	Proposed insertions of a new subsection
90B	There is established the office of the Complaints Reviewer in the Lands Registry and Survey of Kenya which shall perform the functions and exercise the powers provided for in this Part.

The Complaints Reviewer is a person established within the Land Registry and Survey of Kenya offices to decide on undefined complaints of unspecified nature of land at different administrative stages of survey and registration of land. Article 62 (3) of the Constitution specifies that Public land shall be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the Commission. In its administrative role, the Commission has various roles that affect vesting and monitoring of all land rights and interests under section 5 (5) (b) of the National Land Commission Act. These roles affect survey and registration services. Parliament has already specified the Commission's roles in undertaking land dispute resolutions under Sections 4(2) (m) of the Land Act, reviewing complaints and extending that role under section 14 of the National Land Commission Act. Historical land injustice investigations and provisions of recommendations touch on issues of survey and registration and this is a constitutional function of the Commission under Article 67 (2) (e) of the Constitution. Courts have constitutional review roles and powers. A similar parallel mechanism creates confusion and is therefore unnecessary. Moreover, creation of such an office given its seniority and statutory status require public participation. A better and constitutional supported option in our view is to, resource, empower, stream line and strengthen existing mechanisms.

3. Proposed insertions of section 90C

Section	Proposed insertions of a new subsection
90C	The Complaints Reviewer shall provide a free, effective and impartial complaints review mechanism at the Lands Registry and Survey of Kenya by reviewing and determining complaints regarding land registration and survey services.

We note that review of complaints regarding Land Registry and Survey of Kenya services are an integral part of the constitutional and legislative integrated and coordinated administrative roles of the national and county governments in diverse stages of vesting and disposing private, public and community land interests and rights. Some of the said

roles are undertaken in consultation with the Commission. Review of the said services are also part of the constitutional and legislative independent review, advisory and oversight roles of the court and the commission. The unfortunate consequences of the wording of the bill creates an unclear, incomplete, partial and parallel review mechanism contrary to the revision, consolidation and rationalization of land laws envisaged under Article 68(a) of the Constitution.

4. Proposed insertions of section 90D (1) (a)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – (a) receive, process and resolve all complaints relating to land registration and surveying lodged by public;

Instead of revising, consolidating and rationalizing existing land laws, this brings duplicity, confusion and lack of clarity. It is vague in the nature and meaning of critical terms. The related jurisdiction of the Complaints Reviewer is generic and undefined and would encroach on other constitutional and legislative mandates and cause duplicity. It is inherently unclear on criteria for receipt, nature of processes, nature of resolutions and complaints. It is silent on the parties that can bring claims. It is unclear on the Reviewer's role as it relates to the roles played by the court, Commission and County government which have related constitutional and legislative roles touching on survey and registration as discussed.

5. Proposed insertions of section 90D (1) (b)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – (b) recommend actions to remedy complaints relating to land registration and survey services at the Lands Registry and Survey of Kenya;

Instead of revising, consolidating and rationalizing existing land laws, the bill brings duplicity, confusion and lack of clarity. It is silent on envisaged remedies and appeal against decisions. It is unclear on the Reviewer's remedies as they relate to the remedies available in the court, the Commission and by decisions of County government as already provided in constitutional and legislative roles touching on survey and registration as discussed.

6. Proposed insertions of section 90D (1) (c)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – (c) provide advisory opinions or proposals on improvement of processes on improvement of processes and procedures;

The bill gives the Reviewer advisory functions on procedures and processes parallel to those of the Commission creating more confusion and duplicity. Article 67 (1) (c) of the Constitution requires the Commission to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya. Under Section 5 (5) (b) of National Land Commission Act, the Commission monitors the registration of all rights and interests in land. Article 67 (h) of the constitution gives the Commission powers to monitor and have oversight responsibilities over land use planning throughout the country. This includes advisory proposals on issues of survey. County governments also make decisions on survey and planning supported by the Commission. This clause is unconstitutionally unsupportable.

