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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON:

THE LAND LAWS (AMENDMENT) NO. 2 BILL (NATIONAL ASSEMBLY BILL NO. 76
OF 2023)

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THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	09 APR 2024
	DAY: Tuesday
TABLED BY:	Chair, Departmental Committee on Lands Hon. Joash Nyamoko
CLERK-AT THE TABLE:	Anne Shibuko

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 - (d) Institution of Surveyors of Kenya
 - (e) Land Development and Governance Institute
 - (f) The Kenya Institute of Planners
 - (g) Mr. Laibuta Mutua

CHAIRPERSON'S FOREWORD

The Bill proposes to amend the Registration of Documents Act; the Land Control Act, the Land Registration Act, 2012, the Land Act, 2012, Community Land Act, 2016 and the Sectional Properties Act, 2020 as follows–

Registration of Documents Act

The Bill seeks to *inter-alia* amend the Registration of Documents Act by decentralizing land registries for registration of documents across the country as opposed to when such services were only available in Nairobi and Mombasa, and align the Registration of Documents Act to the Constitution of Kenya, 2010.

The Land Control Act

The Bill seeks to reconstitute and align land control boards according to the Constitution of Kenya, 2010, new governance structure and enable granting consents to transact in agricultural land within the paradigms of Article 65 of the Constitution which allows non-citizens to own land on leasehold terms not exceeding 99 years, as opposed to when their ownership could only be permitted by the President.

The Land Registration Act, 2012

The Bill seeks to streamline registration of long term leases within the provisions of the Sectional Properties Act, 2020 and also to widen the scope under which the registrar can revoke a title obtained through fraud by the proprietor.

The Land Act, 2012

The Bill seeks to amend the Land Act by giving clarity as to what it means by allocation of public land and the respective roles played by the National and County government as opposed to the National Land Commission and to separate the roles of renewal and extension of leases and respectively assigning them to the National Land Commission and the Cabinet Secretary. The Bill also seeks to provide for the periodical review of rent and the valuation of land for rent every ten years to be in tandem with the current property values, vest upon the Cabinet Secretary, the mandate of handling compulsory land acquisition, eliminate conflict of interest likely to occur when one entity is involved in the valuation process and at the same time making compensation payments and eliminate delay in acquiring land since the acquiring public body has direct control in making compensation payments as opposed to when funds were being transferred to the Commission and establish the Land Acquisition Committee to replace of the Land Acquisition Tribunal.

The Community Land Act, 2016

The Bill seeks to amend the Community Land Act to allow the Cabinet Secretary to complete pending adjudication programmes under the Land Adjudication Act beyond the 2 year period permitted by the Community land Act.

The Sectional Properties Act, 2020

The Bill seeks to amend the Sectional Properties Act to widen the scope of the Sectional Properties Act to include phased developments, introduce a second tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed use sectional development.

The Bill was read a First Time in the House on Thursday, 7th December, 2023 and thereafter committed to the Departmental Committee on Lands for review and repowering to the House in line with National Assembly Standing Order 127.

Article 118 (1b) of the Constitution of Kenya and National Assembly Standing Order 127 (3) require Parliament and its Committees for facilitate public participation and involvement in the law-making process. In fulfilment of this requirement, the Committee put in an advertisement in the print media on 9th December 2023, inviting the public to submit memoranda on the Bill.

By close of business on Thursday, 28th December, 2023, the Committee had received submissions from the National Land Commission, the State Department for Lands and Physical Planning, the Association of Licensed Land Surveyors of Kenya (ALLSK), the Institution of Surveyors of Kenya Mr. Laibuta Mutua and Land Development and Governance Institute all of which are contained in this Report. The Committee thereafter considered the Report of the Bill and made various observations and recommendations as indicated in this Report.

The Committee appreciates the support accorded to the Committee in considering the Bill by the office of the Clerk and the participation of the Honorable Members of the Committee and finally the Committee Secretariat for their exemplary performance in the provision of technical and logistical support. The Committee is also grateful to various stakeholders for their submissions and input which gave the Committee the much-needed insights in relation to the Bill.

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

PART I

1.0 PREFACE

1.1 Introduction

1.2 Legal Provision on Public Participation

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

a) Methodology used by the Committee in Public Participation

4. The Land Laws (Amendment) Bill No. 2 of 2023 was read a First Time on Thursday 7th December 2023 and thereafter committed to the Departmental Committee on Lands for consideration and reporting to the House.
5. Pursuant to Article 2 of the Constitution and National Assembly Standing Order 127(3), the Committee through local daily newspapers of Monday, 9th December, 2023 published an advertisement inviting the public to submit memoranda. Further, vide letters dated Thursday 25th January, 2024, the Committee invited various stakeholders to submit memoranda on the Bill.
6. By close of business on 28th December, 2023, the Committee received memoranda from the National Land Commission, the State Department for Lands and Physical Planning, the Association of Licensed Land Surveyors of Kenya (ALLSK), the Institution of Surveyors of Kenya, Mr. Laibuta Mutua and Land Development and Land Development Governance Institute.
7. The Report contains an analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.

b) Mandate of the Committee

8. The Departmental Committee on Lands is one of the Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ii. To study the programmes and policy objectives of ministries and departments and the effectiveness of the implementation;
- iii. on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
- iv. To study and review all legislation referred to it;
- v. To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- viii. To examine treaties, agreements, and conventions.
- ix. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
- x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- xi. To examine any questions raised by Members on a matter within its mandate.

c. Subjects under the Committee

9. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters in relation to the subject of lands and settlement.
10. In executing its mandate, the Committee oversees the Ministry of Lands and the National Land Commission.

