
LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

MEMORANDUM OF THE LAW SOCIETY OF KENYA

(CONVEYANCING COMMITTEE)

TO

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

8TH JUNE 2020

June 8, 2020

The Chair,

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

Greetings,

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

Introduction

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

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

- G. By virtue of the notice, all persons likely to be affected by the proposed Regulations are required to submit written comments on the Land Transactions (Electronic) Regulations, 2020.
- H. The proposed statutory instruments (“the *e-Regulations*”) are as follows:
- i. **Land Registration (Electronic Transactions) Regulations, 2020**
 - ii. **Survey (Electronic Cadastre Transactions) Regulations, 2020**
 - iii. **Survey (Amendment Regulations), 2020**
 - iv. **Stamp Duty (Valuation) Regulations, 2020**
 - v. **Stamp Duty (Amendment) Regulations, 2020**
 - vi. **Land (Amendment) Regulations, 2020**
 - vii. **Land (Extension and Renewal of Leases) (Amendment) Rules, 2020**
 - viii. **The Land (Allocation of Public Land) (Amendments, Regulations), 2020**
 - ix. **Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020**
- I. The Law Society of Kenya (“LSK”) is a key stakeholder in reforms being undertaken in the land sector. Consistent with its broad mandate, the LSK is mandated to originate proposals on reform of the law and practice to address challenges encountered by practitioners.
- J. The LSK contributed the chapter on electronic conveyancing in the Land Regulations and thereby planted the seed for the growth of e-Conveyancing in the country. The LSK has also sought judicial intervention to ensure the introduction and growth of e-Conveyancing proceeds within a legal spectrum so as to ensure a credible and legally defensible system.
- K. It is the desire of the LSK that this paradigm shift in land management and registration proceed earnestly and with adherence to best practices. Indeed, it is only in those countries where the law society has taken a central position in the e-Conveyancing process that has shown marked success.
- L. An examination of the terms of reference of the Task Force creates an expectation that this exercise will deliver definitive regulations and propose credible solutions to enable e-Conveyancing to take root in Kenya. While an end to end e-Conveyancing process remains the ideal achievable over time, we expect the Task Force to borrow from international best practice and offer a blue print that will deliver a phased credible and secure: *electronic system; procedure for certification of electronic instruments; procedure for execution and verification or certification of digital signatures; the form of e-Conveyancing that is possible in the circumstances of our country having regard to international experiences; electronic transfer and execution of deeds and contracts; seamless and timely electronic funds transfer etc.* These activities should work towards achieving seamless connectivity and access to the information and

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

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

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

Part 1: General Comments

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

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

Part 4: Review of the Draft e- Regulations

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

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

PART 1: GENERAL COMMENTS

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

¹ Conveyancing and Law of Property Act 1881

² The United Nations' definition of Land Administration

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

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

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

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

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

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

I. Incomplete migration of titles to the LRA Platform

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

II. Incomplete Digitisation/Automation

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

III. Manual and paper based system

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

IV. Poor record keeping

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

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

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

3.1 The Integrity and Reliability of the System

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

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

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

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

3.2 Government Guarantee of Process and of Title

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

3.3 e-Signature

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

3.4 Third Party Certification

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

4. *e-Statutory Changes*

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

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

5. *Electronic Fund Transfer (EFT) Service*

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

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

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

³ Parliamentary Hansard Proceedings of 26th April 2012 pursuant to a resolution of the House, LCB was included in the schedule of the repealed Acts.
⁴ Basil Criticos v Attorney General & 8 others & 4 others [2012] eKLR

- 5.2 To deliver credible and legally sound e-Regulations the Task Force should have due regard to the constitutional roles and functions of the two lead agencies in land administration and registration: the NLC and the Ministry. In doing so, the Task Force should be guided by the Constitution, the Land Acts and the judicial interpretation of the role of the two agencies.
- 5.3 We would refer the Task Force to the following constitutional references which are relevant to some amendments the Task Force has proposed:-

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

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

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

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

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

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

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

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

5.4 There are several cases that have followed the principles set out in the two leading judicial cases on the relationship and functions between the NLC and the Ministry. It is therefore prudent for the Task Force to have regard to these judicial guidance while preparing the e-Regulations and when proposing amendments to the existing Regulations and the Land Acts.

5.5 Flowing from the Supreme Court advisory opinion, the Law Society invites the Task Force to review the 2018 amendment of section 23 (2) of the Land Act. We have noted that this section has formed the basis of the e-Regulations in the area of public land administration as well some sections of the land registration regulations. The section is therefore at the core of public land administration as it deals with the process of leases over public land.

5.6 We are respectfully of the view that the recent amendment to Section 23 (2) conflicts with the Constitution, the Land Acts, the current LRA and LA Regulations and judicial precedents. The LSK would like to draw your attention to the following:-

(i) Judicial clarity

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

(ii) Statutory clarity

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

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

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

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

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

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

“64.

Private land

Private land consists of—

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

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

(v) The Task Force should review the current section 23 (2) and determine whether it is legally coherent and in the right place. In doing so, the Task Force should also have regard to Article 62 (1) (c) of the Constitution which deals with grants powers to the NLC to deal with “*land transferred to the State by way of sale, reversion or surrender*”. Most leases over public land are preceded by a legal incidence of surrender or reversion to the State.

(vi) It is the recommendation of the LSK that the amendment in 2018, (*Act 18 of 2018*) Section 23 (2) of the LA is incurably defective to the extent that it purports to grant the Cabinet Secretary power to issue leases over private land. It is also incurably defective if it intended to grant the Cabinet Secretary power to issue leases over public land as this is the preserve of the NLC as per the Constitution and as conclusively determined by the Supreme Court in the advisory opinion.

PART 4: SPECIFIC COMMENTS ON THE E-REGULATIONS

1. LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020

I. Need to harmonise the Regulations

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

II. Definition of User

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

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

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

III. Definition of an Authorized User - Regulation 7

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

IV. Electronic Land Register - Regulation 5

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

V. Users to have a User Agreement

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

VI. Authorised User Agreement

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

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

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

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

^s See the Table to the Memorandum attached

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

VIII. Stay of Registration

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

IX. Express Preclusion of Attestation of Instruments Processed Electronically

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

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

IX. Certification of Electronic Instruments

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

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

X. Adoption of the Prescribed Land Forms

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

XI. Controlled Transactions/Spousal and other special consents

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

XII. Appeal Process

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

⁶ Greenwood and Jones, 2003, p. 330

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

XIII. Electronic Certificate of Lease or Title

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

XIV. Multiplicity of Rejections

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

XV. Suspension Notice for Users

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

2. SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGULATIONS, 2020

I. Electronic Survey Plans and Maps

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

II. ICT Infrastructure cost to surveyors and stakeholder involvement

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

III. Authorized User

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

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

IV. Survey Gaps

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

3. STAMP DUTY (VALUATION) REGULATIONS, 2020

I. Generally

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

II. Access to Electronic Valuation Mode

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

III. Timeline for valuation process

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

IV. Scope of the Regulations

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

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

V. Engage Private Valuers to Complement Government Valuers.

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

VI. Provide for Indemnity on Valuation

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

VII. Timeline for stamping

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

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

Proposal for e-Stamping

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

b) The e-Regulations on e-stamping should include the following features: -

(i) Establishing an e-stamping system

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

(ii) Reliability of the Electronic stamp certificate

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

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

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

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

3. Stamp Certificate Number

4. Date of Stamping

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

(iv) Rectification of an Electronic Stamp certificate

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

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

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

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

5. LAND (AMENDMENT) REGULATIONS, 2020

a) **General comments**

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

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

(ii) **Incomplete Amendments**

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

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

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

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

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

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

“Existing land holdings and agreements relating to natural resources

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

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

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

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

“Public land shall vest in and be held by a county government in trust for the people resident in the county, *and shall be administered on their behalf by the National Land Commission, if it is classified under—*

(a) clause (1)(a), (c), (d) or (e);”

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

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

d) Electronic Appeals Standing Committee

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

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

a. Collaboration between the NLC and the Ministry of Lands

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

b. Timelines for a Lessee:

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

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

a. Whose task is this -NLC or the Ministry

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

b. Timelines for preparation and execution of leases

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

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

a. Generally

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

b. Application – Regulation 1 (2)

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

c. Licensed professionals

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

d. Cost of ICT Infrastructure and Transition Period

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

e. Electronic Appeals Committee

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

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

9. SURVEY (AMENDMENT) REGULATIONS, 2020

a) Generally

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

b) Migration to the new register

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

c) Licensed professionals

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

PART 5 : CONCLUSION AND FURTHER RECOMMENDATIONS

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

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

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

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

Which e-Conveyancing System for Kenya?

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

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

Stakeholder Engagement

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

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

Land Transactions (Electronic) Regulations, 2020

Schedule to the Memorandum of the Law Society Conveyancing Committee

9th June 2020

1. Land Registration (Electronic Transactions) Regulations, 2020

| Regulation | Comments | Proposed Amendment |
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| Regulation 2 and 9 | <p>The Regulations need to substitute the definition of a “Authorized User” as currently defined for purposes of who qualifies as an authorized user under Regulations 2 and 9 to be an Advocate. Advocates will still be mandated to have a User Account and User Agreement before using the e-system.</p> <p>A User on the other hand will be a member of the public who has a User Account and entered into a User Agreement.</p> | <p>An “Authorized User” should be an Advocate qualified to practice under the Advocates Act, Cap 16 Laws of Kenya.</p> |
| New Regulation | <p>We note that the e- system will be accessible to members of the public who may have scanty details about the Regulations. We note also that the e-system being introduced for the first time, users will need to understand how it works clearly.</p> <p>It is important for any User to sign a User Agreement upfront upon opening a User Account to understand the terms and conditions of use in clear and concise details.</p> | <p>To make provision for every User to have a User Agreement under Regulation 2 and defined as follows:</p> <p>“<i>User Agreement</i>” means an Agreement between a User and the Registry which permits a User to access services of the Registry electronically.</p> <p>The definition of a “<i>User</i>” under Regulation 2 needs to be revised to state that a User has entered into a User Agreement with the Registry. We propose the deletion of the words in the definition section from “...and may include a <i>property owner or a professional on the instructions of a property owner...</i>”</p> <p>In the UK, a User Agreement provides for certain terms worth noting: Address of services for both parties, terms and conditions of use, services available, what amounts to a material breach, type of electronic signature as well as the manner of affixation, retention and retrieval of documents, system and security requirements and when either party will be deemed to be or not to be liable to the other.</p> |

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| <p>Third Schedule (Clause 5: Disclaimer)</p> | <p>The Ministry as the custodian of land records as well as its officers should be responsible for the completeness and reliability of documents processed online as well as confidentiality, integrity and security of the e-system. The Government as the keeper of all land records in Kenya and must accurately mirror all active registrable interests land in both manual and electronic form. So fundamental is this information, that the land laws guarantee compensation to persons provided with wrong or misleading particulars.</p> <p>We note that there is also need to distinguish when the Ministry or a User will be liable for their acts or omissions under the system.</p> | <p>To amend the disclaimer clause to guarantee the reliability and accuracy of documents processed online and to impose liability on the Ministry and its officers in the event of any loss or damage.</p> <p>To introduce new provisions on a User's and Registry/Officers' liability as follows:</p> <p>When a User will be liable:</p> <ul style="list-style-type: none"> • the intentional, reckless or negligent misuse of the e-system by the User; • breach of the User agreement by a User; • negligent acts, errors or omissions by the User; • where a User has enabled a third party access and to the extent that such loss or damage is attributable to the User. <p>When the Registry will be liable; A User is entitled to be indemnified by the registrar if he suffers loss by reason of:</p> <ul style="list-style-type: none"> • inappropriate rectification of the electronic register; • a mistake in an electronic search; • a mistake in an instrument, electronic certificate of title or lease; • the loss or destruction of a document lodged electronically for registration; • failure by the registrar and its officers to perform its duties. <p>The draft Regulations should also prescribe how the compensation will be made to the user in the event of any loss, destruction or damage arising from the above.</p> |
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¹ Civil Appeal No. 156 of 2013 Elizabeth Wambui & 28 Others vs KURA, Ministry of Roads, Ministry of Lands, KNHA & AG Consolidated with Cycad Properties Limited vs the AG, Ministry of Roads, Ministry of Lands, The National Highway Authority and KURA (Civil Appeal no. 160 of 2013).

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| <p>Regulation 23 (3)</p> | <p>There is need to align the provisions of the draft Regulations particularly Regulation 23 on rejection of documents with Regulation 35 (1) of the Land Registration (General) Regulations, 2017.</p> <p>Regulation 35 (1) provides that the Registrar shall reject a document and state reasons thereof where there is a substantial defect or where the document is submitted without the requisite documents required under the Act.</p> <p>An applicant who is dissatisfied can later file an appeal against the decision with the County Registrar and thereafter, the Chief Land Registrar.</p> <p>Regulation 23 (3) of the draft Regulations provides for multiplicity of rejections contrary to Regulation 35 (1) which mandate the Registrar to only have one rejection.</p> <p>Where a party is dissatisfied, the draft Regulations should allow an applicant to appeal the decision at the Electronic Appeals Committee and not restart the whole process of Registration.</p> | <p>To amend Regulation 23 of the draft Regulations by deleting sub regulation (2) (3) (4) (5) and substitute with the following:</p> <p>(2) The Registrar may reject an application that appears to the Registrar:</p> <p>(a) to be substantially defective; or</p> <p>(b) to have been submitted for registration without the requisite documents required under the Act or the Land Registration (General) Regulations, 2017.</p> <p>(3) The Registrar may be reject an application under paragraph (2) when the application is lodged for registration or at any time thereafter, and communicate the rejection in Form LRA 22 set out in the Sixth Schedule of the Land Registration (General) Regulations, 2017 and state the reason for the rejection.</p> <p>(4) A person whose application has been rejected under Regulations 23 (2) may appeal to the Electronic Appeal Committee.</p> <p>(5) The Electronic Appeal Committee as the case may be, shall hear and determine the appeal under paragraph (4) within fourteen days of receiving the appeal.</p> <p>(6) There shall be a stay of registrations and no instrument affecting the interest under review shall be considered for registration over the affected parcel during the fourteen days under paragraph (5).</p> |
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² See recommendation for introduction of stay of registration under Regulation 23 (3) in page 5.

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| <p>Regulation 23 (3)</p> | <p>The draft Regulations make provision under Regulation 23 (4) which allows the Registrar to reject documents submitted for registration with a substantial defect.</p> <p>There is need to introduce a new clause under 23 to allow for stay of registration pending the filing of an appeal by a User at the Electronic Appeals Committee.</p> | <p>To introduce a new sub regulation under Regulation 23 making provision for stay of registration as follows:</p> <p>(6) There shall be a stay of registrations and no instrument affecting the interest under review shall be considered for registration over the affected parcel during the fourteen days under paragraph (5).</p> |
| <p>Regulation 15 (b)</p> | <p>The draft Regulations need to make provision for documents processed and executed electronically under Regulation 15 (b) to be certified by an advocate.</p> | <p>To amend Regulation 15 (b) to make provision for electronic certification of documents by advocates and how electronic attestation will be done.</p> <p>We suggest adoption of a new legal concept of "<u>electronic acknowledgement</u>" which involves the signatory acknowledging to the witness after the event that they have applied their electronic signature to the document, following which the witness signs the document with their own electronic signature to record the signatory's acknowledgement.⁴</p> <p>The electronic acknowledgement will be prepared by advocates acting for both parties.</p> <p>A classic example would be as follows:</p> <p>"A signs a deed with her electronic signature. A phones or emails B to tell him that she has signed the document, then sends the document to B. B sees the document with A's signature. B signs the document with his electronic signature and includes a statement on the document that A has acknowledged her signature to him."⁵</p> |

³ See recommendation for introduction of stay of registration under Regulation 23 (3) in page 5.