7. Proposed insertions of section 90D (1) (d)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – (d) maintain a register and keep a file of all complaints, including proceedings and determinations;

The Commission has a parallel related register of specified complaints of constitutionally specified nature and has made over 5000 recommendations related to survey and registration issues that include recommendations on revocation of title decisions and on steps of title regularization. To date the Registrar is still to act on the said recommendations yet the bill seeks a parallel independent and impartial function of review within the Registrar’s own office for dissatisfactory actions within the same office. This was not envisioned in the National Land Policy of 2009. The courts also have related complaints’ registry. The clause is unconstitutionally unsupportable.

8. Proposed insertions of section 90D (1) (e)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – (e) submit quarterly and annual reports to the Cabinet Secretary on the complaints investigated, the remedial actions recommended and matters pertaining to the functions of the office; and

In view of the foregoing explanations this clause is unconstitutionally unsupportable.

9. Proposed insertions of section 90D (1) (f)

Section	Proposed insertions of a new subsection
90D	(1) The Complaints Reviewer shall have powers to – (f) determine frequency of meetings, sittings and venues.

This clause seeks to support administrative issues of roles of unconstitutional nature and is unsupportable.

10. Proposed insertions of section 90D (2) (a)

Section	Proposed insertions of a new subsection
90D	(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints – (a) relating to the merits of a decision of the Land registry and Director of Survey;

The powers and perimeters of the Reviewer's jurisdiction is unspecified as it relates to the merits of the Chief Land Registrar and the Director of Survey as they perform their specified duties on their own or in relation to complaint determination in coordination with the Commission, the county government and other sectors of the national government. It is not supported by constitution or legislation.

11. Proposed insertions of section 90D (2) (b)

Section	Proposed insertions of a new subsection
90D	(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints – (b) by the Land Registry and Survey of Kenya employees concerning their employment or by applicants for employment about recruitment procedures; and

The clause fails to show how the Reviewer's role relates to constitutional and legislative duties of other related actors as discussed in the foregoing and it is therefore unsupportable.

12. Proposed insertions of section 90D (2) (c)

Section	Proposed insertions of a new subsection
90D	(2) The powers of the Complaints Reviewer are limited to matters listed in sub-section (1) and shall not include complaints – (c) that are subject of legal proceedings.

The clause fails to show how the Reviewer's role relates to constitutional and legislative duties of other related actors as discussed in the foregoing and it is therefore unsupportable. Limiting the unspecified nature of complaints related to unspecified complainants to only matters that are not "subject of legal proceedings" would bring confusion and duplicity and encroachment on rights to seek constitutional court remedies both on procedure and substantive law. It is unconstitutionally unsupportable.

13. Proposed insertions of section 90D (3)

Section	Proposed insertions of a new subsection
90D	(3) The Complaints Reviewer shall only consider complaints that have been fully considered within the internal complaints procedures at the lands registry and Survey of Kenya and complainant received a final response and is dissatisfied.

Firstly, unlike what is envisaged in the National Land Policy of 2009, this gives oversight role to a person working within the offices where dissatisfaction occurred. Secondly, the nature of complaints has not been defined as already discussed. Finally, the nature of dissatisfaction is not defined and is generic. It is not clear whether dissatisfaction would include administrative issues of allocation, acquisition, extension of lease, historical land injustice, review of grant and dispositions under Article 68 (c) (v) of the constitution and Section 14 of the National Land Commission Act. It is not clear whether dissatisfaction relates to determination of whether the land is being used for the purpose for which it was envisaged under Section 5 (2) (b) of the National Land Commission Act. It is not clear whether dissatisfaction would include issues for commission independent dispute resolution envisaged under Article 252 of the constitution and Section 4 (2) (m) of the Land Act. It is not clear whether dissatisfaction includes issues related to illegality and irregularity of title acquisition that challenge registered title of land under Article 40 of the constitution and section 26 of the Land Registration Act. It is not clear whether the issues fall within the constitutional jurisdiction of the Environment and Land Court under Article 162(2)(b) of the Constitution and operationalized by Section 13 of the Environment and Land Court Act, 2011. The proposed sub-clause is unconstitutionally unsupportable.