d. Membership of the Committee

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

Chairperson

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

UDA

Vice-Chairperson

Hon. Jayne Kihara, MP
Naivasha Constituency

UDA

Hon. Rachael Kaki Nyamai, MP
Kitui South Constituency

Jubilee

Hon. Gideon Ochanda, MP
Bondo Constituency

ODM

Hon. Joseph Hamish Dena, MP
Nominated

ANC

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

ODM

Hon. Mathias Robi Nyambabe, MP
Kuria West Constituency
UDA

Hon. George Koimhuri, MP
Juja Constituency
UDA

Hon. Paul Katana, MP
Kaloleni Constituency
ODM

Hon. Josses Lelmengit, MP
Emgwen Constituency
UDA

Hon. Gachoki Gitari, MP
Kirinyaga Central Constituency
UDA

Hon. Ali Wario Guyo, MP
Garsen Constituency
ODM

Hon. Omar Mwinyi, MP
Changamwe Constituency
ODM

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

Hon. Anthony Kenga Mupe, MP
Rabai Constituency
PAA

e. Committee Secretariat

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

Mr. Joshua Ondari
Clerk Assistant I/ Lead Clerk

Mr. Binensa Mabungu
Clerk Assistant III

Ms. Noelle Chelagat
Media Relations Officer

Ms. Brenda Michira
Research Assistant III

Mr. Sidney Lugaga
Senior Legal Counsel

Ms. Nancy Chamunga
Fiscal Analyst III

Mr. Yeziel Jillo
Serjeant-at-Arms

PART II

2.0 OVERVIEW OF THE BILL

13. The Land Laws (Amendment) No.2 Bill, 2023 is a government Bill, sponsored by Hon. Kimani Ichungwah, Leader of Majority. The Bill was published on 6th December, 2023, read for the first time on Thursday 7th December 2023 and committed to the Departmental Committee on Lands for consideration and reporting to the House.

Object of the Bill

Registration of Documents Act

14. The Bill seeks to *inter-alia* amend the Registration of Documents Act by decentralizing land registries for registration of documents across the country as opposed to when such services were only available in Nairobi and Mombasa, and align the Registration of Documents Act to the Constitution of Kenya, 2010.

The Land Control Act

15. The Bill seeks to reconstitute and align land control boards according to the Constitution of Kenya, 2010 new governance structure and enable granting of consents to transact in agricultural land within the paradigms of Article 65 of the Constitution which allows non-citizens to own land on leasehold terms not exceeding 99 years, as opposed to when their ownership could only be permitted by the President.

The Land Registration Act, 2012

16. The Bill seeks to streamline registration of long term leases within the provisions of the Sectional Properties Act, 2020 and to also widen the scope under which the registrar can revoke a title obtained through fraud by the proprietor.

The Land Act, 2012

17. The Bill seeks to amend the Land Act by giving clarity as to what it means by allocation of public land and the respective roles played by the National and County government as opposed to the National Land Commission and to separate the roles of renewal and extension of leases and respectively assigning them to the National Land Commission and the Cabinet Secretary. The Bill also seeks to provide for the periodical review of rent and valuation of land for rent after every ten years to be in tandem with the current property values, vest upon the Cabinet Secretary, the mandate of handling compulsory land acquisition, eliminate conflict of

interest likely to occur when one entity is involved in valuation process and at the same time making compensation payments and eliminate delay in acquiring land since the acquiring public body has direct control in making compensation payments as opposed to when funds were being transferred to the Commission and establish the Land Acquisition Committee to replace of the Land Acquisition Tribunal.

The Community Land Act, 2016

18. The Bill seeks to amend the Community Land Act to allow the Cabinet Secretary to complete pending adjudication programmes under the Land Adjudication Act beyond the 2 year period permitted by the Community Land Act.

The Sectional Properties Act, 2020

19. The Bill seeks to amend the Sectional Properties Act to widen the scope of the Sectional Properties Act to include phased developments, introduce a second tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed use sectional development.

PART III

3 SUBMISSIONS BY STAKEHOLDERS ON THE LAND LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 76 OF 2023)

3.1 Submission by the State Department for Land and Physical Planning

The State Department for Lands and Physical Planning appeared before the Committee on Thursday, 1st February, 2024 and submitted as follows-

Registration of Documents Act, Cap 285 (Clause 2-16)

20. Clauses 2-16 seeks to amend Registration of Documents Act, Cap 285 by –

- a) Decentralizing land registries for registration of documents across the country as opposed to when such services are only currently available in Nairobi and Mombasa.
- b) Aligning the Registration of Documents Act to the Constitution of Kenya, 2010.
- c) Recognizing only documents written in English and Kiswahili.
- d) Redefining the term registrar to mean any registrar designated as registrar of documents in any registry.

Land Control Act, Cap 302 (Clause 17-42)

21. Clause 17-42 of the Bill seeks to amend the Land Control Act, Cap 302 to—

- a) Reconstitute and align the land control boards according to the new governance structure i.e. including County Governments in constitution of the Land Control Boards.
- b) Enable non-citizens to own agricultural land within the limits of Article 40 & 65 of the Constitution which allows ownership under leasehold tenure for a term not exceeding 99 years.
- c) Introduce special land control meetings for urgent Applications.

Land Registration Act, 2012 (Clause 36-43)

22. Clause 36-43 of the bill seeks to amend the Land Registration Act, 2012 to—

- a) Streamline registration of long-term leases within the provisions of the Sectional Properties Act, 2020.
- b) Widen the scope under which the registrar can alter or cancel a title obtained through fraud by the proprietor and to reduce the notice period to 30 days from 90 days.
- c) Draw a clear-cut line when one can create interests in land by way of long-term leases as opposed to sectional properties in an urban set-up.