⁴ Electronic contracts, deeds and signatures, Practical Law UK Practice Note 7-598-7269

⁵ UK Law Commission: Execution of Electronic Documents Law Com. No 386

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| <p>Regulation 15 (b)</p> | <p>The draft Regulations do not make provision for: the type of electronic signature; the manner and format in which the electronic signature shall be affixed; the manner and procedure which facilitates identification of the person affixing the electronic signature and control of the process and procedure to ensure adequate integrity, security and confidentiality of electronic execution and attestation.</p> <p>All electronic signatures have to be generated using a signature creation device.⁶ Further, the electronic signature should be capable of being validated or authenticated by an electronic certification service provider registered or recognized by the Communications Authority of Kenya.⁷</p> | <p>To introduce a separate schedule to address the unregulated areas dealing with electronic signatures listed in the in the comments section.</p> <p>This requires stakeholder engagement with the Communications Authority of Kenya.</p> |
| <p>New Regulation</p> | <p>The draft Regulations need to make express provision for the prescribed fees and that all documents submitted electronically shall be in the prescribed land forms set out in the Land Registration (General) Regulations, 2017.</p> | <p>To introduce a new Regulation mandating all users to use and adopt the prescribed forms in the land regulations as well as providing clarity on the applicable fees.</p> <p>Proposed Clause to read as follows:</p> <p>“The forms set out in the Sixth Schedule of the Land Registration (General) Regulations, 2017 shall be authorized for use in the system subject to such modifications as the Registrar may make under regulation 87(1) of the Land Registration (General) Regulations, 2017, from time to time, to enable the use of the forms electronically, in the system.”</p> |

⁶ Section 2 Kenya Information and Communication Act, (KICA): Definition of a “signatory”

⁷ Section 83 (E) KICA

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| <p>Regulation 27 (Miscellaneous provision)</p> | <p>Certain services may not be offered online as there are legal requirements and due processes to be followed such as physical presence of the applicants e.g. processing of the Land Control Board Consent.</p> <p>The draft Regulations should outline the services under Regulation 27, which can be offered online and those that will be processed manually.</p> | <p>To amend Regulation 27 to outline services to be conducted manually and those to be conducted on the e- platform.</p> <p>This can include: payment of land rent and issuance of the land rent certificate, application for official searches, applications for registration of transfers, charges, discharges, leases, cautions and caveats.</p> <p>Land Control Board consents; spousal consents; County Government consents; management company consents as well as consents for controlled transactions will be obtained in accordance with the applicable laws and governing documents and uploaded into the system as they are not issued at the Ministry.</p> <p>In the interim, we propose the introduction of a two-year transition period for a manual back up system until all records are not only available but have been verified on the electronic system, and the electronic registry is fully operational.</p> |
| <p>Regulation 11, 12 and 13</p> | <p>The appeal process is very lengthy and involves engagement of a number of bodies which will in tandem delay the process of registration.</p> <p>The draft Regulations do not provide for the procedure of how one may approach or lodge a claim before the Appeals committee.</p> <p>The draft Regulations need to also clarify that the "Court" here refers to the Environment and Land Court</p> | <p>To amend Regulation 11 to 13 to make provision for one Appeal Committee to hear and determine any issues arising. A party aggrieved can later file an appeal with the Environment and Land Court. In addition, the Committee should compose of one representative from the Law Society of Kenya.</p> <p>The draft Regulations should also prescribe how one may approach or lodge such a claim before the Appeals Committee as well as the standing rules of the Committee.</p> <p>To delete the word "court" under Regulation 13 (5) and replace with "Environment and Land Court."</p> |

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| <p>Third Schedule Regulation 5</p> | <p>As a general comment, the Regulations provide that users will be provided with a one-time password to access the portal/system.</p> <p>However, the Regulations also provide that the user will be required to change their login credentials from time to time and to nominate subscribers who must be approved by the authority to use the account.</p> <p>The Regulations are silent on who may qualify as a subscriber to use the account.</p> | <p>To define who may be a subscriber for purposes of use of the account.</p> |
| <p>Regulation 25</p> | <p>Regulation 25 which makes provision for electronic processing of a certificate of lease or title, the word "may" should be replaced with the word "shall".</p> <p>There needs to be a way in which a user can verify the authenticity of an online generated title document such as certificates of titles and leases. The Ministry of Lands should ensure that electronic certificates of title or leases issued have a unique serial number or security feature that prevents any duplication or tampering with the issued title document.</p> | <p>To delete the word "may" in Regulation 25 and replace with "shall."</p> <p>To amend Regulation 25 to make provision for unique serial numbers and security features for identification of title documents generated on the e-platform.</p> |

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| <p>Regulation 11 (3) (f)</p> | <p>In the event the Chief Land Registrar suspends a user account, the notice should be immediately emailed to the user via the email provided at the time of creating the account and SMS through the contact provided.</p> <p>It is our opinion that providing the option to include notice of service via post would defeat the essence of the draft Regulations.</p> | <p>To amend Regulation 11 by deleting sub regulation 11 (3) (f).</p> |
| <p>2. Survey (Electronic Cadastre Transactions) Regulations, 2020</p> | | |
| <p>Regulation</p> | <p>Comment</p> | <p>Proposed Amendment</p> |
| <p>Regulation 12</p> | <p>There is need for the Ministry to ensure security, integrity and reliability of survey maps, survey plans, forms and documents processed electronically. This includes allowing users to access and download survey data and plans with non-edit rights.</p> <p>The Regulations are silent on how surveyors shall present their work to the Electronic Cadastre system for approval. There is therefore need for clarification on the type of computational procedures for surveyors.</p> | <p>To make provision for unique serial numbers and security features for identification of reliable online survey plans and maps with non-edit rights.</p> <p>There is need for review the process of how surveyors submit their work to ensure that they are using computational procedures that conform to technological advancement.</p> |

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| Regulation 2 | <p>The draft regulations provide that an authorized user shall be a person qualified to carry out survey and submit as per the Survey Act.</p> <p>The scope of the definition needs to be expanded to include professionals who rely on survey plans as well e.g. Advocates, Architects, Surveyors and Land Valuers.</p> | <p>To amend Regulation 2 to include Users as Advocates, Architects, Surveyors and Land Valuers.</p> |
| <p>3. Stamp Duty (Valuation) Regulations, 2020</p> | | |
| Regulation | Comment | Proposed Amendment |
| Regulations 4-5 | <p>We note that the provisions on accessing the Electronic Valuation module are not clear, since they do not specify whether a User will have to obtain a user account to access the module.</p> | <p>To amend Regulation 5 and specify whether a User must have a user account to access the Electronic valuation module.</p> |
| Regulations 6-12 | <p>The draft Regulations should provide timelines to guide the valuation process, on receipt of the applications by the Chief Government Valuer timelines for acknowledgement of receipt, forwarding of the application to a valuer and notification of a user on the valuer's visitation for purposes of the valuation exercise.</p> | <p>To provide for timelines of the valuation exercise from Regulation 6 to 12.</p> |

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| <p>Regulation 10</p> | <p>Regulation 10 requires that a valuer on completion of a valuation exercise, shall electronically submit to the Chief Government Valuer the valuation report for approval. There is need to include and engage licensed private valuers in the exercise to reduce any delays experienced in the past.</p> | <p>To amend Regulation 10 to make provision for engagement of private valuers.</p> |
| <p>Regulation 3</p> | <p>The draft Regulations should expand the scope of application under Regulation 3 to include other documents to which duty is payable such as charges, discharges and share transfer documents.</p> <p>Further, there is need to specify that the Regulations apply to documents submitted electronically for valuation for stamp duty purposes.</p> | <p>To amend Regulation 3 to make provision for charges, discharges and share transfer documents and to also specify that the Regulations apply to documents submitted electronically for valuation for stamp duty purposes.</p> <p>To amend Regulation 9 to make reference to valuation reports prepared with respect to other instruments.</p> |
| <p>Section 6 Stamp Duty Act</p> | <p>On a separate note, we note that section 6 of the Stamp Duty Act provides that every instrument shall be duly stamped with the proper duty before the expiration of thirty days after it is first executed. This has been a challenge for most practitioners.</p> | <p>We suggest an amendment to this provision of the Act to allow for time to start running from the date the valuation is completed and the amount assessed for payment.</p> |
| <p>New Regulation</p> | <p>The draft Regulations need to make provision to ensure that mistakes of land valuers during the valuation exercise are not be revisited upon the registered owners as has been the case in the past.</p> | <p>To introduce a new Regulation on the liability of land valuers during the valuation exercise.</p> |

4. Stamp Duty (Amendment) Regulations, 2020

We note that the Regulations do not set out in detail the process of e-stamping. Based on the Hong Kong system, we note that an effective e-stamping system will need to take into consideration a number of factors:

- Harmonization of the processes and steps that need to be under taken before an instrument is deemed as '*duly stamped*.' This will therefore entail harmonization of the process of valuation, assessment, payment and finally the generation of the electronic stamp certificate.
- The system provides for how all the relevant information regarding the instrument and the parties that will be relied upon in generating the stamp certificate is to be keyed for purposes of generating the stamp certificate.
- For one to generate an electronic certificate, one must be an authorized user (advocates) and have a user account. The system should not be accessible to members of the public.
- To create a "*Stamp Certificate Enquiry*" section or tab in the system to allow Users to verify the authenticity of the stamp certificate. It is important that the electronic stamp certificate has unique security features not capable of being tampered with, to help Users verify the authenticity and reliability of the certificate.
- Provision for rectification or cancellation of a stamp duty certificate in the event of a mistake or error and how this will be done.

It is also important that the draft Regulations include a provision that, an instrument that is electronically stamped is considered as a duly stamped document.

We further suggest that the definitions of the following terms be included in the interpretation section of the Regulations in order to provide clarity on the electronic stamping system:

- a. Definition of "e-stamp" - this would clarify on what amounts to an electronic stamp.
- b. Definition of "duly stamped" - to include an instrument electronically stamped.
- c. Definition of "stamp certificate" - to include a certificate in electronic form.
- d. Definition of "e-stamping system" - this is a system that will enable users to make applications for an assessment of stamp duty, and the generate the stamp certificate.

5. Land (Amendment) Regulations, 2020

| Regulation | Comment | Proposed amendment |
|---|--|--|
| Regulation 21 E | The composition of the Electronic Appeals Committee as provided under Regulations 21 E should include an Advocate for purposes of ensuring due process in hearing and determination of disputes. The draft Regulations should provide the rules of conduct of the business of the Electronic Appeals Committee. | To amend Regulation 21E to ensure that there is a representative from the Law Society of Kenya in the Committee. |
| 6. Land (Extension and Renewal of Leases) (Amendment) Rules, 2020 | | |
| Regulation | Comment | Proposed amendment |
| Regulation 3-7 | The Regulations are silent on the timeline for the new e-processes that the lessee should abide by (with respect to revaluating, resurveying and the geo-referencing of the land) in the event the application for extension or renewal is approved. The Regulations are also silent on the timelines the CS is required to prepare, execute and register the lease for the extension. These should be provided to ensure that transaction/process timelines may be tracked. | To amend Regulation 3 to provide for specific timelines on the renewal and extension process. |

7. The Land (Allocation of Public Land) (Amendments, Regulations), 2020

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

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

| Regulation | Comment | Proposed amendment |
|---------------|--|---|
| Regulation 12 | <p>The composition of the Electronic Appeals Committee as provided under Regulation 12 should include an Advocate for purposes of ensuring due process in hearing and determination of disputes.</p> | <ul style="list-style-type: none"> ▪ To amend Regulation 12 to ensure that there is a representative from the Law Society of Kenya in the Committee. ▪ To ensure timeliness in decision making. Need to depart from the laxity of the present Liaison Committees that do not sit thereby frustrating appeal processes |

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| <p>New Regulation</p> | <p>We note that the digitization process may be tasking due to the high cost of developing the necessary ICT infrastructure, the time to be taken in uploading large records, which may occasion delays in the short-term.</p> <p>We also note that there is need to allow licensed physical planners to prepare certificates of occupation to avoid delays experienced in the past.</p> | <p>We propose a two-year transition period to allow the current physical system to support the new digital process until the same is fully operational.</p> |
| <p>Regulation 1 (2) (i) (ii)</p> | <p>Regulation 1(2) (i) appears incomplete.</p> <p>Regulation 1(2) (ii) grants a power to the Cabinet Secretary that ought to be derived from the substantive Act.</p> | <p>A reconsideration of the drafting of the Regulation to ensure clarity and completeness and to ensure that the power of Cabinet Secretary is derived from the Act and not the Regulations.</p> |
| <p>New Regulation / General</p> | <p>To enhance service delivery, licensed professionals from the private sector, who have signed agreements with the regulator and given sufficient indemnities, should be allowed to perform tasks certifications otherwise performed by civil servants.</p> | <p>Engagement of licensed professionals to enhance service delivery under the Regulations.</p> |
| <p>New Regulation / General</p> | <p>Our comments generally on electronic requirements apply to all the e-Regulations. Where e-signatures are used there is need to have a third party certifier to ringfence the exercise from frauds and identity theft.</p> | <p>Third party certification should be mandatory where e-signatures are used and the same should be done by an advocate.</p> |

9. Survey (Amendment) Regulations, 2020

| Regulation | Comment | Proposed amendment |
|--------------------------|--|---|
| New Regulation | It is not clear the level or extent of automation which is being introduced. It would be useful to see an interphase between the survey and other land administration departments and the Ministry and the County as there are significant delays emanating from gaps in the intermediation. | There is need for clarity in the Regulations on the extent of automation which will entail engagement with other land administration departments. |
| New Regulation | The survey function is a key determinant of the transition to e-Conveyancing as the migration to the new e-Register is dependent on cadaster and authentication by surveyors. It would be useful for the Task Force to address these deliverables and to include comprehensive e-Regulations on this part. | There is need to include in the Regulations a comprehensive section on how the survey function will be digitalized. |
| New Regulation / General | To enhance service delivery, licensed professionals from the private sector, who have signed agreements with the regulator and given sufficient indemnities, should be allowed to perform tasks certifications otherwise performed by civil servants. | Engagement of licensed professionals to enhance service delivery under the Regulations. |

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| <p>New Regulation / General</p> | <p>Our comments generally on electronic requirements apply to all the e-Regulations. Where e-signatures are used there is need to have a third party certifier to ringfence the exercise from frauds and identity theft.</p> | <p>Third party certification should be mandatory where e-signatures are used and the same should be done by an advocate.</p> |
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This legislation is administered by Land Information New Zealand. For more information please see:

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Authority and Identity Requirements for E-Dealing Standard 2018

This Standard is made under section 236 of the Land Transfer Act 2017 by the Registrar-General of Land.

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Schedule 1

Declaration of identity form

Schedule 2

High Risk Transactions

Authority and Identity Requirements for E-Dealing Standard 2018

1 Title

This is the Authority and Identity Requirements for E-Dealing Standard 2018.

2 Commencement

This Standard comes into force on 12 November 2018.

3 Purpose

To set 'safe harbour' requirements which, if met, will satisfy a practitioner's obligations under regulation 7 as to:

- (a) client authority and legal capacity
- (b) verifying client identity.

4 Interpretation

In this standard, the definitions in the Act and Regulations apply, and unless the context otherwise requires,—

Act means the Land Transfer Act 2017

Caveator means a client lodging a Caveat or Notice of Claim

Certify means to certify electronic instruments in accordance with the Act and Regulations

Client means the person presenting to the Practitioner as the interested party who is authorising the transaction

Delegate means an independent, trusted person whom a Practitioner can reasonably rely on to carry out the identity verification checks

LINZ means Land Information New Zealand

Practitioner means a lawyer or conveyancing practitioner who certifies

Regulations means the Land Transfer Regulations 2018

RGL means Registrar-General of Land appointed in terms of section 231 of the Act

Trusted Colleague means a person who works for the same firm or organisation as the Practitioner whom they can reasonably rely on to obtain authority and verify identity.

Practitioner's Obligations

Certification of Standard Matters

5 Client Authority and Legal Capacity

- (1) Before certifying an electronic instrument as to the matters set out in regulation 7(3)(a) a practitioner must:
 - (a) obtain the client's written authority

(b) take reasonable steps to ensure the client has legal capacity.

- (2) A practitioner may dispense with the requirement for written client authority, and instead record a file note, when certifying a caveat or notice of claim for a client who has provided verbal instructions.

6 Client Identity

Before certifying an electronic instrument as to the matters set out in regulation 7(3)(b) a practitioner must:

- (a) take reasonable steps to verify the client's identity; and
(b) where applicable, seek further evidence and make further inquiries as provided in clauses 8 and 9.

7 Reasonable steps

- (1) For the purposes of clause 6(a), 'reasonable steps' includes:
- (a) having the client present in person with an acceptable form of photo ID and confirming that the client is the person for whom the photo identification has been issued; or
(b) having the client's identity independently verified by way of a statutory declaration in the form and manner set out in Schedule 1.
- (2) For the purposes of clause 7(1)(a), an acceptable form of photo ID means:
- (a) a passport;
(b) New Zealand government issued photo identification; or
(c) another form of photo identification which the RGL has confirmed is acceptable for use in connection with verifying a client's identity.
- (3) The photo ID relied upon for the purposes of clause 7(1)(a) must be current or have expired within the previous 12 months.
- (4) A practitioner may also rely on a trusted colleague or delegate to verify the client's identity in accordance with clause 7(1)(a).

8 Further evidence

- (1) Where the electronic instrument is a transfer or mortgage, a practitioner acting for the transferor or mortgagor must also obtain:
- (a) evidence in the form of a rates demand, bank statement, utility account, insurance policy or other official document connecting the client to the property; or
(b) if the client has only recently purchased the property, a copy of the agreement for sale and purchase.
- (2) A practitioner who can confirm the client's connection to the property based on their own personal knowledge or that of a trusted colleague may choose to dispense with the requirement for evidence in clause 8(1) and instead record a file note as to these matters.

9 High risk transactions

- (1) In the case of a high risk transaction a practitioner must, in order to manage the risk of fraud or improper dealing, make such further inquiries as may be reasonable in the circumstances to confirm the transaction is bona fide.
- (2) A transaction is high risk if it meets the criteria set out in schedule 2.

10 Retention of Evidence

A Practitioner who certifies an electronic instrument must retain evidence as to client authority and identity for the 10 year retention period prescribed by regulation 7(6).