14. Proposed insertions of section 90E

Section	Proposed insertions of a new subsection
90E	There shall be a Complaints Reviewer who shall be appointed by the Cabinet Secretary for a term of three years renewable once.

The Cabinet Secretary will appoint the Complaints Reviewer to perform the same legislative functions of the Chief Land registrar as already specified under Section 14 (2) of the Land Registration Act. The Chief Land Registrar is a public servant appointed and vetted by the Public Service Commission under Section 12 of the Land Registration Act. This would bring parallel conflicting statutory functions within the same Ministry and confusion. As a person appointed by the Cabinet Secretary, the Reviewer would be performing parallel independent oversight functions of independent constitutional institutions which are already provided for in the constitution and legislation as discussed in the foregoing. This clause cannot be supported.

15. Proposed insertions of section 90F

Section	Proposed insertions of a new subsection
90F	A person shall qualify to be appointed as the Complaints Reviewer if the person – (a) is a citizen of Kenya; (b) is an advocate of the High Court of Kenya with at least ten years' experience; and (c) meets the requirements of Chapter Six of the Constitution.

Article 249 of the Constitution and Section 8 of the National Land Commission Act are examples of the necessary requisite independent Commissioners needed to perform the envisaged related critical oversight functions. The proposal is unconstitutional and hence unsupportable.

16. Proposed insertions of section 90G

Section	Proposed insertions of a new subsection
90G	The office of the Complaints Reviewer shall become vacant if the holder – ... (c) is removed from office by the Cabinet Secretary for – (i) gross misconduct; (ii) violation of any law including a contravention of Chapter Six of the Constitution; (iii) physical or mental incapacity to perform the functions of the office; (iv) incompetence; or (v) bankruptcy.

Article 249(2)(d) and 251(1) of the Constitution and Section 10 of the National Land Commission Act cushion members of independent offices from external interference and arbitrary removal from office because of the impartiality they are required to espouse. Giving the Cabinet Secretary the powers to remove officers who perform such a critical role compromises the standards of impartiality required of the holder of such office because the holder of such office could easily be beholden to the appointing authority hence negating the very purpose for which the Reviewer is established. The clause should be deleted.

17. Proposed insertions of section 90 (H)

Section	Proposed insertions of a new subsection
90H	Where a vacancy occurs in the office of the Complaints Reviewer, the Cabinet Secretary shall appoint a Complaints Reviewer within fourteen days of occurrence of a vacancy.

Giving the Cabinet Secretary the powers to appoint the Complaints Reviewer compromises the standards of impartiality required of the holder of such office because the holder of such office could easily beholden to the appointing authority hence negating the very purpose for which the office is established. The clause is unconstitutional as discussed is the foregoing and should be deleted.

18. Proposed insertions of section 90I

Section	Proposed insertions of a new subsection
90I	No matter or action done by the Office of the Complaints Reviewer or any officer, employee or agent of the office shall, if the matter or action is done <i>bona fide</i> for executing the functions, powers or duties of the office, render the Complaints Reviewer, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand.

The alluded to protection is for an independent and constitutionally appointed Commissioner under Article 250(9) of the Constitution. This appointment to perform critical oversight functions is well defined by constitution and operationalized by

legislation to ensure independence, impartiality and integrity as discussed in the foregoing. This clause is unconstitutionally unsupportable.

19. Proposed insertions of section 90J

Section	Proposed insertions of a new subsection
90J	The office of the Complaints Reviewer shall – (a) determine rules of procedure for the conduct of its business; and (b) keep minutes of its proceedings and decisions.

Our foregoing discussion finds the existence of the proposed office unnecessary, unconstitutional and hence this clause is unsupportable.