Justification: Where long-term leases are created over sectional units on a leasehold land to confer the entire leasehold without retaining reversionary

interest, the registrar shall register each sectional unit and issue a certificate of lease in accordance with the Sectional Properties Act, 2020.

Land Act, 2012 (Clause 44-78)

23. Clause 44-78 of the bill seeks to amend the Land Act, 2012 to—

- a) Re-define the term “allocation of land” to mean alienation of land by either government by way of issuance of a letter of allotment by the NLC to any person to hold the land either under leasehold or freehold tenure;
- b) Define the term “letter of allotment” to mean a written expression of offer by the NLC to a person who duly accepts the offer of being granted rights to hold public land in an alienation of public land or allocation of land process.
- c) Give clarity as to what it means by allocation of public land.
- d) Replace the Land Acquisition Tribunal with the Land Acquisition Committee.
- e) Set out clear roles played by the National Government, County government and the National Land Commission as far as renewal and extension of leases is concerned.
- f) Assign the role of renewal of leases to the National Land Commission and that of extension to the Cabinet Secretary.
- g) Assign to the Cabinet secretary the role of valuation services for purpose of compulsory acquisition including conducting inquiry and making the award. Assign to the acquiring public body the role of making compensation payments.
- h) Conduct periodical review of land rent, including peppercorn land rent and valuation for purposes of rent after every 10 years.
- i) Introduce a land levy equivalent to land rent for freehold land within the boundaries of urban areas and cities.

The Community Land Act, 2016 (clause 79-80)

24. Clause 79 – 80 of the Bill seeks to amends the Community Land Act to—

- a) allow the Cabinet Secretary to complete pending and uncompleted adjudication programmes under the Land Adjudication Act beyond the 3 year timeline set under the Community land Act.

Sectional Properties Act, 2020 (Clause 82-86)

25. Clause 82-86 of the seeks to amend the Sectional Properties Act, 2020 to—

- a) Widen the scope of the Sectional Properties Act to include phased developments.
- b) Introduce a second tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed use sectional development.
- c) Give clarity under which circumstances long-term leases issued under the LRA can convert to sectional units under the SPA.

- d) Define the term “to confer entire leasehold interest” to mean the transfer of a unit within a building on a parcel of land held on a leasehold tenure with an unexpired residue of the term of not less than twenty-one years, by a developer or owner without retaining any interest including reversionary interest.

3.2 Submission by Institution of Surveyors of Kenya

The Institution of Surveyors of Kenya appeared on Friday, 2nd February, 2024 and submitted as follows-

The Land Control Act, Cap 302

26. Clause 34 a) (ii) of the Bill to be amended by providing that the CECM should nominate a Land Surveyor and a Physical Planner.

Justification: they recommended that the committee needs to have professionals in the Land sector. A land Surveyor and a Physical Planner are necessary for the proper functioning of the Land Control Board.

27. Clause 34 b) (2) of the Bill be amended by substituting the following-

b) For public service- specify from which departments.

c) It is important to state the criteria for this selection.

Justification: Specify the composition of this persons otherwise the statement appears vague. One of these officers should be a Land Officer.

The Land Registration Act, No. 3 of 2012

28. Clause 40 (b) should be amended to read - The Registrar shall register long-term leases and issue certificates of lease if the respective interests are captured and "georeferenced" in a section plan drawn by a "Surveyor" and approved by the Authority responsible for land survey.

Justification: The plan should be georeferenced by a land surveyor otherwise the Director of Surveys can be compelled to authorize surveys from other quarters.

29. Clause 41(a) should be amended by retaining the initial provision which includes the phrase “Georeferenced by a surveyor.”

Justification: There is need to retain the certificate of rent clearance so that it is not dependent on the judgement by the registrar. The potential buyers have an obligation to ensure the property is up to date in terms of rent and rates payments. In any case, if someone buys a property that has rent and rates arrears, the obligation shifts to him.

They proposed that this be embedded on ArdhiSasa, the system should simply refuse to finalize a transaction for property that has arrears.

30. Clauses 43 (b) should be amended to provide a written notice of 60 days

Justification: 30 days is too short and 90 days was too long so 60 days is a compromise.

The Land Act, No. 6 of 2012

31. Clause 47 (b) should be deleted and retain what is in the Act.

Justification: it usurps the NLC Act 2012.

32. Clause 48(1) - proposes that the annual rent be based on an unimproved site value to be assessed every 10 years.

Justification: Rent should not be pegged on developments that have been made on the land.

33. The proposed clause 49 should be deleted and retain the former provision

Justification: it usurps the NLC Act 2012.

34. The proposed clause 51 should be deleted

Justification: Freehold land should not attract any annual levy or rent. You cannot pay rent or a levy to someone who doesn't own the land. This would be unfair and can be challenged in a court of law.

35. Clause 52 should be amended to read - Whenever a public body....., the respective accounting officer shall....

Justification: There is included in the list of definitions, a public body. Their opinion was the definition was included because of this section.

36. Clauses 52 in 107(1) - Retain the former provision. Application to be made to the commission (NLC). Once the land is acquired, it becomes public land which is managed by National Land Commission. Thus the need to have the acquisition being done by National Land Commission.

Justification: This is to limit the executive's involvement on the acquisition process which is to be done by an independent body. This will eliminate possible conflict of interest as the Cabinet Secretary is usually spearheading the Government agenda which may prejudice land owners.

37. Clause 53 should be amended by retaining the former provision.

Justification: Limit the involvement of the Executive on the matter of compulsory Land acquisition in order to retain checks and balances.