Schedule 1 Declaration of identity form

I [full name of witness] of [town/city of residence], [occupation] do solemnly and sincerely declare that:

1. I am aged 18 years or over.

2. I am independent of the client and the transaction. In particular, in relation to [full name of interested party whose identity is being verified]:

(a) I am not:

- (i) related to them;
- (ii) their partner or spouse;
- (iii) part of their extended family group; and

(b) I do not:

- (i) live at the same address as them; and
- (ii) I am not involved with or benefitting from the transaction.

3. I have personally known [full name of interested party whose identity is being verified] for [number of years].

4. The residential address of [full name of interested party whose identity is being verified] is [interested party's full residential address].

5. The photograph annexed to this declaration and marked with the letter "A" is a true likeness of [full name of interested party whose identity is being verified].

6. I am the holder of current New Zealand government-issued photographic identification, or a current passport, an extract of which, showing my photograph and the identification number, is annexed to this declaration and marked with the letter "B".

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957

Signature

DECLARED at [town, country]

this [dd] day of [Month] 20[yy]

before me

Signature Name

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

Schedule 2 High Risk Transactions

- (1) The following transactions are high risk when one or more of the conditions in clause (2) apply:

| Transaction type | Client |
|--|---------------|
| Transfer | Transferor |
| Mortgage | Mortgagor |
| Application for correction or change of name | Applicant |

- (2) The conditions referred to in clause (1) are:
- (a) the client is not previously known to the practitioner or a trusted colleague, and
 - (i) is dealing with unencumbered land; or
 - (ii) is refinancing in a manner that significantly reduces the mortgagors' equity in the property; or
 - (iii) provides contact details that are not connected to the physical address of the property; or
 - (iv) provides unfamiliar or foreign photo identification;
 - (b) the practitioner or a trusted colleague has not personally met the client to receive instructions in relation to the current transaction; and
 - (i) a third party provides instructions on behalf of the client; or
 - (ii) the transaction involves family members and one family member is gaining an interest from another family member; or
 - (iii) the clients are co-owners, one of whom is providing instructions on behalf of themselves and another co-owner.
 - (c) in the circumstances outlined in clause 2(a) or (b), the instrument is authorised on behalf of the client under a power of attorney.

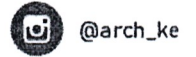
Made at Wellington on 10 October 2018.

Robbie Muir
Registrar-General of Land

Explanatory note

This note is not part of the legislation, but is intended to indicate its general effect.

The Authority and Identity Requirements for E-Dealing Standard 2018 does not add direct costs to transactions under the Act. The standard sets minimum requirements for Practitioners to mitigate against potentially significant impacts of wrongful or fraudulent transactions. These requirements have "de minimis" business impacts.



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IN THE BUILT ENVIRONMENT

MLP/Y20/MAY

3RD June 2020

ERIC NYADIMO,
Chairperson, Task Force on Formulation of Electronic Land Transactions Regulations
Ministry of Lands and Physical Planning
NAIROBI.

Dear Sir,

**AAK's INPUT ON THE PROPOSED LAND TRANSACTIONS (ELECTRONIC REGULATIONS)
2020**

Please receive warm greetings from the Architectural Association of Kenya (AAK).

Established in 1967, the Architectural Association of Kenya (AAK) is Kenya's leading Association for professionals in the built and natural environment in Kenya incorporating Architects, Quantity Surveyors, Town Planners, Engineers, Landscape Architects and Environmental Design Consultants and Construction Project Managers. The Association is registered under the Societies Act and brings together professionals from the Private Sector, Public Sector and Academia. The Association also acts as a link between professionals and stakeholders in the construction industry: Including policy makers, manufacturers, real estate developers and financial institutions.

PURSUANT to section 8 of the Statutory Instruments Act (No. 23 of 2013), the Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the Cabinet Secretary, the National Treasury and the National Land Commission hereby notifies the general public that a Regulatory Impact Statement on the proposed Land Transactions (Electronic) Regulations, 2020 has been prepared to assess the impact of the Regulations on the community and businesses. The proposed Statutory Instruments include the following:

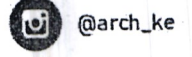
1. Land Registration (Electronic Transactions) Regulations, 2020;

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

We are pleased with the efforts of the Taskforce appointed to oversee this important process. Our specific comments with regards to the Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020 are summarized in the attached matrix while general comments and suggestions are outlined as follows:

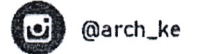
1. The Physical and Land-Use Planning Act (PLUPA), 2019 needs to be revisited to include important clauses to:
 - i. recognize the role of the municipalities in development control
 - ii. recognize the role of neighbourhood association in plan making and development control
 - iii. entrench the role of committee comprising of technical and other relevant stakeholders in vetting of development applications and in enforcement.
2. There is a lot of duplication of effort by government agencies, private sector and non-governmental organization. An example is the Building Regulations (Code) and the PLUPA regulations that seem to speak the same language but with different actors.
3. Build capacity of County Governments to undertake effective development control and enforce the proposed online system for development approval. This will include hiring of relevant qualified professionals, working collaborations with other agencies for instance working with architects and engineers in NCA, engaging qualified professionals on contract basis and building on working with professional associations for technical expertise and capacity building

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4. AAK has already worked with Nairobi, Kisumu and Kiambu Counties in the development of online application system which can be integrated into the proposed national wide system. We appreciate the need to build on a safe system and will be happy given more time to write a detailed proposal on building a block-chain framework that can be used in the system

There is need for mechanisms to ensure implementation of approved physical and land-use development plans, and regulations once there gazetted.

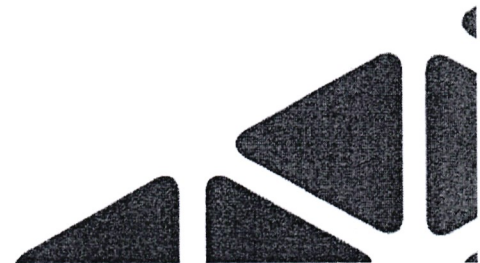
Yours faithfully,

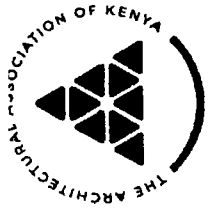
Mugure Njendu
President, Architectural Association of Kenya (AAK)

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AAK's INPUT ON THE PROPOSED LAND TRANSACTIONS (ELECTRONIC REGULATIONS) 2020

| Section | Issue of Concern | Recommendation | Justification |
|------------------|---|---|---|
| 1 5 (2) (ii) | such authorized planning officers in designated planning units in accordance with section 20(g) of the Act | The Planning Units as constituted in Counties has more than planners. Consider giving a sample structure of planning unit with recommended personnel, their qualification and role for counties to adopt. AAK will be happy if given more time to send a draft framework for this. | There have been instances of unqualified professionals vetting applications at Counties. As well as professionals examining applications which they lack capacity to examine for instance a physical planner examining and approving a structural engineering drawing. |
| 2 5 (2) (iii) | such authorized technical officers in the relevant authorities or agencies in accordance to section 60(1) of the Act; | <ul style="list-style-type: none"> - As per S. 60 of PLUPA they are invited as need be to review applications and give comments - Need to integrate their database at the Director General Level to avail information to be maintained at the database. | If the database of relevant agencies such as KENHA, KURA, KERRA, WARMA, KFS among others are integrated to provide relevant information. This is important for making development approval decisions, protecting wayleaves and safeguard the interests of developers and investors. |

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| 4 | S.10 | New Clause | Professional Misconduct upon advice by relevant recognized professional association/body. Supported by minutes of a committee investigating the matter | Professional bodies such as AAK are better placed to offer information on professional members with determined cases of misconduct. This will be essential in protecting the public interests and drawing on existing capacities offered by professional associations/bodies. |
| 5 | S. 17 (2) (ii) (a) | enter as an item in the prescribed agenda; | Refer to prescribed register as per the PLUPA S.62 | In compliance with the PLUPA law |
| | | New Clause | Members of the public shall have access to information or the register by way of a written request on the online portal indicating the reason and purpose and providing their personal details (name, identification document, and contacts) | Consider a sub-clause on inspection of the register by the public. In as much as we want to ensure the public has access to information it has to be given in an accountable manner to protect also the privacy of applicants. |

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| 6 | New Clause | Introduce a class of 'low risk' projects that can be vetted by the Planning Unit and recommended for approval without going through the circulation process outside the County | In support with efforts by the government on ease of doing business. Such projects could be: boundary walls, single dwelling units that don't exceed one floor, extension of bungalows, alterations of existing buildings, among others that can be spelt out in a schedule. |
| 7 | S. 17 (2) | Technical Development Validation Committee | For effective public participation and transparency of the system. Give it legal mandate by pegging it to PLUPA. This also allows for co-opting of other relevant members as deemed necessary |
| 7 | S. 17 (2) | Prefer to remain with existing terminology "Technical Committee. Recommend this to be a Sub-Committee of the County Physical and Land-Use Planning Consultative Forum as established in S. 14 of PLUPA. and riding on the mandate of the Forum as per S.15 (b) promote effective coordination and integration of physical and land-use development and sectors planning as well as S.16 (2) and (3) that gives the Forum the mandate to regulate its procedures and establish sub-committees. | |

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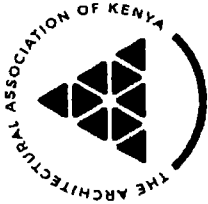
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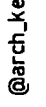
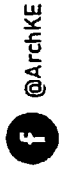
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| | | | <p>Include stakeholders in the committee – At the very least Professionals through their Associations. AAK members are the front end-users of the platform particularly. Utility providers like KPLC For effective public participation and transparency of the system. Give it legal mandate by pegging it to PLUPA. This also allows for co-opting of other relevant members as deemed necessary and Water Companies. Others like NEMA and WARMA also</p> | |
| 8 | Part IV | Inspection | <p>Streamline with provisions of NCA to ensure seamless execution by NCA and County Governments</p> | <p>There is need to streamline the efforts by the Ministry of Transport ,Infrastructure, Urban Development and Housing in formulation of the Building regulations to ensure the mandate of NCA and Counties is clear and they complement each other.</p> |
| | | New Clause | <p>The CECM may require the applicant to submit evidence of informing the public of</p> | <p>Public Participation in vetting and submitting applications not very clear in the regulation</p> |

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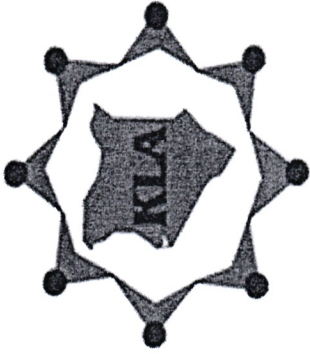
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| | | the development project by way of newspaper advert, notice on site and notice uploaded on the relevant county website as per the provisions of this regulation. | Riding on Clause 58 (7) where a developer is required to notify the public of development project proposed. |
| | Definition (New) Landscape Architect and Urban Designer | A professional holding a degree in the relevant field from a recognized university and a corporate member of the Architectural Association of Kenya. | There is need to recognize these two key professionals that are currently not regulated by a registration Board but play a key role in development approval and implementation process. |
| | Schedule PLUPA Form | The form needs to be improved. <ul style="list-style-type: none"> - the office is that of the CECM as per the provisions of the PLUPA S.57 - you can consider having different types of forms for different types of applications or have one form with the option to: <ul style="list-style-type: none"> select relevant type of application from a checklist authorized agent should be a registered professional: provide a checklist as well | |

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MEMORANDUM

Date: June ,3 2020.

TO: TASKFORCE ON FORMULATION OF ELECTRONIC LAND TRANSACTIONS REGULATIONS, 2020

FROM: THE KENYA LAND ALLIANCE.

SUBJECT: COMMENTS ON THE PROPOSED AMENDMENTS ON THE LAND (AMENDMENT) REGULATIONS, 2020; THE LAND (EXTENSION AND RENEWAL OF LEASES) (AMENDMENT) RULES, 2020 AND THE LAND (ALLOCATION OF PUBLIC LAND) (AMENDMENTS, REGULATIONS), 2020.

Greetings from Kenya Land Alliance!

The Kenya Land Alliance (KLA), a not-for-profit Public Benefits Organization (PBO), is an umbrella network of Civil Society Organizations (CSOs) and individuals committed to effective advocacy for the implementation of policies and laws governing land, environment and natural resources. KLA has been in operation since 2000 as a Trust and got registered under Section 10 of the Non-Governmental Organizations Co-ordination Act on 31st July 2013 in line with the Public Benefits Organizations Act (No, 18 of 2013) of Kenya Law.

Pursuant to the call of submissions in the matter of the statutory instruments act (no. 23 of 2013); the land registration act (no. 3 of 2012); the land act (no. of 2012); the physical and land use planning act, 2019; the survey act (cap 299); and the stamp duty act (cap 480), the Kenya Land Alliance would like to make the following comments on the proposed amendments on Land (Amendment) Regulations,

2020; Land (Extension and Renewal of Leases) (Amendment) Rules, 2020; and the Land (Allocation of Public Land) (Amendments, Regulations), 2020.

General Comments;

We would like to highlight the following key issues;

1. Usurping of NLC's Constitutional mandate

The proposed amendments are an attempt to usurp NLC's constitutional mandate. It is observed that all through the proposed amendments there is a proposition to replace the "COMMISSION" with "the CABINET SECRETARY". A regulation cannot alter constitutional provisions or the mandates contained in the parent Act.

We would like to refer to the Article 67, which speaks to the formation of the National Land Commission. The mandates are further underscored by the Supreme Court ruling, which states as follows;

The Functions of the NLC include;

- a) Par 221 states that apart from the functions listed under Article 67(2) of the Constitution, Section 5(2) of the Act assigns other tasks to the NLC, in the following terms:
- on behalf of, and with the consent of the National and County Governments, alienate public land;
 - monitor the registration of all rights and interests in land;
 - develop and maintain an effective land information management system at National and County levels; and
 - manage and administer all unregistered trust land and unregistered community land on behalf of the County Government."

b) Par 222 states that the Land Act defines "alienation" as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.

c) Par 223 states that," It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC's function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration."

2. Mandates of the MoLPP and NLC under the Land Act 2012

Par 231 of the Supreme Court ruling states that

"It emerges clearly from the foregoing provisions that *neither the Ministry nor the NLC is in a position to perform its tasks in isolation*. The Ministry is required to develop and facilitate land policies on the basis of advice and recommendations from the NLC; while the land database to be prepared and kept by the NLC has to be geo-referenced and authenticated by the statutory body in charge of survey, which

is the Land Surveyors' Board, established under the Survey Act. The officers serving on that Board are appointed by the Public Service Commission, and, by Section 6(e) of the Act, are to be regulated by the Cabinet Secretary, as an aspect of quality control. This is a typical instance in which *it falls to the Executive to exercise check-and-balance upon a different State organ.*

It is therefore upon the MoLPP and NLC to moot a working relationship. Attempts to strip NLC of its Constitutional mandates that were further underscored by the Supreme Court advisory is in bad faith.

3. Lease/Subleases/Charges

Par 241 of the Supreme Court ruling states that;

"It is clear that the responsibility of the NLC to issue licenses, leases and grants in respect of public land, is subject to the conditions set out in law. Section 28 provides for the collection of rent charged on the use of land, and requires the NLC to account for the payments received under any lease or license, to the respective Governments. It is thus provided:

"(1) The rent, royalties and payments reserved under any lease or license is a debt owed to the Commission and shall be paid at the Commission's office or at such other place as the Commission may prescribe.

"(2) The annual rent reserved under any lease or license shall be payable in advance on the first day of January in each year of the term.

"(3) The payments made under subsection (2) shall be accounted for to the respective Governments."

These provisions are a clear indication of the constitutional design of decentralizing the powers of public governance, within a context of checks-and-balances."

4. Overseeing the Compensation actions and procedures.

The Supreme Court ruling states the following

a) Par 242 cites Section 107 (1) of the Act which provides that when the National or County Government seeks to compulsorily acquire public land, it is to submit a request for acquisition thereof to the NLC, to acquire the land on its behalf. This further underlines the interdependence of the NLC and the Government; hence the primacy of the principle of co-operation between the two State organs. The Section thus provides:

"Whenever the National or County Government is satisfied that it may be necessary to acquire some particular land under Section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf."

b) Par 243 cites Section 110(1) which specifies that land can only be compulsorily acquired upon certification by the NLC, that such land is required for public purposes, or in the public interest. Section 111(2) requires the NLC to make rules to guide the assessment of just compensation, in relation to the compulsory acquisition of land.

c) Par 244 cites Sections 112 and 113 of the Act require the NLC to make necessary inquiries, and to consider claims for compensation, before allowing compulsory acquisition of land. The Act makes provisions for compensation-inquiry proceedings, in the context of Article 10 (2) of the Constitution. The process of inquiry is to be fair, equitable, transparent and accountable, and is subject to judicial review, in a proper case.

Therefore, the role of compulsorily acquiring Land for public use is fully under the NLC ambit.