20. Proposed insertions of section 90K

Section	Proposed insertions of a new subsection
90K	(1) The Public Service Commission may employ such staff for the office of the Complaints Reviewer as may be necessary for the proper discharge of the functions of the Complaints Reviewer under this Act. (2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Public Service Commission may determine. (3) The Cabinet Secretary, upon request by the office of the Complaints Reviewer, shall second such number of public officers as may be necessary for the proper performance of the functions of the office. (5) A public officer seconded to the office of the Complaints Reviewer shall, during the period of secondment, be deemed to be an officer of the Office and shall be subject only to the direction and control of the Office of the Complaints Reviewer.

This is already provided for under Article 252(1) (c) of the Constitution and Section 22 of the National Land Commission Act and seeks to grant the same role and functions of an independent Commission of getting secretariat to an internal parallel person's office within the same national office. In view of this and the foregoing discussion, it is unsupportable.

21. Proposed insertions of section 90L

Section	Proposed insertions of a new subsection
90L	(1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Part. (2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations relating to the procedure for lodging and handling a complaint and any other matter incidental thereto

This is the same legislative function provided for under Section 36, 14(2) and Section 15 of the National Land Commission Act to independently operationalize the related parallel mandate as discussed in the foregoing. Moreover, this Parliament provides more oversight on such regulations under section 36 of the National Land Commission Act due

to the Commission's critical independent oversight mandate. The proposed clause is therefore unconstitutionally unsupportable.

PROPOSAL

The proposed clauses of the bill are not in line with the Constitution, legislation, best practice and policies. The Commission provides independent, impartial and effective review on issues of land including those related to survey and registration. It monitors all interests and rights in land. It provides resolution, administrative and related regulatory and advisory functions that affect determination of survey, registration and other land complaints. It was envisaged as an oversight body for that purpose under the National Land Policy.

Section 14 (9) of the National Land Commission Act enabled the Commission to extend the period for undertaking review of grants and disposition in line with Article 68 (c) (v) of the constitution where it considers it necessary to petition parliament. Upon considering that necessary, due the pending complaints and the complaints it continues to receive, the Commission petitioned parliament in 2017 and send a subsequent reminder through the Attorney General's office but Parliament has still not considered the extension. The courts continue to affirm the Commission's decisions on review and recommend the extension for review. Since Section 14 (9) of the National Land Commission Act has neither expired nor been repealed, parliament is mandated to factor in the following Commission's considerations on review.

To ensure that the review obligations related to Land Registry and the Survey of Kenya services are impartial and independent and that they neither encroach on existing constitutional and legislative functions of established institutions nor create another layer of quasi- judicial determination of complaints unlike what is envisaged by the constitution, we propose that

- (i) The proposed insertions of Sections 90(A to L) to the Land Registration (Amendment) Bill 2020 be replaced with the following new subsections after Section 90 of the Land Registration Act, 2012;

Section	Proposed insertions to the Land Registration (Amendment) Bill, 2020
90A. (1)	Subject to Article 68 (c)(v) of the Constitution and on commencement of this Act, the Commission shall on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.
(2)	Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).
(3)	In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the

	grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.
(4)	After hearing the parties in accordance with subsection (3), the Commission shall make a determination.
(5)	Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
(6)	Where the Commission gazettes the title for revocation, the Registrar shall revoke the title.
(7)	Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.
(8)	No revocation of title, shall be effected against a bona fide purchaser for value, without notice of a defect in the title.
(9)	In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.

- (ii) As proposed by the National Land Policy and envisaged by various stakeholders, the Ministry of Lands and Physical Planning to urgently initiate a comprehensive review of the Survey Act Cap 299 to align it with the Constitution, Land Registration Act No. 3 of 2012 and Land Act No. 5 of 2012.

Yours *Sincerely,*



Mr. Gershom Otachi Bw'Omanwa
CHAIRMAN