38. Clauses 52-57 - they proposed that the role is retained by the National Land Commission.

Justification: The Commission is an independent body whose functions have historical significance as far as management of public land is concerned.

39. Clauses 59 – they proposed that the former provision to be retained.

Justification: This should be the work of the National Land Commission.

40. Clauses 60 – they proposed that the former provision to be retained.

Justification: This should be the work of the National Land Commission.

41. Clauses 70 should be amended to provide that such a short period should not necessitate acquisition, but mechanisms be made for rental of the property for the period required. Acquisition has the understanding that it is an outright purchase.

Justification: The Registrar may be asked to register the lease in the register provided it is prepared in the manner prescribed in the Land Registration Act. After the lease period, the land is to revert to the owner. Costs are to be borne by the leasing public entity.

42. Part VIIIA to be amended to provide nominations should be done by the professional bodies – the ISK nominates both the Registered Valuers and Licensed Surveyor.

Justification: the nomination of professionals by professional bodies will give the committee the independence that it deserves.

43. Part VIIIA should be amended to read - The committee shall comprise of-

- a) one Licensed Valuer with at least 10 years' experience in statutory valuation in a public body, who shall be the chairperson;
- b) an advocate of at least 10 years standing, who shall be the secretary;
- c) one Licensed Valuer of at least 10 years' standing;
- d) one licensed surveyors of at least 10 years' standing;
- e) One Land Administration who is a Full Member of the Institution of Surveyors of Kenya with at least 10 years' experience.

Justification: a) Most of the complaints will be of a valuation nature;

- b) *The advocate will provide legal guidance on the deliberations and be a secretary of the committee;*
- c) *From the experience of the NLC, the Chairperson ought to be a person with extensive knowledge in valuation principles, have widespread experience in compulsory acquisition and has knowledge of statutory valuations;*
- d) *The committee is not a tribunal so as to be chaired by an Advocate;*
- e) *There is need for a person with Land Administration knowledge for purposes of understanding the tenure system as well as traditional uses;*
- f) *One person with extensive knowledge and experience in the informal sector representing the public is vague and not clear who such person is and what they have studied.*

44. The proposed 133 (A)(3) should be deleted.

Justification: All the experts have been included hence there is no need for an additional expert. The aspect of regulating procedure seems misplaced.

45. 133 (A)(4) should be amended to read three years renewable once.

Justification: This is the standard procedure that has been adopted across board.

46. Clause 81 should be amended by adding the word master after the word duly – so as to read duly approved master plan.

Justification: Phased development requires a master plan.

47. Clause 83 be amended to clarify when the 2 year period starts.

Justification: ISK assumes that the 2 years starts from the time the SPA, 2020 was enacted and not the proposed Land Laws Amendment Bill.

3.3 Submission by the Association of Licensed Land Surveyors of Kenya (ALLSK)

The Association of Licensed Land Surveyors of Kenya appeared before the Committee on 2nd February, 2024 and submitted as follows-

Land Control Act, Cap 302

48. Clause 34a(ii) should be amended Delete the paragraph and substitute therefor with –

“ Two persons nominated by the County Executive Committee member for the time being responsible for lands in the county where the board has jurisdiction who must have post secondary education training in a land related field.”

Justification: This clause needs to clarify the qualification of these two members to mitigate against nomination of cronies of the appointing authority or unqualified individuals.

Land Registration Act No. 2 of 2012

49. Clause 36 be amended by Insert the word “**permanent**” immediately after the word more and before the word structure.

Justification: For avoidance of doubt, let the definition go further to exclude semi permanent structures.

50. Clause 40 should be amended by Deleting the word “drawn” appearing immediately after the word plan and before the word by and substitute therefor with the word “ prepared” and Delete the subsection and substitute therefor with

(5) The Registrar shall register long –term leases and issue certificates of lease in respect of interests in freehold and leasehold land, apartments, flats, maisonnettes, townhouses, townhouses or offices having the effect of conferring ownership if the respective interests are captured in a georeferenced sectional plan prepared by a surveyor and approved by the authority responsible for land survey”;

Justification: The term “drawn” is misleading because the surveyor does not draw but prepares. The subsection should not be limited to land only but, land, should come in as additional to what was listed in the written lawn.

51. Clause 43 should be amended by deleting the word thirty appearing immediately after the word of and before the word days and substitute therefor with the word “sixty.”

Justification: Thirty days may be too short for the proprietor and provide appropriate response in view of the current scenario of travel possibilities. It is proposed 60 days would be more appropriate.

52. Clause 48 be amended by deleting the subsection 28 B(2) and substitute therefor with- (2) The rent determined under subsection (1) shall be payable to the national government or the county government as the case may be, with effect from the beginning of the date for which it is determined to be payable and such date shall not apply retrospectively.

Justification: Clearly state who rent is payable to. Who is the rent payable to? The National or the county Government? The bill should specify that pursuant to article 62(2) and 62(3) of the constitution of Kenya 2010.

53. Clause 52 be amended by deleting 54A: since it purports to re-define freehold or absolute land tenure which variance is at variance with the spirit of the CoK 2020 and best practice world over.

ii) If the clause must be retained, which we do not agree with;

Justification: Levying freehold interest violates the spirit and the letter behind article 64(a) of the Kenyan constitution that ensures locals has long term control over their land and promotes national sovereignty. If the government wants to levy freehold interests; it should either first convert it into leasehold interest upon which such levy shall apply constitutionally; otherwise not.