Key Highlights

| PROPOSED AMENDMENTS BY GOK | (ACTUAL PROVISION) OF PROPOSED AMENDMENT | COMMENTS / OBSERVATIONS |
|--|---|---|
| <p>(a) "electronic" has the same meaning assigned under the Kenya Information and Communication Act;</p> | <p>Actual provision from the KENYA INFORMATION AND COMMUNICATIONS ACT</p> <p>"electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;</p> | <p>Comment</p> <ul style="list-style-type: none"> Data should be made secure from any manipulation. <p>RECOMMENDATION:</p> <ul style="list-style-type: none"> There is a need for keenness on data security for instance hacking and other vulnerabilities. |
| <p>(b) "electronic form" has the same meaning assigned under the Kenya Information and Communication Act;</p> <p>(c) "register" includes electronic form; and</p> <p>(d) 'system' means the National Land Information System developed under Section 6</p> | <p>Actual provision from the Kenya Information and Communications Act</p> <p>"electronic form" with reference to information, means any information generated, sent, received or stored in magnetic, optical, computer memory, microfilm or similar device;</p> | <p>Comment</p> <ul style="list-style-type: none"> Data should be made secure from any manipulation. <p>RECOMMENDATION:</p> <ul style="list-style-type: none"> There is a need for keenness on data security for instance hacking and other vulnerabilities. |

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| <p>3. Regulation 6 of the principal Regulations is amended by -</p> <p>(i) deleting sub-Regulation (3) and substituting therefor with the following sub-regulation;</p> | <p>Actual provision</p> <p>6. (3) The notice may also (a) set out the details of the proposed variation and; (b) specify how they are to affect the third party.</p> <p>Proposed Amendment</p> <p>(3) The winner of the bid shall, at the fall of the hammer, pay to the cabinet secretary the full amount of the bid or percentage specified in the notice.</p> | <p>Comments;</p> <p>The provisions are disjointed (they don't speak to each other)</p> <p>Public auction of public land does not make sense. Is it provided for under the law? (there is need for CSOs to seek clarification).</p> <p>Sale by public auction would open a window for selling prime public land below market value. As it is, the law does not preclude the Commission from selling it at a value below the market value, provided it matches the stand premium value.</p> <p>This provision compromises the constitutional mandate of the NLC in so far as it requires that the full amount or percentage thereof is remitted to the Cabinet Secretary. No justification has been provided for divesting the Commission of this mandate.</p> <p>According to section 10 of the Land, Act,2012, the Commission should prescribe guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land.</p> <p>Recommendation</p> <p>Further clarification needed on how public Land can be auctioned??</p> <p>Auctioning of public Land to the highest bidder perpetrates inequalities.</p> <p>Imposing CS on an NLC role is contrary to the</p> |
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| <p>Regulation 4 of the principal Regulations is amended in sub-Regulation</p> | <p>Actual</p> <p>(3) Upon receipt of the representations sought under paragraph (2), the county government may within thirty days- (a) approve the application; or (b) refuse to approve the application.</p> <p>Proposed Amendment to read</p> <p>17. The successful bidder shall pay to the Cabinet Secretary the stand premium within ninety days of receipt of the Commission's letter of notification under regulation 16(1).</p> | <p>provisions of the Land Act, 2012.</p> |
| | | <p>Comments</p> <p>Proposed amendment breaches article 62 (2) and 67 which speak to the definition of public land, and states how it will be administered:</p> <p>62 (2) Public land shall vest in and be held by a County Government in trust for the people resident in the County, and shall be administered on their behalf by the National Land Commission, if it is classified under-</p> <p>Article 67 provides for the establishment of the NLC and its functions:</p> <p>(a) to manage public land on behalf of the National and County Governments;</p> <p>Par 156 of the Supreme Court advisory, No 1 of 2014, states that;</p> <p>"From such a tone in the legislative deliberations, it may be inferred that public land was perceived to fall within the administrative competence of the NLC, safeguarding it from abuse of the kind associated with history. The NLC is a permanent commission under Chapter 15 of the Constitution"</p> <p>Recommendation</p> <p>Clear description of scope of mandates should be provided to give clear direction on the management of matters public land.</p> <p>MoLPP was to play an oversight role in the administration of public Land. Imposing the Cabinet</p> |

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| <p>5. Regulation 26 of the principal Regulations is amended in sub Regulation (2) paragraph (c) by inserting the word "to the Cabinet Secretary" appearing after the word "payable".</p> | <p>Actual Reading 26.(1) The Commission shall carry out valuation of interests or claims determined at the inquiry for purposes of determining the full and just compensation to be payable persons whose interest or claims have been determined and inform the acquiring body of the costs.</p> <p>Proposed Amendment 26.(1) The Commission shall carry out valuation of interests or claims determined at the inquiry for purposes of determining the full and just compensation to be payable to the CABINET SECRETARY persons whose interest or claims have been determined and inform the acquiring body of the costs.</p> | <p>Secretary in the management of public Land is unconstitutional and illegal and should not hold.</p> <p>Acquiring public Land in the interest of the Public is an NLC function.</p> <p>What does payable to the Cabinet Secretary mean???</p> <p>Article 67 (g) of the CoK,2010 states that the National Land Commission shall "assess tax on land and premiums on immovable property in any area designated by law"</p> <p>Taking away the valuation function is amending the Constitution provisions through the back door. Which is unacceptable.</p> <p>This proposed amendment defeats art Articles 249, 252 and 253 of the Constitution. which speaks to the objects, authority and funding of commissions and independent offices. Attempting to amend NLC's functions breaches the Constitution.</p> <p>Recommendation It is clear that matters public Land fall under the ambit of the NLC'S mandate in toto. Attempts to separate the financial accountability function from the operational function is illegal. There is no reasonable basis for bestowing the Cabinet Secretary with a function that was reserved for the Commission.</p> |
| <p>6. Regulation 35 of the principal Regulations is amended by deleting and substituting therefor with the following new</p> | <p>Proposed Deletion (Actual) 35.An allottee shall make payment of the requisite fees within 90 days</p> | <p>The proposed amendment is separating the operational and financial mandates of the NLC.</p> <p>The amendment introduces a new Committee to take</p> |

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| <p>regulation;</p> <p>7. Regulation 36 of the principal Regulations is amended by deleting the Regulation and substituting therefor with the following new regulation</p> <p>36(1) The cabinet secretary shall prepare and execute leases emanating from allocation of public land.</p> <p>(2) Without prejudice to the generality of sub-regulation (1), leases prepared may be done in electronic form.</p> | <p>from date of issue of the letter of allotment for preparation of the lease to the Cabinet Secretary</p> <p>Proposed replacement</p> <p>35.(1) The committee shall, after the verification exercise, prepare a list of proposed beneficiaries in Form LA 42 set in the Third Schedule and submit the list together with the minutes of the committee to the Board for approval.</p> | <p>over the financial role of NLC by overseeing the payment of fees role.</p> <p>The proposed amendment breaches the Constitutional mandate of NLC.</p> <p>Recommendation:</p> <p>It seems that the financial accountability role is being moved to MoLPP. Is there any mischief that this amendment is trying to cure?? And if there is, transparency and accountability should be exercised before proposing such an amendment.</p> <p>It's an illegal proposal</p> |
| | <p>Actual</p> <p>36(1) The Commission shall prepare and execute leases emanating from allocation of public land.</p> | <p>Comment:</p> <p>The proposed amendment, like the foregoing, is intended to divest the Commission from playing a critical role in relation to leases emanating from allocation of public land.</p> <p>Proposal</p> <p>Recourse should be had of Para 241 of the Supreme Court Advisory on the role of the Commission in relation to issuance of licenses, leases and grants in respect of public land.</p> <p>Comment</p> <p>The other proposed amendment in this regard is meant to provide a framework for digitized</p> |

(3) In order to facilitate the preparation of leases on public land, the cabinet secretary shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the Schedule from the office or authority responsible for surveys.

(4) Without prejudice to the generality of sub-regulation (3), cadastral plan and cadastral map may be requested in electronic form.

(5) Upon receipt of the sealed cadastral plan and cadastral map, a lease document in Form LA 13 set out in the Schedule and shall be executed by an officer designated by the Cabinet Secretary by notice in the Gazette.

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

documentation.

Proposal

The most appropriate home for the same should be the regulations to guide electronic transactions and record, provided for in separate set of regulations under discussions.

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| <p>(7) Without prejudice to the generality of sub-regulation (5), a lease document prepared and a certificate of lease may be executed in electronic form.</p> | | |
| <p>9. These regulations are amended by inserting two new regulations after regulation 36</p> | <p>Insertions</p> <p>36A. Any fees or payment prescribed under these regulations may be paid through authorized electronic means as may be advised by the Cabinet Secretary from time to time.</p> <p>36B. Any fees or payment prescribed under these regulations may be paid through authorized electronic means as may be advised by the Cabinet Secretary from time to time</p> | <p>Comment:</p> <p>The role of collection of fees in matters public Land lays with the NLC. This amendment attempts to take that role thus compromising NLC's mandate.</p> <p>Such an amendment will propagate an illegality</p> |

Land (Amendment) Regulations, 2020.

The Land Regulations, 2017, hereinafter referred to as the "principal Regulations" is amended in Regulation 2 by inserting the following new definition in their proper alphabetical sequence--

| Proposed amendment by CoK | Actual/deletions/insertions/amendments | Comments/Recommendations |
|---|---|--|
| <p>B) deleting sub-Regulation (2) and substituting therefore with the following new sub-Regulation;</p> | <p>Actual Provision (2) Upon receipt of the application, the national or relevant county government shall process the application and forward their recommendation to the Commission for grant of license to the successful applicant in Form LA 19 set out in the Third Schedule</p> | <p>Comment: The role of collection of fees in matters public Land lays with the NLC. This amendment attempts to take away that role thus compromising NLC's mandate. Such an amendment will propagate an illegality</p> <p>Recommendation Issuance of licenses on un-alienated public land is an NLC mandate.</p> |
| | <p>Proposed Amendment (2) Upon receipt of the application, the national or relevant county government shall process the application whereupon the county government shall forward its recommendation to the Cabinet Secretary for grant of license to the successful applicant in Form LA 19 set out in the Third Schedule.</p> | <p>Matters Public Land is an NLC mandate. Such an amendment will perpetuate an illegality by attempting to amend the CoK,2010 through the back door.</p> |
| <p>C) deleting the word "Commission" appearing in Sub-Regulation 9 (3) and substituting therefor</p> | <p>Actual provision (3) An application for consent to transfer a temporary license shall be made to the</p> | <p>Comments: Par 222 of the Supreme Court advisory No1 of 0214 states that;</p> |

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| <p>the words "Cabinet Secretary".</p> | <p>Commission in Form LA 20 set out in the Third Schedule.</p> <p>Proposed Amendment</p> <p>(3) An application for consent to transfer a temporary license shall be made to the CABINET SECRETARY in Form LA 20 set out in the Third Schedule.</p> | <p>"The Land Act defines "alienation" as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal."</p> <p>Recommendation</p> <p>The MoLPP is only supposed to oversight and give consent not to issue the requisite license</p> <p>Issuance of licenses on un-alienated public land is an NLC mandate</p> <p>The proposed amendment will enable MoLPP to usurp the mandate of the NLC</p> <p>This proposed amendment will be perpetuating an illegality</p> |
| <p>(d) deleting sub-Regulation 9 (4) and substituting therefor the following new sub-Regulation;</p> | <p>Actual</p> <p>(4) The fees payable under any license shall be paid to the Commission which shall remit such funds into the Consolidated Fund account in the case where the national government is the licensor; and, to the County Revenue Fund account where the county government is the licensor.</p> <p>Proposed Amendment</p> | <p>Recommendation</p> <p>Issuance of licenses on un-alienated public land is an NLC mandate</p> <p>The proposed amendment will enable MoLPP to usurp the mandate of the NLC</p> <p>This proposed amendment will be perpetuating an illegality.</p> |

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| <p>Regulation 11 of the principal Regulations is amended by-- (a) deleting the word "Commission" wherever it appears in the Regulation and substituting therefor the words "Cabinet Secretary".</p> | <p>(4) The fees payable under any license shall be paid to the Cabinet Secretary where the national government is the licensor, and into the County Revenue Fund account where the county government is the licensor.</p> | |
| <p>Regulation 11 of the principal Regulations is amended by-- (a) deleting the word "Commission" wherever it appears in the Regulation and substituting therefor the words "Cabinet Secretary".</p> | <p>Actual Provision (11) (1) The Commission shall issue land rent demand notes to the lessees in accordance with the terms of a lease. Proposed Amendment 11.(1) The CABINET SECRETARY shall issue land rent demand notes to the lessees in accordance with the terms of a lease.</p> | <p>Comment According to section 28 (1) of the Land Act,2012, the rent, royalties and payments reserved under any lease or license shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe. Recommendation Overseeing of payment of land rent is a function of the NLC The proposed amendment will enable the MoLPP to usurp the mandate of the NLC This proposed amendment will be perpetuating an illegality.</p> |
| <p>Regulation 11 of the principal Regulations is amended by-- (a) deleting the word "Commission" wherever it appears in the Regulation and substituting therefor the words "Cabinet Secretary".</p> | <p>Actual 11) 1. The Commission shall issue land rent demand notes to the lessees in accordance with the terms of a lease Proposed Amendment 11.(1) The CABINET SECRETARY shall issue land rent demand notes to the lessees in accordance with the terms of</p> | <p>Comment According to section 28 (1) of the Land Act,2012, the rent, royalties and payments reserved under any lease or license shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe. Recommendation Overseeing of payment of land rates is an NLC function.</p> |

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| | <p>a lease</p> | <p>According to section 154 (1) of the Land Act,2012, the Cabinet Secretary can only prescribe the rates of fees.</p> <p>The proposed amendment is illegal.</p> |
| <p>deleting sub-Regulation 11 (2) and substituting therefor the following new sub-Regulation;</p> | <p>Proposed deletion</p> <p>(2) Land rent shall be paid into a bank account designated by the Commission.</p> <p>Proposed insertion</p> <p>(2) Land rent shall be payable to the Cabinet Secretary where the head lessor is the national government and into the County Revenue Fund account where the county is the head lessor.</p> | <p>Comments</p> <p>According to section 28 (1) of the Land Act,2012, the rent, royalties and payments reserved under any lease or license shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe.</p> <p>The proposed amendment is not supported by any law.</p> <p>Recommendation</p> <p>Proposed amendment is illegal.</p> |
| <p>(c) deleting sub-Regulation 11 (3)</p> | <p>Proposed deletion</p> <p>11 (3) Where the national government is the head lessor, the Commission shall remit such funds into the Consolidated Fund account and where the county government is the head lessor, the Commission shall remit such funds into the respective County Revenue Fund account by the fifth day the following month.</p> | <p>According par 223 of the Supreme Court advisory, "It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC's function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration.</p> <p>Recommendation</p> <p>Proposed deletion is illegal.</p> |

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| <p>10. Regulation 12 of the principal Regulations is deleted.</p> | <p>Proposed deletion</p> <p>12.(1) Upon payment of the outstanding land rent, an application for the land rent clearance certificate shall be made in Form LA 24 set out in the Third Schedule. (2) Rent Clearance Certificate shall be issued in Form LA 25 set out in the Third Schedule at the county office of the Commission where the land is registered or in any other means as may be determined by the Commission.</p> | <p>It amends the NLC's mandate without due process.</p> <p>Comments</p> <p>The process of overseeing the Procedure for obtaining land rent clearance certificates is under the NLC mandate</p> <p>According to section 28 (1) of the Land Act,2012, the rent, royalties and payments reserved under any lease or license shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe.</p> <p>The proposed deletion is not supported by any law.</p> <p>Recommendation</p> <p>It's an illegal proposal.</p> |
| <p>11. Regulation 13 of the principal Regulations is amended by--</p> <p>(a) deleting the word "Commission" wherever it appears in the Regulation and substituting therefor the words "Cabinet Secretary".</p> | <p>Actual</p> <p>13.(1) An application for consent to transfer, sublease or charge land shall be submitted to the Commission in Form LA 26 set out in the Third Schedule.</p> <p>Proposed Amendment</p> <p>13.(1) An application for consent to transfer, sublease or charge land shall be submitted to the CABINET SECRETARY in Form LA 26 set out in the Third Schedule.</p> | <p>Comments;</p> <p>It's the work of the NLC to approve any application for consent for transfer, sublease or charge.</p> <p>In regard to Lessee pre-emptive rights to allocation. Section 13. (1) of the Land Act ,2012, states that</p> <p>"Where any land reverts back to the national or county government after expiry of the leasehold tenure the Commission shall offer to the immediate past holder of the leasehold interest pre-emptive rights to allocation of the land provided that such lessee is a Kenya citizen and that the land is not required by the national or the county government for public purposes.</p> |

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| | | <p>(2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following.</p> <p>(a) prescribing the procedures for applying for extension of leases before their expiry.</p> <p>(b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee.</p> <p>(c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or reallocation of the land. (d) other covenants and conditions to be observed by the lessee.</p> <p>Recommendation</p> <p>The proposed amendment is illegal</p> |
| <p>(b) deleting subparagraph 13 (2)</p> | <p>Proposed deletion</p> <p>(2) An application under paragraph (1) shall be accompanied by a rent clearance certificate issued under regulation 12</p> | <p>Comments</p> <p>The process of overseeing the Procedure for obtaining land rent clearance certificates is under the NLC mandate</p> <p>According to section 28 (1) of the Land Act,2012, the rent, royalties and payments reserved under any lease or license shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe.</p> <p>The proposed deletion is not supported by any law.</p> <p>Recommendation</p> <p>It's an illegal proposal.</p> |