54. Clause 52 be amended by Sections 107(1), (2), (3), (4) be retained as they are in the Act. In section 107(5) delete the words, “the Cabinet Secretary shall” appearing after the word Constitution and before the word “shall” and substitute therefor with the words “, shall authorize the acquiring entity to”

Justification: The acquisition of land for government using public money is a Public Land management and Administration process, which is a constitutional function of the NLC. It must therefore be done by the NLC. However the CS, who is the custodian of the Land Register and is the authority that guarantees titles to Land; there is an urgent need to reconsider the compulsory acquisition with a view to ensure a fast, transparent and efficient process devoid of unnecessary delays leading to undesired outcomes in infrastructure projects’ implementations.

55. Clause 52 (107.(5)(a)) be amended by deleting the words “establish whether” and substitute therefor with “confirm to the Cabinet Secretary and notify the Commission in the prescribed form.”

Justification: Since this must have happened before the request to acquire, then the pending item is to confirm to the CS and perhaps notify the Commission.

56. Clause 53 be amended by deleting the word narrative “A” appearing after the digit 107 and before the word “of.”

Justification: The narrative has to be amended to read section 107.

57. Clause 58 be amended by deleting the subsection and substitute therefor with- “(1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary registration fees and valuation costs, if any, before the acquisition is undertaken.”

Justification: While it is necessary to demonstrate that the compensation funds are available; the only funds to be deposited are the registration and valuation fees, if any; since it is more efficient for the acquiring entity to do or use consultants to undertake the survey and thereafter pay the Persons Affected by Project (PAPs) directly.

58. Clause 59 be amended by deleting the word “Cabinet Secretary” and inserting the word “Commission.”

Justification: Allow the NLC to handle the role of conducting the enquiries as to the proprietary rights and claims to compensation.

59. Clause 60 be amended by deleting the word “Cabinet Secretary” and inserting the word “Commission.”

Justification: The award to be filled in the office of the Commission not the CS.

60. Clause 66 be amended by deleting the words “ Cabinet Secretary and substitute therefor with “Commission.”

Justification: Let the vesting Communication be made by Commission after they conduct the enquiries and verify the claims for compensation.

61. *Clause 78 be amended* by deleting paragraph (b) and substitute therefor with–

(b) “ two registered valuers with at least ten years’ experience in valuation nominated by the Institution of Surveyors of Kenya

delete the paragraph (b) and substitute therefor with–

(c) one licensed land surveyor of at least seven years’ experience nominated by the Institution of Surveyors of Kenya in consultation with the Association of Licensed Surveyors of Kenya

Insert after paragraph (d) as follows–

“ the committee may co-opt a member from the acquiring entity who shall serve for a specified duration of time.”

Justification: The Valuers and Licensed Surveyors should be nominated by the ISK in consultation with their respective professional Associations, and must be in private practice.

62. Clause 81 be amended in the definition to read as follows:- “part sectional plan” means a sectional plan on part of land designated for developing each phase of a phased development prepared by a surveyor and approved by the authority responsible for survey before development commences.

Justification: There is no reference nor the quality check necessary for this document. It should be prepared by a Surveyor and it shall be approved by the authority responsible for survey.

63. Clause 82 be amended inserting the words “and approved by the Authority responsible for survey” immediately after the word “surveyor” and the.”

Justification: There is no reference to the quality check necessary for the part sectional plan shall be approved by the authority responsible for survey.

3.4 Kenya Institute of Planners

64. Clause 24 should be amended in membership by adding – a registered Physical Land Use Planner who shall be the secretary.

Justification: the chairperson and secretaries of the County Lands Control Appeals Board should not be the Chairperson and secretaries respectively of the County Land Control Board.

65. Clause 34 should be amended by adding a registered Physical and Land Use Planner in this case, the County Director of Physical and Land Use Planning who shall be the Secretary nominated by the CECM in charge of Physical Planning.

66. Clause 51 be deleted.

Justification: It is not clear what the proposed levy is, and what it is meant to pay for. The proposal was akin on land value capture since the freehold land in urban areas may experience increase in its value virtue of being in urban areas that enjoy high level infrastructure unlike the adjacent rural areas. A lot of freehold land was incorporated into urban areas for the purpose of creating municipalities and much of it is not under use and indeed may not be for the next twenty or so years and remain agricultural use.

3.5 Kenya National Highways Authority

The Kenya National Highways Authority submitted through their written memoranda as follows-

67. Clause 52 in section 107(11) be amended to read “all land to be compulsorily acquired shall be geo-referenced.

Justification: generally and in practice, the authentication of the survey work for the acquired land is done after compensation is fully paid and final survey is undertaken. In most instances, there are changes in the parcels areas to be acquired during the acquisition process and thus the actual area can only be ascertained after compensation has been paid and vesting to the government undertaken.

68. Clause 58 in section 111 on compensation to be paid be amended to read “the acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, shall avail to the Cabinet Secretary the funds required in carrying out the land acquisition activities.

Justification: the costs for various activities in the land acquisition process are determined during the execution of specific activities. The funds are therefore not determined in the initial stages to enable the acquiring body to deposit the same with the Cabinet Secretary.

There are also instances whereby the road is re-aligned once the consultant review the design on site and thus the need for degazettement arises if the land was already gazetted or exclusion from the list of acquisition if gazettement had not been done.

69. Clause 60 in section 113 on award of compensation be amended to read “every award shall be filed in the office of the Cabinet Secretary and a copy of the award together with the respective valuation report sent to the acquiring public body.

Justification: the valuation report is required by the acquiring public bodies in dealing with various issues for example Office of the Auditor General, legal disputes, queries from Project Affected Persons (PAPs).

70. Clause 65 in section 118 on the final survey be amended as follows-

(1) If part of the land comprised in documents of title has been acquired, the Acquiring Body shall, as soon as practicable, carry out the final surveys on all the land acquired.

(1A) The final survey shall be authenticated by the statutory body responsible for survey.

(2) Upon completion of final survey under subsection (1), the Cabinet Secretary shall cause to be issued new title documents for every affected parcel.

Justification: this is intended to reduce the bureaucracy and speed up the process of the final survey since the acquiring body is in possession of the initial survey data (acquisition drawings). Many of the acquiring public bodies have surveyors who can ensure final survey is done either in-house or through outsourcing. The Cabinet Secretary should only provide a list of parcels fully compensated including the acreages to enable the Acquiring Body to carry out the final survey.

71. Clause 65 in section 119 on condition of compensation be amended to read “payment of compensation shall be made only upon exercise of due diligence which shall include the determination of parcel identification, acreage, boundaries, ownership and value.

Justification: final survey of the acquired land is done after full compensation is paid. It therefore not advisable to consider final survey to be a condition for payment of compensation.

72. Clause 66 in section 120 on formal taking possession be amended to read “Upon taking possession of land under subsection (1) or subsection (2), the Cabinet Secretary shall serve upon –

- (a) the commission
- (b) the registered proprietor of the land
- (c) the Registrar, and;
- (d) the acquiring public body – a notice that possession of the land has been taken and that the land has vested in the national or county government as the case may be

Justification: the acquiring public body requires to be given a copy of the notice of taking possession to facilitate the follow up and for execution of the works.

3.6 submission by the National Land Commission

The National Land Commission appeared before the Committee on Friday, 2nd February 2023 and on Tuesday, 13th February 2023 and submitted as follows-

73. Clause 2 of the bill should be amended by deleting it.

Justification: The definition of a public body is already implied in Article 260 of the Constitution. Further, the Constitution and the Land Act, 2012 already defines the Commission as the National Land Commission. Acquiring body should refer to the respective Cabinet Secretary that is submitting the request for compulsory land acquisition to the Commission.

74. Clause 46 in section 20 should be amended to read as follows-

“Any person or entity may submit an application for a license on unalienated public land to the County government.

Whenever the county government is satisfied that it may be necessary to grant a licence to any person to use unalienated public land, the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission to handle the process including.”

Justification: Article 62 (1) provides that unalienated 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. For this reason, the requests to the Commission should only be submitted by the County Government.

75. Clauses 47 in section 23(2) should be amended to read as follows:

“A lease or licence for public land shall be prepared and executed by the Commission and registered by the Chief Land Registrar.”

Justification: Article 67(2)(a) mandates the Commission to manage public land on behalf of both the National and County governments. The proposal to have the Chief Land Registrar prepare the leases for public land is against the tenets of the principals of devolution as provided for under Article 175(a). Further, the Supreme Court Advisory opinion No. 2 of 2014, Courts and an Advisory opinion from the Attorney General have on several occasions pronounced themselves on this matter that the National Land Commission should execute leases on public land and such leases shall be registered by the Cabinet secretary.

76. On Clause 48 of the Bill - The Commission supports the amendment. However, the amendments should provide for the following:

Under Section 28A, the Commission should gazette.

The Commission should undertake the mandate of determining rent payable on behalf of the Counties and National government.

They propose that revision of rent should be done every 5 years not 10 years due to high inflation.

Under the proposed amendment under 28C (1), the Commission and not the Cabinet Secretary should cause notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by him during the next following period and calling upon the lessee to state in writing whether he objects to the valuation.

Justification: Article 67(2)(a) and (g) mandate the Commission to manage public land on behalf of the national and county governments and to assess tax on land and premiums on immovable property in any area designated by law. The Commission does the initial assessment and the National government should not gazette for county governments as the two are distinct and county governments are not subservient to the National government and should operate on the basis of mutual cooperation and collaboration under the principles of devolution in Article 175 of the Constitution of Kenya.

The proposed amendment threatens to violate Article 6 of the Constitution which provides that the National and county governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

77. Clause 50 should be deleted.

Justification: The proposed amendment to Section 34(1) is already in force and therefore not necessary.

78. Clause 51 should be deleted

Justification: Freehold interest is not comparable to a leasehold interest. There should be no levy charged on freehold land apart from rates. Freehold interests are superior interest and there is no landlord and therefore no rent can be owed. Introduction of a levy would amount to double taxation.

The proposal touches on provisions under the urban areas and cities Act. The proposal requires the Senate approval.

79. Clause 52 amending section 107 of the Land Act 2012 should be deleted

Justification: This amendment affects the Constitutional Provision in Article 174 & 175 on the objects of devolution which promotes the autonomy of the national and county governments.

Article 60 principles of land policy, 62 (2 &3) and 67(2)(a) of COK mandates the Commission to manage and administer public land on behalf the national and county governments. Under compulsory land acquisition, the conversion of private or community land into public land is undertaken by the Commission and commences with the publication of a notice of intention to acquire, and at which the process of administration begins. Upon vesting, the converted land is now managed by the Commission on behalf of the two levels of governments. The process of land acquisition is therefore within the land administration process which falls under the mandate of the National Land Commission.

The National Land Policy of 2009, under 3.2.1.1 pointed out the problems of irregular acquisition where the process of compulsory land acquisition being undertaken by the Commissioner of Lands were abused and not adhered to. The policy proposed harmonization of laws with clear criteria processes and procedures of compulsory land

acquisition. The policy proposed the formation of the National Land Commission to undertake the function.

The Supreme Court Advisory Opinion Ref. No. 2 of 2014, confirmed that the provisions of the Land Act 6 of 2012 were consistent with the COK on the Commission's mandate to protect and oversee public interests and rights.