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| <p>Regulation 14 of the principal Regulations is amended by--</p> <p>(a) deleting the marginal note "Commission to notify" and substituting therefor the following marginal note</p> | <p>Proposed deletion</p> <p>Commission to notify affected non-citizen land owners</p> <p>Proposed amendment</p> <p>"Notification of affected non-citizen land owners.</p> | <p>Comments</p> <p>According to section 28 (1) of the Land Act, 2012, Notice of lease, license or agreement action on public land should be done by the NLC.</p> <p>Section 36 (1) states that, " A notice of action indicating the availability of public land for use through lease, license, or agreement shall be published in the Gazette and in at least two daily newspapers of nationwide circulation when a determination has been made that such public land is available for a particular use.</p> <p>36 (2) The notice under subsection (1) shall indicate the use proposed for the public land and shall notify the public that applications for a lease, license or agreement shall be considered, and specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued..</p> <p>The proposed deletion is not supported by any law.</p> <p>Recommendation</p> <p>It's an illegal proposal.</p> |
| <p>Regulation 17 of the principal Regulations is amended by -</p> <p>(ii) Deleting the words "Commission and of" appearing after the word "the" and after the word "national" at sub-regulation 2(c)</p> | <p>2(c) the land administration officer of the Commission and of national government at the county;</p> | <p>The proposed amendments is consequential in nature, and as the justification thereof has been question in the foregoing comments, they would be unnecessary, Unconstitutional and illegal.</p> |

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| <p>(vi) inserting the following new paragraph (d) immediately after sub-regulation (5) (c) as follows;</p> | <p>Proposed Insertion</p> <p>d) prepare the subsequent lease(s) and forward them to the Chief Land Registrar for registration in Form LA 29 set out in the Third Schedule</p> | <p>Comments</p> <p>What is the role of NLC in the registration of Leases?? Clear roles allocation would go along way in ensuring that Constitutional mandates are not compromised.</p> |
| <p>(vii) deleting sub-regulation (6)</p> | <p>Deletion</p> <p>(6) The Commission shall prepare the subsequent lease(s) and forward them to the Chief Land Registrar for registration in Form LA 29 set out in the Third Schedule.</p> | <p>Comments</p> <p>Role of NLC??</p> |
| <p>(viii) inserting the following new sub-Regulation (6A) immediately after sub-regulation (6) as follows;</p> | <p>Insertion</p> <p>6A. Any leases prepared under sub-regulation (5) and approvals under sub-Regulation (6) shall be made in electronic form</p> | <p>Comments</p> <p>Do electronic submissions allow public participation processes to be adhered to??</p> |
| <p>16. Regulation 18 of the principal Regulations is amended by</p> <p>(i) inserting the following new sub-Regulation (1A) immediately after sub-regulation (1) as follows;</p> | <p>Sub regulation 1</p> <p>18.(l) Application for change or extension of users on freehold land shall be submitted to the relevant county government.</p> <p>Insertion</p> <p>(1A.) An application under sub-</p> | <p>Comments</p> <p>Does the electronic process accommodate the technologically challenged Kenyans??</p> <p>Maybe some hybrid process can be put in place to ensure that the process is not exclusionary to a section of service deserving Kenyans.</p> |

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| | <p>regulation (1) shall be submitted to the county government in electronic form.</p> | |
| <p>(ii) inserting new sub-Regulation (2A) immediately after sub-regulation (2) as follows;</p> | <p>Sub Regulation 2 - Actual 2(a) the officer representing the national Director of Surveys at the county;</p> <p>Insertion after</p> <p>2A. An application under sub-regulation (2) to seek representations may be made in electronic form.</p> | <p>Comments</p> <p>Does the electronic process accommodate the technologically challenged Kenyans??</p> <p>Maybe some hybrid process can be put in place to ensure that the process is not exclusionary to a section of service deserving Kenyans.</p> |



NATIONAL CONSTRUCTION
AUTHORITY

**MEMORANDUM ON THE
LAND TRANSACTIONS
(ELECTRONIC)
REGULATIONS, 2020**

JUNE 2020

9TH – 11TH FLOOR, KCB TOWERS
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MEMORANDUM ON LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

1.0 Introduction

The National Construction Authority was established under the provisions of section 3 of the National Construction Authority Act No. 41 of 2011 to oversee and coordinate the development of the construction industry. In addition, Section 5(2) (a) of the Act states that the Authority shall promote and stimulate the development, improvement and expansion of the construction industry.

Pursuant to its mandate, the Authority has reviewed the Land Transactions (Electronic) Regulations 2020 and our written submissions on the proposed Regulations are outlined below.

2.0 Land Transactions (Electronic) Regulations, 2020

2.1 Background

The Ministry of Lands and Physical Planning in consultation with the National Treasury, the National Land Commission and other stakeholders are in process of developing Land Transactions (Electronic) Regulations, 2020 to facilitate the Ease of Doing Business as far as electronic land transactions are concerned so as to enhance accountability, transparency and efficiency in land administration and management.

To this end a taskforce was appointed to assist the Ministry of Lands in the formulation of the Land Transactions (Electronic) Regulations, 2020. The taskforce has since prepared the following proposed Statutory Instruments:

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

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| | | | <p>within the digital platforms and to other users.</p> <ul style="list-style-type: none"> • Digitization should guard against fraud especially in identity theft of owners, professionals and authorized agents. • The Regulations should address the instance of data input errors and discrepancies in the National Land Information System during digitization and the issue of duplication of data. |
| 2. | Survey (Electronic Cadastre Transactions) Regulations, 2020 | Regulation 2 - Interpretation | <ul style="list-style-type: none"> • We propose the inclusion of the definition of "Electronic", "Electronic Form", "Electronic Signature" and "Electronic Appeals Standing Committee". • To enhance efficiency in operations for users, we propose an interface of the Authority's existing system and the electronic cadastre system. |
| 3. | Stamp Duty (Valuation) Regulations, 2020 | | <ul style="list-style-type: none"> • We propose the inclusion of the definition of "Chief Government Valuer" and "Electronic". • We note that the Regulations make provision for the Electronic Valuation System capable of electronic submission and storage of documents, monitoring the progress of the valuation processes and management of electronic communication. |
| 4. | Stamp Duty (Amendment) | | <ul style="list-style-type: none"> • We note that the Regulations have been |

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| | Regulations, 2020 | | <p>amended to ease processing of electronic documents for valuation. The Regulations seek to make electronic means as one of the ways through which duties under the Stamp Duty Act may be paid. The submission of an executed instrument for purposes of the Stamp Duty Act to be done electronically as an alternative to manual submission.</p> |
| 5. | Land (Amendment) Regulations, 2020 | | <ul style="list-style-type: none"> We note that the Regulations are seeking to entrench electronic filing of applications such as: issuance of licenses and quit notice in relation to un-alienated public; applications for consent to transfer, lease or sublease; application for change of user; and application for consent to transfer, sublease or charge on leasehold land. We propose an interface of the Authority's existing system and the electronic database of all public land and an inventory of land based natural resources. |
| 6. | Land (Extension and Renewal of Leases) (Amendment) Rules, 2020 | | <ul style="list-style-type: none"> We note that the Regulations make provision for the application for extension/renewal of lease to be done electronically. The Extension/renewal shall also be done electronically. |
| 7. | The Land (Allocation of Public Land) | | <ul style="list-style-type: none"> We note that the Regulations make |

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| | (Amendments, Regulations), 2020 | | provision for issuing a letter of allotment for public land electronically. Leases emanating from allocation of public land may be done in electronic form. |
| 8. | Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020 | <p>Regulation 2 - Interpretation</p> <p>Regulation 5 - Requirements for handling applications for development permission</p> <p>Regulation 6(1) (iii) Signing up for user Account</p> <p>Regulation 14(9) Submission of Application</p> | <ul style="list-style-type: none"> • We propose the inclusion of the definition of Electronic Appeals Standing Committee. • Following the amendments to the National Construction Authority Act No. 41 of 2011 vide the Business Laws (Amendment) Act 2020, the enforcement of the Building Code has been anchored to the National Construction Authority. Hence, to enhance efficiency in operations for users in regards to development control, we propose an interface of the Authority's existing system and the electronic development control and enforcement system once it is established for ease of information cross-referencing. • Add "electronic signature" under the sub rule as part of the information to be provided by the user. Electronic signature that can be authenticated and for verification. • Inclusion of verification of electronic |

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| | | | signature according to the process for verification of electronic signature based on 6(1) (iii). |
| | Regulation 24(1) Site inspection Procedures. | <ul style="list-style-type: none"> Development can only progress after 7 days yet inspection takes place within 24 hours. The time should be reduced to 3 days. | <ul style="list-style-type: none"> Development can only progress after 7 days yet inspection takes place within 24 hours. The time should be reduced to 3 days. |
| | Regulation 25 Final inspections Issuance of Compliance/Occupation Permit | | <ul style="list-style-type: none"> The final inspection timelines are missing e.g. when inspection is to be conducted after receiving notification form property owner and when the report should be submitted to the County Director. We propose that the final inspection should be conducted 48 hours after notification and the final inspection report to be submitted within 7 days. In regards to the notification procedure for final inspection, we propose that a notification template should be developed on the same. |
| | Schedules | | <ul style="list-style-type: none"> We have noted that the Occupational certificate is missing. We propose development of Occupational Certificate template. In regards to Register of Compliance and Occupational Certificates issued. We propose the development of registers and procedure for access to the register. |

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| | | | <ul style="list-style-type: none"> • In regards to Register of Enforcement Notices issued, we propose that there should be a copy communication to the National Construction Authority. • Further, there should be a copy communication of Compliance and Occupational Certificates and Enforcement notices to other relevant authorities and agencies such as National Construction Authority. |
| 9. | Other Comments | | <ul style="list-style-type: none"> • To enhance efficiency in operations for users, it will be useful to consolidate systems into a one-stop access to all government agencies registering projects and/or issuing construction permits which include National Construction Authority (NCA) and National Environment Management Authority (NEMA) among others. • There is need for legal reforms i.e. a stable and responsive legal framework to ensure the adoption of digitization. • Deliberate efforts will need to be made to ensure integrity and confidentiality of personal data throughout the land management cycle. • There is need for government to promote ICT literacy among the public to ensure good acceptance on land |

electronic systems.

3.0 Conclusion

In view of the above, the proposed Regulations will facilitate the implementation of a digital National Land Information System which is crucial for the economic and social development of Kenya.

The Authority's recommendations on the proposed Regulations should therefore be taken into account before full adoption of the Regulations.

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Eng. Maurice Akech
EXECUTIVE DIRECTOR



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Our Reference

LAND-REG/Y20/F01

Your Reference

Date

29 May 2020

The Principal Secretary

Ministry of Lands and Physical Planning

Urdhi House, Nairobi

Attn: Chairman, Eric Nyadimo

Task Force on Electronic Land Transactions

COMMENTS - PHYSICAL AND LAND USE PLANNING(ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS 2020

Receive greetings from Town and County Planners Association of Kenya(TCPAK).

Below are our comments on Development Control and Enforcement regulations.

Overview

From Parts IV and V and the Third Schedule of the Act, County governments have express mandate over Development Control and Enforcement.

Section 69(4) of the Act is in total conflict with the rest of Part IV and V and the Third Schedule of the Act and the Constitution and does not at all give the Cabinet Secretary mandate of over receiving, processing and granting development permission.

-In these regulations, the role of Cabinet Secretary/Director General in development control and/or enforcement is therefore not clear, irregular and against the Constitution, PLUPA, County Governments Act, Urban Areas and Cities Act.

Electronic systems are run on clearly defined and specific instructions, route and chain command. General and woolly processes in these draft regulations will not do.

For the process to be clear, transparent and accountable, it is proposed that the submission process be clearly separated for National Government and County governments, and by specific profession – Physical/town planning, architecture, engineering, land surveying etc (Landscape/urban design????).



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2 Interpretation

- Licensed professional to include Physical/Town Planner; Land Surveyor
- Landscape architect and Urban designer are not licensed under existing law and therefore this cannot do so through regulations

3 System Establishment

- Article 6 of the Constitution is clear that National and County levels of government are distinct and inter-dependant and relate through consultation and cooperation
- Besides establishing an electronic development Control and Enforcement System as a module within the National Land Information System, do also establish similar at the County level
- As the basic building block, establish electronic development control and Enforcement System in each of the 47 counties and the same integrated to the National Land Information System

4 Database and Operation Tools

- County Governments, the foundation functionaries of development Control and enforcement are totally missed out.
- Include: In each County, the County Executive Committee member shall maintain an electronic data base system for the –
 - Approved physical and land use development plans
 - Development control instruments
 - Registers of documents

5. Requirements for Handling Applications for Development Permission



5(1) as a whole is not valid as explained earlier. Director General/CS is not provided for in the Third Schedule of the Act and has no authority over development control and

5(1)(iii) is indeed in total conflict with the Third Schedule of the Act

12 Appeals against the Decision to Terminate a User's Access to the System

-12(2) The membership of the Electronic Appeals Standing Committee does not reflect real user and equity needs -

- Ministry has three representatives and 47 Counties(core users) have only one representative.

We propose that representatives be - 1/Ministry; 3/COG/counties

- That appeals committee be set up in each county

14 Submission of Application

4-1 National Government- Submission of Development Application

4-1.1 Physical and Land Use Development Planning Applications

All development planning applications(list/name them ...) shall be submitted electronically to ... office/office/Department??...) and shall include the following documents/?????????

14-1.2 Building Architectural Design work

All building architectural design work and reports shall be submitted electronically to office/Department...?? And will include..... design drawings, specifications, report?????

4-1.3 Building Structural/Civil/Mechanical/Electrical Engineering Design work

- (a) All building structural design work and reports shall be submitted electronically tooffice/department???? ... and will include design drawings, specifications, reports
(b) All Civil (roads, drainage, water, waste water etc) design work and reports shall be submitted electronically to ...office/department????... and will include?????



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- (c) **All Mechanical/Plumbing design work and reports** shall be submitted electronically to Office/Department???... and will include
- (d) **All Electrical design work and reports** shall be submitted electronically to.....office/department???... and will include????

14-1.4 Land Survey Work

All land Surveying work and report shall be submitted electronically to Office/department????... and will include????

14-2 County Government – Submission of Development Application

14-2.1 Submission to County Physical/City/Municipality/Town planning Department

-All physical and land use development planning applications shall be submitted electronically to the **county PP/city/municipal/town planning office** and will include – plan reports, drawings, specifications, models, guidelines etc. The development plan applications will cover – land sub-division/ amalgamation, adjustments, alignment, change of use, extension of use, change of density, site land use master plan, extension/renewal of lease

14-2.2 Submission to County/City/Municipality/Town Architecture Department

-All building architectural design work shall be submitted electronically to the county/city/municipal/town architecture office. The submission will include building architecture design drawings, specifications, models and reports.

14-2.3 Submission to County/City/Municipal/Town Engineering Department

- (a) **All building structural design work** shall be submitted electronically to the county/city/municipality/town engineering department office. The submission will include structural design drawings, specifications, models and reports.
- (b) **All building civil(roads, drainage, water, waste water) design work** shall be submitted to the county/city/municipality/town engineering department office. The submission will include design drawings, models, calculations, reports and specifications.
- (c) **All Mechanical and Plumbing design work** may be submitted electronically to the county/city/municipality/town engineering department office.
- (d) **All Electrical design work** may be submitted electronically to the county/city/municipality/town engineering department office. The submission will include design drawings, models, specifications, report etc



TCPAK

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4-2.4 Submission to County/City/Municipality/Town Land Surveying Department

All land surveying work may be submitted electronically to the county/city/municipality/town land surveying department office. The submission will include survey maps, plans, reports, specifications etc.

15. Receiving and Processing of Development Application

5(2)(i) Cabinet Secretary: Receiving and Processing of Development application

This regulation be deleted as it offends the Constitution and the law as explained earlier.

-How does, competency, capacity of CS handle applications below: -

Development plan application???

- Building architectural design work?????

Building Structural/civil/Mechanical/Electrical Engineering design work?????

Land Surveying work?????

15-2 County Government: Receiving and Processing of Development Application

For efficiency and accountability, the process must be clear and specific on the process for each type of profession application – development plans, architectural design, engineering design, and land survey

5-2.1 Processing Development Plan Application

- The county physical and land use planning department will receive, circulate to relevant departments/institutions for comment, consider and approve development plan applications
- The city/municipality/town planning department will receive, circulate to relevant departments/institutions for comment, consider and approve development plan applications

5-2.2 Processing of Building Architectural design work

- The county architecture department will receive, circulate to relevant departments/institutions for comment, consider and approve the architectural design application.
- The city/municipality/town architecture department will receive, circulate to relevant departments/institutions for comment, consider and approve the architectural design application

5-2.3 Processing of Building structural/civil/mechanical/electrical design work

- The county engineering department will receive
- The City/municipality/town engineering department will receive

5-2.4 Processing of Land Surveying work



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17 Circulation and Review of Application

17(2)(i) Be deleted as it does not conform to the law as explained earlier.