The proposed amendment will create a conflict of interest whereby the National Government determines the location of projects, approves the acquisition, determines the value, provides compensation funds and makes the payment.

It also exposes the process of Compulsory Land Acquisition to political interference.

80. Clause 52 amending section 107(1) of the Land Act 2012 should be deleted.

Justification: This amendment affects the Constitutional Provision in Article 174 & 175 on the objects of devolution which promotes the autonomy of the national and county governments.

Article 60 principles of land policy, 62 (2 &3) and 67(2)(a) of COK mandates the Commission to manage and administer public land on behalf the national and county governments. Under compulsory land acquisition, the conversion of private or community land into public land is undertaken by the Commission and commences with the publication of a notice of intention to acquire, and at which the process of administration begins. Upon vesting, the converted land is now managed by the Commission on behalf of the two levels of governments. The process of land acquisition is therefore within the land administration process which falls under the mandate of the National Land Commission.

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The proposed amendment will create a conflict of interest whereby the National Government determines the location of projects, approves the acquisition, determines the value, provides compensation funds and makes the payment.

It also exposes the process of Compulsory Land Acquisition to political interference.

81. Clause 52 the proposed amendment to section 107(2) of Land Act 2012 should be deleted.

Justification: Regulations, criteria and guidelines are better developed by a Constitutional Commission with independent mandate to safeguard public interest.

Hypothetically, in line with Article 174 & 175 of CoK (2010) on Objects of Devolution & Principles of devolved government, the county governments can argue that they can undertake compulsory land acquisition process on their own. This would mean in addition to the Cabinet Secretary, 47 administrative units will have their own processes and procedures.

To avoid such a scenario, the Commission is best placed to undertake this process by ensuring uniformity in processes, procedures & guidelines, limiting misuse of the process by observing safeguards such as land index, tribunal & promotes public interest.

82. Clause 52 – the proposed amendment to section 107(3) of the Land Act 2012 should be deleted.

Justification: The proposal will introduce conflict of interest where national government requests and approves compulsory land acquisition.

This will negate the principle of separation of powers between the National and County Governments as envisaged under article 175(a) of the Constitution of Kenya especially where a county government is the acquiring entity.

A constitutional commission is best placed to create the link between the national government, the county governments and the public given its mandate under Article 249 of CoK.

83. Clause 52 – the proposal to amend section 107(4) of the Land Act 2012 should be deleted.

Justification: Every project has to be approved at either cabinet level or at county executive committee level before implementation in which the Cabinet Secretary is a member. Exposing the same projects to the approval of the Cabinet Secretary to either accept or reject, amounts to duplication in approval. This role is better placed to be done by the another constitutional entity.

84. Clause 52 – the proposal to amend section 107(5) of the Land Act 2012 should be deleted.

Justification: This offends the principle of checks and balances and creates a potential conflict of interest.

Projects are approved by either cabinet or county executive committees at national and county level respectively hence exposing the same projects to the approval of the Cabinet Secretary to either accept or reject amounts to duplication in approval.

The county governments will have to seek approvals for projects already approved by the County Assemblies from the National Government through the Cabinet Secretary for Lands. This appears to undermine the authority of the county governments and the county assemblies.

This would make county governments subservient to the National Government which is against the spirit of Article 174 and 175 of the COK (2010).

This role is better placed to be done by a constitutional commission with independent mandate.

85. Clause 52 – the proposal to amend section 107(6) of the Land Act 2012 should be deleted.

Justification: The Cabinet Secretary will identify the land, notify the affected persons without undertaking an assessment to determine public interest as required. It will be prudent to have the Commission to take care of public interest as was articulated in the National Land Policy No. 3 of 2009 and firmed up under Article 249 of the COK (2010).

86. Clause 52 – the proposal to amend section 107(7-11) of the Land Act 2012 should be deleted.

Justification: This role is better placed to be done by a constitutional commission with independent mandate.

87. Clause 53 – the proposal to amend section 107A(3) of the Land Act 2012 should be deleted.

Justification: The new clause introduces a conflict of interest because the cabinet secretary identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value based on the same index developed by the same Cabinet Secretary.

To achieve checks and balances, the roles should be split as provided in s.107A (1) of the Land Act No. 6 of 2012; whereby the cabinet secretary develops the land value index while the Commission adopts the Index in assessing value among other market considerations.

Article 40(3)(b) stipulates that when the State acquires land compulsorily, it must provide prompt, full, fair, and just compensation to the affected landowners or occupants. Development & use of a land index may contravene the above as the values employed are predetermined and may at the time of the acquisition be outdated hence leading to unfair & unjust compensation.

88. Clause 53 – the proposal to amend section 107A(3B) of the Land Act 2012 should be deleted.

Justification: The proposal introduces a conflict of interest because the national government identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value.

89. Clause 54 – the proposal to amend section 107B of the Land Act should be deleted.

Justification: Regulations, criteria and guidelines are better developed by a Constitutional Commission with independent mandate in consultation with both levels of government with the approval of the National Assembly and the Senate to safeguard public interest.

The allocation and renewal of leases are already administrative roles of the Commission. In line with the Commission's roles in the management of public land, it is best suited to develop regulations and guidelines on the land acquisition processes in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate.

This will further enhance the principle of separation of powers between the National and County Governments as envisaged under Article 175(a) of the CoK (2010).

90. Clause 55 – the proposal to amend section 108 of the Land Act 2012 be deleted.

Justification: This clause introduces a conflict of interest because the national government identifies the land to be acquired, approves the acquisition, inspects the land to ascertain its suitability for the intended purpose, determines the basis of value through the land value index and assesses the value.