17(2)(ii) be expanded to provide for separate professional officers to receive, circulate, review relevant applications that are within their professional capacity and competency. The County Director of Physical and Land Use Planning is not competent and has no capacity to handle applications by other professions. Professionally, this is not tenable and not acceptable.

- (a) **County/City/municipality/town planning office** to receive development applications from physical/town planners
- (b) **County/city/municipality/town architecture office** to receive, circulate, review and approve building architectural design work
- © **County/city/municipality/town engineering office** to receive, circulate, review and approve building/structural/civil/Mechanical/electrical engineering design work
- (d) **County/city/municipality/town land survey office** to receive, circulate, review and approve land survey work and subject to advise by Director of Survey.

18 Development Technical Validation Committee

- In law, this committee is not provided for
- These committee is indeed political baggage from old order of COUNCILLOR Committees
- From experience nation-wide these committee lead to serious approval delays, are not transparent, nobody is accountable and add no value.
- What level of input and scrutiny does this committee add, for example, to detailed architectural, engineering design work??
- We propose that these committee be deleted and let professionals handle professional applications and consult as they know best.
- The technical officers are of course under the overall duty of the respective County Executive Committee members

19 Decision Making and Communication

- 19(1) be deleted as is irregular and against the law as explained earlier.
- 19(2) Be updated to reflect 17 and 18 above for each professional line
- 19(3) Be update to accommodate the different professional line offices/departments as explained in 17/1

20 Preparation of conformance Conditions of Applications

- The regulation be revised to reflect the different professional applications

21 Receiving and Processing

- The same be revised for different professional disciplines



TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA

White Court, Galana Road, Kilimani

P.O. Box 38027-00100 GPO, Nairobi, Kenya

Cell: +254 725 028 572

Email: tcpakassociation@yahoo.com/info@tcpak.com

22 Issuance of Development Permission

- The same be revised and provide for different professional applications
- It is not professional acceptable and tenable that the County Director of Physical and Land Use Planning can PRETEND to sign and issue development permission for architectural, engineering, surveying work

23 Notification of Inspections

- The regulation be revised to reflect the requirements for each professional discipline
- Building and civil construction works have different and unique requirement for each professional line.
- All each professional line to guide this process
- It will be important that these regulations and those being prepared by National Construction Authority/Building Code are harmonised

24 Site Inspection Procedure

- This regulation be revised to reflect different professional needs
- The same be harmonised with NCA/Building code regulations

25. Final Inspection, Issuance of Compliance/Occupation Permit

- This be revised to reflect different professional disciplines
- This be revised and harmonised with NCA/Building code regulations.

26 ,27,28 Enforcement

- This be revised to meet needs of different professions
 - The same be harmonised with NCA/Building code regulation
-

The attendance FORMS be revised accordingly.

Mairura Omwenga

Chairman TCPAK



LAND SURVEYORS' BOARD

MEMORANDUM ON PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS 2020

JUNE 2020

LAND SURVEYORS' BOARD MEMORANDUM ON PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS 2020

1. General comment on the regulations:

There is need for the professional bodies to be recognized in regulating the engagement of the various professionals that will interact with the system.

The regulations should define a standard engagement which will be interpreted onto a module in the system instead of every profession defining its engagement standard with user roles clearly mapped according to the professional requirement for any transaction. This will void the multiple definitions of user for every regulation.

2. On Physical and Land use planning (electronic transaction). It has emerged that physical planner has emerged as a compliance checker for transactions beyond their competence hence introducing a bureaucratic layer of an overseer with other professionals working as technical officers.

The effect of this is;

- a) Ease of doing business is compromised
- b). There is cost implication to the process.
- c). The role of overseer or coordination of development control has been made exclusive to physical planning profession thus creating an unwarranted exclusivity to one profession. This is purely an administrative role that should be open to professionals in built environment. The actual professional input is done by the technical officers.
- d). No profession should purport to control other professionals as this is unethical.

3. The planning consultant (interchangeably used as consultant) creates agency role for other built environment professions which is not professionally acceptable through giving exclusive access to the planning consultant with no value addition to the process.

This should be revise to allow the system to have the concerned professional to engage with the development control authority which is the essence of digital platforms.

4. The compliance certificate to be issued on development should be eliminated for subdivision survey because the Director of Surveys is the competent authority to check compliance on the surveyor implementation of the approved subdivision scheme plan. The compliance checking process ends with authentication and registration of a survey with parcel numbers issued.

This issuance of compliance certificate by planning authority is redundant because the Director of Surveys is in the first instance a government agent in development control as no cadastral survey is authenticated without an approved plan from the same authority.

5. The deviation that the director physical planning intends to check for compliance emanates from planning done without actual topographical input leading to a need for modification at survey stage. To eliminate possibility of deviation from approved plan ALL scheme plans should be done on topographical maps drawn and authenticated by a surveyor as defined in Survey Act Cap 299.

6. Occupation/ compliance certificate for a building suffices as approval for Sectional Property Survey. It is not necessary to apply for another development approval and compliance.

COMMENTS ON THE LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020.

By R.P. MWANGI & P.K. NDICHU (RAYDON MWANGI & ASSOCIATES NAKURU)

| No. | REGULATION | ISSUE | RECOMENDATION | RATIONALE |
|-----|------------|------------------------------------|--|--|
| 1 | 2 | Definition of 'COURT' | The definition of court where an appeal as per regulation 13(5) will be filed should be included under this section. | It is not clear as to where appeals under regulation 13(5) should be filed, is it the ELC court, the Chief Magistrates Court or the High Court as the decision pertains registration of documents, cancellation of documents and suspension of accounts. |
| 2 | 2 | Definition of "authorized person " | the authorized staff who has the authority and mandate to access and make alterations to the electronic register should be gazetted by the Chief Land Registrar and the definition should therefore include "as gazetted by the Chief Land Registrar of a particular registration unit." Where a land registrar ceases to be in charge, the Chief Land Registrar shall of a land registrar should be notify the public in a notice published in the Gazette. The said gazettelement should be circulated to the relevant professional associations of users of the electronic land registration system eg LSK, ISK. | This will give notice to the general members of the public and the various professional users of the registry of the persons mandated to access and effect changes in the system and therefore prevent or reduce fraud including reduction of risk of members of the public from being swindled by fraudsters masquerading as authorized persons . |
| 3 | 4 | Electronic register | The electronic register should be backed up by a manual register where the registrar should maintain | This will greatly reduce the challenge of loss of the files and missing green cards. |

| | | | | |
|---|-------|---|--|---|
| | | | <p>a register of green cards separately from the current used binder. The said register should be kept by the registrar who should be the only person able to access the said register.</p> | |
| 4 | 5 | Electronic register | <p>Authorized staff should exercise due diligence in altering the information and data on the electronic land registry. Any false or inaccurate information entered, the authorized staff should be held responsible and a criminal sanction should be meted to the said staff.</p> | <p>This will improve accountability of the authorized staff and ensure authenticity and accuracy of information entered in the electronic land registry and it will therefore protect the owners of the said information.</p> |
| 5 | 12(1) | <p>Closure of accounts of deceased persons</p> <p>Security of persons advanced in age</p> | <p>There should be a system connected with the identity card of every authorized user to ensure that there is an updated sharing of information between the registrar of persons (deaths) to ensure that there is immediate closure of accounts of deceased persons.</p> <p>Senior citizens advanced in age should have special treatment in accessing the electronic services which could include being allowed to present manual documents and to appear before the registrar in person.</p> | <p>this will improve efficiency in the closure of the accounts of deceased persons to prevent unauthorized access by persons who may have their account details.</p> <p>For purposes of protecting the senior citizens who may not be up to date in terms of the advanced technology.</p> |

| | | | | |
|---|----|--|---|---|
| 6 | 21 | Printing of documents filed electronically | <p>any documents filed electronically should be printed and placed in a manual register which should be kept as manual backup for future reference in case the electronic system malfunctions.</p> | <p>This will ensure security of data in case the electronic system fails and will form a source of registrar's information for future reference.</p> |
| 7 | 14 | Searches | <p>Electronic search should be conducted by manually keying in the details or by scanning a QR code of Barcode on the title document.</p> | <p>It will expedite the search process and also ensure authenticity of the results as well as enhance perpetuity and security of the barcodes and QR codes. Experience indicates that QR codes are very sensitive and easy to deface.</p> |
| | | Security measures | <p>Provide detailed regulations on Barcodes and QR codes and proper civic education to the members of the public on how to use them and to verify their authenticity.</p> <p>Defacing or malicious alteration of the QR codes or Bar codes should be made a criminal offence.</p> | |



INSTITUTION OF SURVEYORS OF KENYA

03/06/2020

Ref: ISK/COU/AS/20/50

Mr. Eric Nyadimo,
Chairman,
Taskforce on Electronic Land Regulations,
Ministry of Lands and Physical Planning,
P.O. Box 30450-00100,
NAIROBI

Dear Surveyor Nyandimo,

RE: ISK Memorandum on Various Land Related Regulations

Reference is made to your letter on the above subject matter.

ISK thanks you for the opportunity you accorded us to make our submissions on the proposed regulations during a virtual meeting held on Friday 22nd May 2020.

We hereby submit our memorandum on the below set of regulations for your consideration;

- a) Stamp Duty (Valuation) Regulations, 2020
- b) The Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020
- c) Land Registration (Electronic Transactions) Regulations, 2020
- d) Survey Electronic Cadastre Transaction Regulations, 2020

We additionally request that you accord us the opportunity to jointly engage with the Treasury on the proposed Stamp Duty (Valuation) Regulations, 2020. ISK was involved in the drafting the regulations to operationalize section 10 A of the Stamp Duty Act, Cap 480 together with the Ministry of Lands and Physical Planning and Kenya Revenue Authority.

It is therefore important that all the stakeholders harmonize the regulations to ensure that they meet the spirit of the Law.

Thank you in advance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Abraham Samoei', with a large, stylized flourish extending upwards and to the right.

Abraham Samoei
President

CC

Ms. Farida Karoney
Cabinet Secretary
Ministry of Lands and Physical Planning
P.O. Box 30450-00100,
NAIROBI

Ambassador Ukur Yatani
Cabinet Secretary
National Treasury, Harambee Avenue
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3rd June 2020

The Principal Secretary,
Ministry of Planning and Physical Planning,
Ardhi House, 1st Ngong Avenue
P.O Box 30450 – 00100,
Nairobi.

Dear Sir,

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

Reference is made to your notice published in the Daily Nation of 8th May 2020 inviting members of the public to submit memoranda on the following Regulations;

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

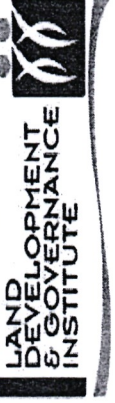
We hereby submit our memoranda with detailed views and recommendations on the above Regulations.

We will be pleased to engage in further consultation with the Ministry as the Regulations continue to be developed.

Thank you.

Yours Sincerely

Dr. Mwenda Makathimo
Executive Director



LAND
DEVELOPMENT
& GOVERNANCE
INSTITUTE

Empowering Society

REVIEW OF VARIOUS LAND TRANSACTION (ELECTRONIC) REGULATIONS, 2020

1. Land Registration (Electronic Transactions) Regulations, 2020
2. Survey (Amendment) Regulations, 2020
3. Survey (Electronic Cadastre Transactions) Regulations, 2020
4. Stamp Duty (Valuation) Regulations, 2020
5. The Physical and Land Use Planning (Electronic Development Control and Enforcement Systems) Regulations, 2020

by the

Land Development and Governance Institute (LDGI)

3rd June 2020

1. Land Registration (Electronic Transactions) Regulations, 2020

| Section | Provision | Commentary |
|---|--|--|
| 11 (3) (e) on suspension of a user's access to the system | An electronic transmission to any electronic address specified in the user agreement as the user's through SMS Notification, email notification or any other form of electronic transmission | We could leave this completely open to changes with time by not specifying any of the forms of electronic transmission. Make it read: <i>an electronic transmission to any electronic address specified in the user agreement as the user's through any appropriate form of electronic transmission</i> |
| 11 (3) (f) on suspension of a user's access to the system | Post, to any postal address specified in the user agreement as the user's address of service | Since postal boxes have been experiencing diminishing use and may with time cease to be used, allow for this by allowing for physical delivery as well. Make it read: <i>post, or physical delivery, to any postal or physical address specified in the user agreement as the user's address of service</i> |
| 12(4) Termination of a user's access | The user may file an appeal to the Electronic Appeals Committee, through the Cabinet Secretary, within 14 days of the decision to terminate the user's access. | The timeline looks stiff. One imagines a scenario where a user, for some reason, is not able to receive the notice, or is indisposed, and cannot rise to the 14 days. It is suggested that this be expanded to 30 days |
| 13 (d) on Appeals against the decision to terminate a user's access | Four representatives from the private sector provided that one of them shall be an Information Technology Specialist well versed with system forensic audit and cybercrime. | To avoid the perception that these four will come from the "private sector", which is currently perceived to be represented by the stakeholder KEPISA, make it more inclusive by having it read that the representatives will come from "the non-state user community" or look for any other suitable, inclusive and non-prescriptive phrase to describe where the representatives will come from. |

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|------------------------------|--|--|
| First Schedule on Registries | Nairobi | Please clarify the significance of this. Why just Nairobi yet the Ministry has many gazetted registries. Is this for piloting or we shall gazette only Nairobi for NLIS? |
| Third Schedule 5 (vi) | Any use of the NLIS by any person with access to the Security Measures used or made available to you or any of your people (whether authorized by you or not) constitutes sufficient authority for the Ministry to: | It appears that this set to enumerate subsequent subsections below it but the listing just continues regardless. This could be revisited for flow |



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2. Survey (Amendment) Regulations, 2020

| Section | Amended Section in Survey Regulations | Content | Commentary |
|---------|---------------------------------------|--|------------|
| 1 | N/A | Citation | |
| 2 | 6 on register of registered surveyors | change allows the register of surveyors to be maintained in an electronic format | |
| 3 | 24 on projections | Projections of the earth: change allows room for the Director to introduce other projections besides UTM and Cassini-Soldner in the computation of coordinates | |

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|---|--|--|---|
| 4 | 25 on maintenance of measuring instruments | <ul style="list-style-type: none"> Deletes the former section which was too prescriptive, specifying measuring bands, tapes, etc. Introduces a new section 25 with more inclusive language for survey equipment to be used for survey, making it possible for the Director of Survey to allow the use of new emerging equipment without the need to change the regulations | <p>25 (4): The Director may on receipt of measuring equipment from a licensed surveyor, refuse to authenticate any survey which has been made with inappropriate or defective measuring equipment.</p> <p>The above sub-section is not clear as it blends two concepts, receipt of equipment from a surveyor and authentication of surveys.</p> <p>It is suggested that it reads:</p> <p><i>The Director may refuse to authenticate any survey which, from information available to him, has been undertaken with an inappropriate or defective equipment.</i></p> |
| 5 | 30 on approvals by statutory authorities | <p>Change makes it possible for the Director to advise on statutory authorities that should provide approvals under respective laws.</p> <p>This avoids a prescriptive regulation which becomes obsolete once practice and laws change</p> | |

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|----|---|--|--|
| 6 | 69 on survey field notes | Change makes it possible for the Director to introduce special forms <i>and formats</i> . This will make it possible to harness technology | |
| 7 | 78 on survey computation forms | Change makes it possible for the Director to introduce special forms <i>and formats</i> . This will make it possible to harness technology | |
| 8 | 86 on drawing plans | Change makes it possible for the Director to introduce special forms <i>and formats</i> . This will make it possible to harness technology | |
| 9 | 117 on copyright | Change allows for use of electronic formats | |
| 10 | Fourth Schedule on authorities for statutory approvals for survey | Change deletes the schedule to make it possible for the Director to have latitude of advising on the appropriate authorities with changes in practice and law. | |

3. Survey (Electronic Cadastre Transaction) Regulations, 2020

| Section | Provision | Commentary |
|--|---|--|
| Interpretation | “System” means the National Land Information System developed under Section 6(h). | Make it explicit that this is Section 6(h) of the Land Act |
| 3 on Electronic cadastre | 2 (d)..... Send notification to the user through short message service, email or online notification. | To allow for changes with time, we could avoid specifying the methods of notifying. We could have: <i>Send notification to the user through any electronic means.</i> |
| 9 on suspension of a user’s access to the system | <ul style="list-style-type: none"> • 9 (2) (b)... the facts which, in the opinion of the Chief Land Registrar, justify each ground of suspension and intention to terminate; and • 9 (3) (a) ... an electronic transmission to any electronic address specified in the user agreement as the user’s through SMS Notification, email notification or any other form of electronic transmission | <ul style="list-style-type: none"> • This have intended to be.....in the opinion of the Director.....and not the Chief Land Registrar • We could leave this open to changes with time by not specifying any of the forms of electronic transmission. Make it read: <i>an electronic transmission to any electronic address specified in the user agreement as the user’s through any appropriate form of electronic transmission</i> |

| | | |
|--|---|---|
| | <ul style="list-style-type: none"> 9 (3) (b)..... post, to any postal address specified in the user agreement as the user's address of service. | <ul style="list-style-type: none"> Since postal boxes have been experiencing diminishing use and may with time cease to be used, allow for this by allowing for physical delivery as well. Make it read: <i>post, or physical delivery, to any postal or physical address specified in the user agreement as the user's address of service</i> |
| <p>10 on "Termination of a user's access to the System"</p> | <p>10 (4)..... The user may file an appeal to the Electronic Appeals Committee, through the Cabinet Secretary, within 14 days of the decision to terminate the user's access.</p> | <p>The timeline looks stiff. One imagines a scenario where a user, for some reason, is not able to receive the notice, or is indisposed, and cannot rise to the 14 days. It is suggested that this be expanded to 30 days</p> |
| <p>11 on "Appeals against the decision to terminate a user's access"</p> | <p>11 (2) (d)..... Four representatives from the private sector provided that one of them shall be an Information Technology Specialist well versed with system forensic audit and cybercrime</p> | <p>To avoid the perception that these four will come from the "private sector", which is currently perceived to be represented by the stakeholder KEPSSA, make it more inclusive by having it read that the representatives will come from "the non-state user community" or look for any other suitable, inclusive and non-prescriptive phrase to describe where the representatives will come from.</p> |



| | | |
|---|---|--|
| <p>12 on "Submission of a survey to the Director"</p> | <p>12 (3)..... Upon submission of any survey data by the surveyor, the Director shall send a notification through short message service, email or directly through an online notification to confirm receipt.</p> | <p>This could be opened to allow for changes in modes of communication to read: <i>Upon submission of any survey data by the surveyor, the Director shall send a notification through an appropriate electronic notification to confirm receipt.</i></p> |
| <p>18 on "Sealing of the cadastral map and forwarding to Land Administration"</p> | <p>18 (1)..... the Director of Land Administration that the cadastral map has been updated to facilitate preparation of lease documents</p> | <p>Is the "Director of Land Administration" a gazetted or administrative office? Could we open this by referring to the "authorized office in the Department of Lands".</p> |
| <p>FORM SR3: SURVEY SUBMISSION FORM</p> | <p>(8) Field Notes: a. Total number of pages: b. Cover page; c. Index to field notes d. Other pages</p> | <p>This appears to replicate the current order where manual field books/notes are used. Could we allow for the use of the submission of digital data in which case this would not be necessary.</p> |
| <p>FORM SR6: FIELD NOTES CHECK</p> | <p>Survey Records Tracking Number Checker..... (i) Date of completion of field survey..... (ii) Date of calibration of chain..... (iii) Calibration details used by surveyor are correct/incorrect by.....°C.....Kg/30m.*</p> | <p>These details are direct extracts from the old system. This section could be revisited to allow for advance in technology. Chains and their calibration are now obsolete. The language could be changed to reflect today's reality.</p> |



4. Stamp Duty (Valuation) Regulations, 2020

| Section | Provision | Commentary | Recommendation |
|---------|---|---|--|
| 9 (a) | A valuation report shall contain; a) the address of the land | | Use location instead of the land |
| 10 (1) | A valuer on completion of a valuation exercise, shall electronically submit to the Chief Government Valuer the valuation report for approval. | From the Amendment of the Stamp Duty Act, private valuers are now allowed to do Stamp Duty Valuations. <i>Will the Chief Government Valuer be able to approve all these valuations without defeating the purpose of hastening the way of doing business in Kenya? The time taken may be too long.</i> | A clear procedure of how this will be done should be given and assurance given on the integrity. |
| 13(3) | The Chief Government Valuer may within seven days after receipt of the objection under this Regulation, a) dismiss the objection, if he or she considers that no adjustment in the valuation is justified; or b) make the adjustment, if he or she considers that the adjustment in the valuation is justified. | 1. Is seven days adequate for the Chief Government Valuer to dismiss the objection and make the adjustment (I would imagine to do this the CGV may require to do some research)? 2. After the amendment the Chief Government Valuer should appoint the panel of private valuers to do the Stamp Duty Valuation – Should this office be the one approving or disapproving the valuation returned. <i>How then will the same office be the one presiding over objections, will there be impartiality?</i> | At least fourteen working days may be more realistic There may need to have an adhoc arbitration body |

| | | | |
|----------|---|--|--|
| 14 | Grounds of objection | <p>Include another ground of objection to include;</p> <p>14 (f) Cases where sales are not completed (Tenant Purchase)</p> <p>These are the cases where purchase is completed several years after and the stamp duty valuation is done several years later with valuers returning the current value, which is much higher than the sale price.</p> | |
| SCHEDULE | On this form referred to in the Schedule as Form 1VA Stamp Duty Valuation Application Form | It is not clear who the valuer is (Is it the Chief Government Valuer or the valuer who did the valuation) | |

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

| Section | Provision | Commentary |
|-----------|---|---|
| 6 (1) iii | <p>There shall be a user account created in the system for every authorized user by-</p> <p>(iii) Providing the following information:</p> <ul style="list-style-type: none"> a) Name; b) Identity Number/ Incorporation/ Registration Number; c) Telephone Number; d) Alternative Telephone Number; e) E-mail address; f) Postal Address; g) Next of kin details; h) Passport size photo as profile picture in case of natural persons; and i) Physical Address | <p>In the case of a company, this section could include a passport photo of the person making the application for the legal entity.</p> |
| 10 (1) | <p>The Director – General or County Director may immediately suspend a user's when it comes to his/her notice that the user-</p> <ul style="list-style-type: none"> a) has contravened the obligations or the terms and conditions of access; b) is suspected to have committed ant fraud, identity theft or system misuse; c) allows an authorized/unqualified person to access the system; d) in case of professionals, is not in good standing; e) is dead; f) is declared insolvent g) is declared of unsound mind | <p>It could include circumstances under which a legal person/company can be suspended.</p> |

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| 12(2) | <p>The membership of the Electronic Appeals Standing Committee shall comprise of;</p> <ul style="list-style-type: none"> a) Three representatives from the Ministry b) One representative from NLC c) One representative from Council of Governors; d) Four representatives from the private sector provided that one of them shall be an Information Technology Specialist well versed with system forensic audit and cybercrime | <p>Other than having three representatives from the ministry, these could be reduced to two and the third person can be from the professional planning entity.</p> |
| 14(6) | <p>The e-mailing of document to the planning authority shall not constitute submission of a development application</p> | <p>Application should be deemed completed upon receipt of the email and payment in full as indicated in Section 15(4).</p> |



Summary of finding

1. There is need to align all the sectoral laws to the National Land Policy and the Constitution of Kenya, 2010
2. The Survey Act needs early attention given its critical role in regulation the acquisition and management of spatial data for use in Kenya's cadaster

Signed:

Dr. Mwendu Makathimo
Executive Director

**STAKEHOLDERS COMMENTS ON THE
REGULATORY IMPACT STATEMENT AND
PROPOSED REGULATIONS TO SUPPORT
ELECTRONIC LAND REGISTRATION AND
RELATED TRANSACTIONS**

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

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

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

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

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

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| | | by the government via the Ministry of Lands. | |
| ISK | | Delete Regulation 10 (c) not distribute, sell or combine any information accessed through the system; | Regulation intended to protect copyright material. |
| Lawyers Hub | Regulation 11 | Include duration of time during which user should respond to the grounds for suspension. Shouldn't be less than 14 days. | 11 (2)d amended to provide for the period which shall not be more than 14 days |
| LSK | Regulation 11(3) | In the event the Chief Land Registrar suspends a user account, the notice should be immediately emailed to the user via the email provided at the time of creating the account and SMS through the contact provided. It is our opinion that providing the option to include notice of service via post would defeat the essence of the draft Regulations. | Adopted |
| MoLPP/LSK/CAF/KBA/Lawyers Hub/ISK | Regulation 13 Electronic Appeals Committee 13(5) | <ul style="list-style-type: none"> • Constitution should be clear. • How will it be mainstreamed? • Will it operate in Nairobi? Should it be decentralized? • Provide for appeals to ELC court. • Appointment of the committee and parties ought to be independent • Add more members representing counties | <p>Proposal</p> <p>Do away with regulation 13 which provides for electronic Appeals on the following grounds;</p> <ol style="list-style-type: none"> 1. Composition- ad hoc or standing Committee <ul style="list-style-type: none"> - Central vs Decentralized Committees 2. Cost Implication 3. Section 86 LRA provides that appeals arising from decisions of the Land Registrar under the act lie with the ELC Court. 4. Appeal process is time consuming. |

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| | | <ul style="list-style-type: none"> • Land industry players such as representatives of LSK, KBA or ISK • Appeals should not be capped at 30 days. 90 days is preferable. Moving to court calls for huge costs thus adequate preparation. • Insert "e" representative from ISK. • "f" representative from Academia | Covered |
| MoLPP/ MMS Advocates/KBA/ LSK/KBA/KENHA | Regulation 14 Searches | <p>Search fee should be deleted as it was waived.</p> <p>Turnaround timelines regarding search results should be included.</p> <p>One applying for a search must upload a copy of title to avoid misuse of search privilege.</p> <p>Regulations should provide for finality, conclusiveness, reliability and veracity of the search.</p> <p>System should adopt a format that lists all previous interests or owners on any given land records.</p> <p>Not clear how government Agencies will access the system</p> | <p>We have retained it since fee is provided by law, it has just been waived. We have reworded the regulation.</p> <p>We have coached it in terms of Section 34 of the Act.</p> <p>As long as all the details in the system are accurate and verified, searches should be instant.</p> <p>The system requires one to upload the title copy.</p> <p>To make a recommendation in the report for a transitional period for verification by owners.</p> <p>Addressed by the two types of searches.</p> |

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| | | for searches undertaken for official purposes. | By registering as users in the system. |
| KBA | Regulation 15 | <ul style="list-style-type: none"> • Electronic Signature should be provided for • Advanced signature is more secure and no form of attestation might be needed | We have provided for the advanced electronic signature |
| KBA | | <ul style="list-style-type: none"> • Not instructive on documents required to be drafted by the Advocate as per Cap 16 such as charge documents. There should be a clear understanding as requires documents traditionally and legally required to be drafted by an Advocate who holds a current practicing certificate. | Documents/instruments that convey interests in land. Forms provided by the Land Regulations (General), 2017 adopted for use in the system. |
| KBA | | <ul style="list-style-type: none"> • Form of the Charge - The current form for bank charges should be amended to include the standard clauses as per the Land Act, 2012 and just like it is currently happening at the companies registry (you can attach your own articles of association or adopt the model ones) the regulation and the system can provide for an option to attach a specially drafted or prepared charge. | Recommendation on the adoption of forms for use in the system. This is already covered under Form LRA- 53 |

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

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

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

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

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

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| | | <p>with the applicable laws and governing documents and uploaded into the system as they are not issued at the Ministry.</p> <p>In the interim, we propose the introduction of a two-year transition period for a manual back up system until all records are not only available but have been verified on the electronic system, and the electronic registry is fully operational.</p> | |
| <p>EARB</p> <p>MoLPP</p> <p>Lawyers Hub</p> | <p>Regulation 27</p> <p>Manual Payments</p> | <ul style="list-style-type: none"> • Clarify instances where electronic payments cannot be done. • Manual payment will create loopholes and loss of government revenue. • Security of electronic fee payment needs to be addressed. • Manual payments provision should be deleted. • Manual payments will encourage corruption. With availability of mobile money and banks, manual payment should not be allowed at all. | <p>Adopted.</p> |
| <p>ISK</p> | <p>Third Schedule</p> | <p>There are a number of places where the reader is inappropriately addressed to as “you”, “your” etc. This should be changed to 3rd person referencing.</p> | <p>To be addressed by drafters.</p> |

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

COMMENTS AND RESPONSES

A. Survey (Electronic Cadastre Transactions) Regulations, 2020

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

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

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| | | Send notification to the user through short message service, email or online notification. To allow for changes with time, we could avoid specifying the methods of notifying. We could have: <i>Send notification to the user through any electronic means.</i> | |
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| REGULATION | ORGANIZATION/ PARTICIPANT | COMMENTS | RESPONSE |
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| 4 | 22-05-2020 ISK/ LSB/ VRB/ EARB Christopher Kinyua | Data submitted to include survey records to accommodate data submitted directly from equipment Data available to surveyors to re-framed to include topographical maps and other data | Already provided for in regulation 4 (1) |
| 4 | 22-05-2020 ISK/ LSB/ VRB/ EARB/ ALSK Julius Rotich | Regulations should focus on digital submission of survey work-Forms are very analogue. | Digital submission of survey data already provided for in Regulation 4 (1) |
| 4 | ALSK (Memo) | Survey Plans and Records 4 (1) The Director shall give direction on the format of data submitted for checking and authentication This is due to various survey software used by Licensed Surveyors | Already provided for in regulation 4(1) |
| 4 | NATURAL JUSTICE (Memo) | 4(3) The section sets out that survey plans, filed notes and computations shall be submitted electronically For the sake of clarity and consistency, the provision should set out the alternative method(s) that “Notwithstanding paragraph (1), where transactions cannot be carried out using the Electronic Cadastre, the person seeking to carry out the transaction shall carry out the transaction through such other means as the Director may determine. | The section referred to and the transition clause are sufficient |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Survey (Amendment) Regulations, 2020

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

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

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

| S/ No. | ORGANIZATION/ PARTICIPANT | COMMENTS | RESPONSE |
|--------|---|--|--|
| 1 | 18-05-2020 Council of Governors (COG) | <ol style="list-style-type: none"> Proposed Survey Regulations Be stayed until Survey Act is amended to recognise the County Government Survey is a devolved function | <p>A recommendation to be made for amendment of the current Survey Act (Cap. 299). Title survey not devolved – role for Counties need to be clarified.</p> |
| 2 | 22-05-2020 ISK/ LSB/ VRB/ EARB Prof. G Wayumba | <ol style="list-style-type: none"> We just need to have electronic forms, which can be used to carry out all the operations online. We don't need any other physical maps. My understanding of the amendment is that of the RIMs. There is a lot of problems in updating the maps at the moment. It should be done at the Village Committee level so that people in the village know which land is being affected by subdivision or being sold I suggest that the Survey Act should be revised to accommodate 3D cadastral substantively, not what we do now in the sectional properties act. I have not heard any presentation on this at all. We just need to have electronic forms, which can be used to carry out all the operations online. We don't need any other physical maps. | <ol style="list-style-type: none"> Everything will be electronic once the transition from physical to electronic format is effected Map Amendment is one of the system functions. Accuracy of maps to be addressed through Geo-referencing 3D cadastral plans are included in sectional plans and/ or other plans |
| 3 | 22-05-2020 ISK/ LSB/ VRB/ EARB Prof. Faith Karanja | <p>Given the direction of going electronic in cadastral processes, it would be good to have a standing and competent Cadastral Technical Committee under the Director of Survey to provide the necessary support. This will ensure that any action or decision from the director of survey is soundly</p> | <p>This is the role of the LSB</p> |

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

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

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

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

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

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

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

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

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

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

Stamp Duty (Amendment) Regulations, 2020

We note that the Regulations do not set out in detail the process of e-stamping. Based on the Hong Kong system, we note that an effective estamping system will need to take into consideration a number of factors:

- Harmonization of the processes and steps that need to be under taken before an instrument is deemed as 'duly stamped.' This will therefore entail harmonization of the process of valuation, assessment, payment and finally the generation of the electronic stamp certificate.
- The system provides for how all the relevant information regarding the instrument and the parties that will be relied upon in generating the stamp certificate is to be keyed for purposes of generating the stamp certificate.
- For one to generate an electronic certificate, one must be an authorized user (advocates) and have a user account. The system should not be accessible to members of the public.
- To create a "Stamp Certificate Enquiry" section or tab in the system to allow Users to verify the authenticity of the stamp certificate. It is important that the electronic stamp certificate has unique security features not capable of being tampered with, to help Users verify the authenticity and reliability of the certificate.
- Provision for rectification or cancellation of a stamp duty certificate in the event of a

Following engagement with National Treasury, it was advised that these aspects can be best handled administratively through user manuals because of the system dynamism.

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| | <p>mistake or error and how this will be done.</p> <p>It is also important that the draft Regulations include a provision that, an instrument that is electronically stamped is considered as a duly stamped document.</p> <p>We further suggest that the definitions of the following terms be included in the interpretation section of the Regulations in order to provide clarity on the electronic stamping system:</p> <p>a. Definition of “e-stamp” - this would clarify on what amounts to an electronic stamp. b. Definition of “duly stamped” - to include an instrument electronically stamped. c. Definition of “stamp certificate” - to include a certificate in electronic form. d. Definition of “e-stamping system” - this is a system that will enable users to make applications for an assessment of stamp duty, and the generate the stamp certificate.</p> | |
| <p>Objection</p> | <p>Section 13 on Objection A person aggrieved by a valuation report made under the Act, may within seven days from the date of preparation of that report, electronically lodge an objection in Form 2VA in the schedule to these Regulations</p> <p>How do we deal with Project Affected Persons that are not ICT literate to electronically submit their acceptance / rejection of letters of award digitally?</p> | <p>Objections relate to stamp duty valuations alone, the Land Act has different mechanisms for appealing compensation awards</p> |

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

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

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

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

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

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| | representation by an authorized agent on their behalf. | |
| 25 | Include the term 'estate agent' and 'estate registration board' in the regulations for purpose of clarity | The terms can be included if they are referred to in the body of the regulations/rules |
| 26 | It is recommended that rather than adding the words 'including electronic form' the definition of 'data base' in regulation 3 (Land regulations) while in regulation 4 the word 'inventory' be defined to include physical and electronic form. | To be considered |
| 27 | NLC has, by the Constitution and statutes, a lead role in the preparatory steps towards registering a title. These include: allocation of land; alienation of public land; disposing of public land; format of lease; setting up terms of leases and licenses; finalizing on the contract of lease up to the point of execution; coordinating change and extension of user; setting up the rules regarding renewal of leases before expiry; and coordinating subdivision whereas the Ministry of Land is the special entity with authority to register, issue and guarantee land title." | Save to the redefining of the process of conversion of land from public to private to culminate at the issuance of an allotment letter by the NLC, by section 2 of the Land Act "alienation of public land" and hence private land, all other functions as spelt out in the constitution and statute have not been interfered with. It is on the premise of section 2 of the Land Act that the CS issues leases on land that has progressed from allocation or alienation. |
| 28 | <p>The recent amendment to Section 23 (2) conflicts with the Constitution, the Land Acts, the current LRA and LA Regulations and judicial precedents. The LSK would like to draw your attention to the following:-</p> <p>This amendment constitutes an error on the face of the record. It refers to leases over private land while the deleted section dealt with leases over public land. It introduces private leases in a section dealing with leases over public land.</p> <ul style="list-style-type: none"> • The amendment also created ambiguity and is clearly defective: it purports to grant the Cabinet Secretary power to grant leases over private land or property, which would be unconstitutional and an unwarranted interference with private interest, a preserve of the registered proprietors. <p>It is unclear in what circumstances the Cabinet Secretary would issue leases or licences over "land held by any person under leasehold tenure" under article 64 (b) of the Constitution. Such an intervention would be an illegal and unconstitutional enterprise.</p> | Section 2 "alienation of public land" clearly marks where public land translates to private land (by way of issuance of a letter of allotment) and this does not in any way conflict with the constitution. Public land in respect of which a letter of allotment has issued becomes private land hence section 23(2) reference to that land as private land |

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

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

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

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

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

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

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

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

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

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

REGULATION 1: APPLICATION

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

REGULATION 2: INTERPRETATION

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

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

| No | Stakeholder | Regulation/Section | Issue/Question | Team Comments | Recommendation |
|-----|-------------|--------------------|---|---|----------------|
| 38. | | | Under regulation 3, is there a broad-based regulation for establishment of the NLS before regulating the sub-component of "e-application module" for a cohesive system | Issue not clear to seek clarification from KIP | |
| 39. | KIP | 3.1 | 3 (1) this module will be composed of two sub-components: <ul style="list-style-type: none"> i. National module ii. County module | To be considered | |
| 40. | TCPAK | | As the basic building block, establish electronic development control and Enforcement System in each of the 47 counties and the same integrated to the National Land Information System | This needs to be clarified in light of the capacity by counties to establish such systems. Maybe we have a clause that the system shall be phased, just like the registration module | |
| 41. | CoG | | There shall be established an electronic development control and enforcement system managed and controlled by the County Governments based on National Standards for the purpose of handling applications for development permission at the County Level. | This is debatable based on the capacity of 47 counties to establish such systems, and within what time frame | |
| 42. | EBK | 3(1) | The term "consultant" limits to professionals mandated to submit documents on behalf of registered owner of land. This might be limiting where the land ownership is complex or the professional is not directly engaged by the landowner and may be dealing with a beneficial owner of property. | Role of each professional clearly spelt out | |

REGULATION 4: DATABASE AND OPERATION TOOLS

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

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|-----|-----------------|-----------|---|--|
| 44. | KIP | | <p>This module should have a segment for NLC. The NLC will maintain in the system monitoring frameworks and oversight parameters as provided for in section 9(c) of the principal act.</p> <ol style="list-style-type: none"> 1. Section 9 of the principal act reinforces the monitoring and oversight role of the commission. 2. Section 33 of the principal act requires approved physical and land use plans to be submitted to Director general and NLC 3. Section 35 of the principal act provides that progress reports on implementation of various categories of plans shall be submitted to NLC and the Cabinet secretary. 4. Development control is an element of plan implementation. | <p>To be considered for incorporation</p> |
| 45. | | | <p>What role does the Director General have in keeping registers of documents of all development applications submitted in Kenya? This is not in line with schedule 4 of the Constitution of Kenya.</p> <p>County Governments, the foundation functionaries of development Control and enforcement are totally missed out.</p> <p>Include: In each County, the County Executive Committee Member shall maintain an electronic database system for the –</p> <ul style="list-style-type: none"> - Approved physical and land use development plans -- - Development control instruments - Registers of documents | <p>DG should maintain a register for strategic and inter-county projects</p> |
| 46. | TCPAK | | <p>If the information is classifiable as public information then there should be no restriction of access to the public on the basis of the use for which the information is sought.</p> <p>Access should only be limited on the reasonable grounds set out in Section 6 of the Access to Information Act. These grounds should be applied on a case by case basis. Furthermore, a mechanism should be put in place to challenge such restrictions or at the very least an obligation to provide reasons for the restriction, which can be appealed.</p> | <p>This is part of administrative database that should be accessible for decision making</p> |
| 47. | | 4(2)(a) | | <p>Worth considering</p> |
| 48. | Natural Justice | | | |
| 49. | | 4(2)(iii) | <p>Delete "...for research purposes"</p> | |
| 50. | CAF | | <p>Amend the following to state: - “(1) The County Directors of Physical and Land Use Planning/CEC shall maintain in the system, an electronic database for the – (i) approved physical and land use plans (note preparation and approval of these plans is a county function) in</p> | <p>The provision should be two pronged, for strategic projects and ordinary projects</p> |

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| | | | <p>accordance to provisions of the First and Second Schedules of the Act;</p> <p>(ii) development control (note this is a county function) instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals; and</p> <p>(iii) Registers of documents submitted by applicants for development permission (County function) as provided in Schedule 1."</p> | |
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| REGULATION 5: REQUIREMENTS FOR HANDLING APPLICATIONS FOR DEVELOPMENT PERMISSION | | | | | |
|--|--------------------|---------------------------|---|--|-----------------------|
| No | Stakeholder | Regulation/Section | Issue/Question | Team Comments | Recommendation |
| 51. | CoG | 5(1) | "(1) For purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the County Executive Members in charge of physical and land use planning shall – Rename the section 5 heading to read: "Framework for handling development applications" | To be considered | |
| 52. | | | The entire regulations are ambiguous that the Director General is the superintending authority on all development applications. | The DG is a coordinating office not superintendent parsee | |
| 53. | | | There are no other national government system users other than the Director General. | | |
| 54. | | | Re-write Section 5 (1) to read: "In respect to development applications made to national government for purposes of submission of development proposals listed under section 1 of the Third Schedule of the Act, the Director-General shall....." | To be discussed with the DG | |
| 55. | KIP | 5(1) | Re-write Section 5 (1) to read: "In respect to development applications made to county government, the County Director of Planning shall....." | | |
| 56. | | | The role of NLC in overseeing applications is missing throughout the Regulations. | To be considered | |
| 57. | | | A separate section can be written outlining the system operators of the national and county government systems. | To be considered | |
| 58. | | | There have been instances of unqualified professionals vetting applications at Counties. As well as professionals examining | Consider giving a sample structure of planning unit with recommended | |
| 59. | AAK | 5 (2) (ii) | | | |

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

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

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

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

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

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

| REGULATION 12: APPEALS AGAINST THE DECISION TO TERMINATE A USER'S ACCESS TO THE SYSTEM | | | | | |
|--|-------------|--------------------|---|--|----------------|
| No | Stakeholder | Regulation/Section | Issue/Question | Team Comments | Recommendation |
| 82. | CAF | 12(1) | Amend to state: - "The County Physical and Land Use Planning Liaison Committee shall hear appeals against the termination of user's account within fourteen (14) days of the decision by the county executive committee member." | Liaison committees are not structured to hear appeals on system administration | |
| 83. | KIP | 12(2) | Provides for four member from the private sector One of the representatives from the private sector should be a practicing planner nominated by the Kenya Institute of Planners | Composition of the appeals committee to be reviewed but in light of Mwangozo | |
| 84. | NJ | 12(5) | There is a need to specify the specific court for clarity. "....may appeal to the Environment and Land Court within 30 days from the date of such decision." | Need to interrogate whether ELC is best placed to hear issues on system administration | |
| 85. | CoG | | The County Physical and Land Use Planning Liaison Committee shall hear appeals against the termination of user's account within fourteen (14) days of the decision by the county executive committee member. | | |
| 86. | TCPAK | 12(2) | The membership of the Electronic Appeals Standing Committee does not reflect real user and equity needs. | | |

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

REGULATION 15: RECEIVING AND INVOICING DEVELOPMENT APPLICATION FEES

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

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|-----|-------|-------|--|--|--|
| 97. | TCPAK | | This should be amended for consistency with section 14(6) For efficiency and accountability, the process must be clear and specific on the process for each type of profession application – development plans, architectural design, engineering design, and land survey | This is not applicable | |
| 98. | CoG | 15(2) | The application shall be received and downloaded by the authorised county planning officer and subject to prescribed fees in accordance to the regulations issued from time to time by– (i) the County legislation for proposed projects that fall in the classification of strategic national importance or intercounty, | The point of receiving and invoicing projects on national importance to be discussed with DG | |

REGULATION 16: REGISTRATION OF DEVELOPMENT APPLICATION

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

REGULATION 17: CIRCULATION AND REVIEWING OF APPLICATION

| No | Stakeholder | Regulation/Section | Issue/Question | Team Comments | Recommendation |
|------|-------------|--------------------|--|--|----------------|
| 100. | NCA | 17(2) | county director of physical and land use planning for the prescribed projects of national importance for onward approval by the County Executive Committee Member of physical and land use planning.” | Need to be relooked in light of the roles of the planning authorities | |
| 101. | KIP | 17 2(ii) | There should be time limit for circulation from application to approval. The system should have its own internal checks e.g. a control room that should be aware if officials intentionally slows down the system | There is need for categorization of projects in terms of risks and magnitude | |

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

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

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

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

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|------|-------|-------|--|-----------------|--|
| | | | “The CEC in charge of physical and land use planning shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69 and 33 of the Act” | | |
| 113. | TCPAK | 19(1) | To be deleted as is irregular and against the law as explained earlier. | disregard | |
| 114. | | 19(2) | Be updated to reflect 17 and 18 above for each professional line | disregard | |
| 115. | | 19(3) | Be update to accommodate the different professional line offices/departments as explained in 17/18 | disregard | |
| 116. | KIP | 19(1) | Provide a segment for NLC to be in the technical committee that reviews applications prescribed as projects of strategic national importance. (this may require that the regulations for the principal act details this) | To be discussed | |
| 117. | | 19(2) | the decision to approve or disapprove to be communicated by the CS and NLC to receive this decision | To be discussed | |
| 118. | CoG | 19(1) | The County Executive Member in charge of physical and land use planning shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69 and 33 of the Act | Already covered | |

REGULATION 20: DECISION MAKING AND COMMUNICATION

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

REGULATION 21: Preparation of Conformance Conditions Applications

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

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| 121. | | | | |
| 122. | | | | |
| 123. | | | | |
| 124. | | | | |

REGULATION 22: RECEIVING AND PROCESSING OF CONFORMANCE CONDITIONS APPLICATIONS

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

REGULATION 24: NOTIFICATIONS OF INSPECTIONS

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

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

| OTHERS | | | | | |
|--------|--------------|--------------------|--|--|----------------|
| No | Stakeholder | Regulation/Section | Issue/Question | Team Comments | Recommendation |
| 136. | | 6(g) | Signing up User Account <ul style="list-style-type: none"> No need to include details of next of kin passport size photo to be optional | To compare notes with the team working on the common issues relating to system users | |
| 137. | | 10 | Suspension of user's account <ul style="list-style-type: none"> Fair hearing before suspension of user's account | Suspension is immediate, pending determination of suspected violations while termination is consequential. | |
| 138. | | 14 (3) (iii) | Submission of application <ul style="list-style-type: none"> Requirement of a geo-referenced cadastral map might not be achievable making application difficult Government to allow for google map generated pin location maps to ease doing of business | | - |
| 139. | Maina Onguso | 17 | Circulation and Reviewing of application <ul style="list-style-type: none"> Timelines for circulation should be defined to avoid speculation and misuse | Timelines are provided in general regulations of PLUPA | |
| 140. | | 18 | Development Technical Validation Committee <ul style="list-style-type: none"> Members to include representatives of professional bodies Members of the committee should take an oath of office Members should be entitled to a sitting allowance Minutes to be recorded and attendance list be duly signed | Membership should be determined in line with Mwongozo Policy and membership should not exceed 9 How the committee shall conduct its business shall be determined administratively | |
| 141. | | 19 | Decision Making and Communication of strategic projects <ul style="list-style-type: none"> Define the timelines for making the decision Timeline to be 7days | To be discussed with the DG | - |
| 142. | | 20 | Preparation of Conformance Conditions Applications: <ul style="list-style-type: none"> Provide for county technical officer to share application upon written instructions from the developer/owner | To be considered | - |
| 143. | | | General comments: <ul style="list-style-type: none"> The system to be accessible on phone via an app. | These can be part of the report | |

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| | | | <ul style="list-style-type: none"> o E-payment to be linked into the system to reduce human interaction o Reduce the need to present blue prints o Reduce human interaction | | |
| 144. | | 2 | Electronic appeals committee <ul style="list-style-type: none"> o Define the committee | <p>“ electronic appeals committee ” means a committee constituted under regulation 11 to hear appeals against the termination of a user’s account</p> | |
| 145. | DG-PLUP | 10(4) | Appeals to electronic appeals committees <ul style="list-style-type: none"> o Edit the regulation o Need to provide a submission form for appeals o Decentralize the committee | <ul style="list-style-type: none"> - Consultation during establishment of the committee to be between the CS and CECM not NLC - Insert the words “ or the county executive committee member ” immediately after the word “secretary ” in regulation - Include a representative of Ministry in charge of ICT - Reduce no. of representative from the Ministry and private sector - Secretariat be comprised of rep of CECM & NLC | |
| 146. | | 11 | Appeals against decision to terminate user account <ul style="list-style-type: none"> o Refine membership of the committee o Refine timeline for making decision o The court with jurisdiction to heal appeals of aggrieved persons | <ul style="list-style-type: none"> - Provide a submission form - The Electronic Appeals Standing Committee shall hear and determine any matter referred to it within fourteen days and notify the user of its decision within 7 days of making a determination - Appeals to court be directed to ELC which has jurisdiction on physical and land use matters | |
| 147. | | 18(4)(e) | Development Technical Validation Committee | To be corrected | |

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| 148. | | | <ul style="list-style-type: none"> o Typographical error - Insert a comma after the word "county" in regulation 18(4)(e) | | | | |
| 149. | | 23 | <ul style="list-style-type: none"> o Submission form for structural drawings by engineers o Other licensed professionals such as engineers, who are part of validation committee need to be provided with forms for submission of their work | | | To be considered | - |
| 150. | | | <ul style="list-style-type: none"> o Signing of the form o Form EPLUPA003 (Certificate of Compliance) The form should be signed by County Director o County Director should sign Form on behalf of the CECM who is the planning authority | | | To be considered | |
| | | 2 | <ul style="list-style-type: none"> o Interpretation o Refine the list of definitions with an aim to reduce the number o Add surveyor in the list of users as they interact directly with the system | | | To be considered | - |
| 151. | | 4 | <ul style="list-style-type: none"> o Database and Operation Tools o Check the mandates granted to systems administrators in line with their functions in PLUPA o Provision regulation 4(1) does not resonate with reg. 5(2) o Establishment of the system which is currently vested with the DG should be expanded to the County Director for efficiency and decentralization of functions | | | To be considered | - |
| 152. | | 5 | <ul style="list-style-type: none"> o Requirements for handling applications for development permission (scope of the system) o The scope of the system should be to provide an avenue for undertaking the procedural provisions of the general regulations under Sec.90 of PLUPA electronically | | | To be considered | |
| 153. | | 12 & 13 | <ul style="list-style-type: none"> o Appeals against the decision to terminate a user's access to the system & Submission of application o Rework the mandates of the various role players (CS & CECMs) in line with their functions in PLUPA including that of establishing the committees o Proposed committees cannot be established under the regulations but under the Act | | | Regulations for strategic and inter-county projects provided for in the improved version of the draft | - |