91. Clause 56 – the proposal to amend section 109 of the Land Act 2012 be deleted.

Justification: This is best undertaken by the Commission in line with Article 249 of the Constitution which requires that such a Commission should protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles, and promote constitutionalism.

92. Clause 57 – the proposal to amend section 110 of the land Act 2012 be deleted.

Justification: This role is best executed by the Commission as a constitutional commission with an independent mandate as per Article 249 of the Constitution and only subject to the constitution and the law.

93. Clause 58 – the proposal to amend section 111 in subsection (1A) of the Land Act 2012 should be deleted.

Justification: The Commission has enhanced compulsory land acquisition policy by ensuring that no letter of awards is served to the project affected persons (PAPs) unless deposits of funds have been made into its compensation account.

As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission due to its Constitutional independence unlike acquiring entities where compensation funds will be exposed to the acquiring entities other competing priorities and recalled at the end of the financial year as per Section 45(1) and (2) of the PFM Act.

94. Clause 58 - the proposal to amend section 111 in subsection 2 of the Land Act 2012 should be deleted.

Justification: Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.111 and the rules as developed by the Commission under ‘The Land Assessment (Just Compensation) Legal Notice No. 283 of 2017.

95. Clause 59 – the proposal to amend section 112 of the Land Act 2012 be deleted.

Justification: This negates independence of the commission as per Article 249 of the Constitution which mandates commissions to protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles; and promote constitutionalism. In exercising their mandates Commissions are independent and not subject to direction or control by any person or authority.

The mandate of inquiry is to be performed through a quasi-judicial process as it is under the current law. This is best handled by the Commission.

Nightshade case Petition No. 33 of 2019 entrenched the quasi-judicial function of the Commission as an independent body.

The NLC already provides of Committees. This can be addressed administratively. Sect 19(1) the Commission shall make rules for better carrying out of its mandate. Offends the principle of checks and balance.

96. Clause 60 – the proposal to amend section 113 (1) and (2) of the Land Act 2012 be deleted.

97. Clause 60 – the proposal to amend section 113 in subsection (4) be amended to read as follows-
“(4) Every award shall be filed in the office of the Commission and a copy sent to the acquiring public body”

Justification: The Commission proposes that in addition to retaining copy of the award and serving a copy to the project affected person, the acquiring entity should be given a copy of the award as well.

98. Clause 61 and 62 – the proposals to amend section 114 and 115 of the Land Act 2012 respectively be deleted

Justification: The Commission has enhanced compulsory land acquisition policy by ensuring that no letter of awards is served to the project affected persons (PAPs) unless deposits of funds have been made into its compensation account.

As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission due to its Constitutional independence unlike acquiring entities where compensation funds will be exposed to the acquiring entities other competing priorities and repayment back to the National exchequer account due to lapse of appropriations that are unspent at the end of the financial year as per Section 45(1) and (2) of the PFM Act.

The funds are best protected with the Constitutional independence of the Commission.

99. Clause 63, 64 and 65 – the proposal to amend section 116, 117 and 118 respectively of the Land Act 2012 be deleted.

Justification: The funds are best protected with the Constitutional independence of the Commission.

100. Clause 66 – the proposal to amend section 120 of the Land Act of 2012 be deleted.

Justification: It offends the principle of checks and balances and creates potential conflict of interest. The Commission as the manager of public land is best placed to undertake this function.

101. Clause 67 and 68 – the proposal to amend section 121 and 122 respectively of the Land Act 2012 be deleted.

Justification: Offends the principle of checks and balances and creates potential conflict of interest.

102. Clause 69 – the proposal to amend Section 123 of the Land Act, 2012 be deleted.

Justification: As the manager of public land the Commission is best suited perform the function. Offends the principle of checks and balances and creates potential conflict of interest.

103. Clause 70 – the proposal to amend section 124 of the Land Act of 2012 be deleted.

Justification: Offends the principle of checks and balances and creates potential conflict of interest.

This role is best executed by the Commission as per Article 249 (1)(a) of CoK which mandates constitutional commissions to protect the interest of the public and secure the observance by all state organs of democratic values and principles.

104. Clause 71 – the proposal to amend section 125 of the Land Act of 2012 be deleted.

Justification: As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission due to its Constitutional independence unlike acquiring entities where compensation funds will be exposed to the acquiring entities other competing priorities and repayment back to the National exchequer account due to lapse of appropriations that are unspent at the end of the financial year as per Section 45(1) and (2) of the PFM Act. Section 26 of the NLC Act also provides that the receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purposes of this Act in accordance with Article 206(1)(a) and (b) of the Constitution.

Offends the principle of checks and balances and creates potential conflict of interest.

105. Clause 72 – the proposal to amend section 126 of the Land Act of 2012 be deleted.

106. Clause 73 – the proposal to amend section 127 of the Land Act of 2012 be deleted.

Justification: Offends the principle of checks and balances and creates potential conflict of interest.

107. Clause 74 – the proposal to amend section 129 of the Land Act of 2012 be deleted.

Justification: Offends the principle of checks and balances and creates potential conflict of interest.

108. Clause 75, 75, 76, and 77 – the proposal to amend section 130, 131, 133 respectively of the Land Act of 2012 be deleted.

Justification: Offends the principle of checks and balances and creates potential conflict of interest.

109. Clause 78 – proposal to repeal and replacement of Part VIIIA of the Land Act 2012 be deleted.

Justification: The Commission proposes that the Tribunal be retained to avoid the likelihood of conflict of interests.

All tribunals should be under the Judiciary as proposed by the Tribunals Bill that is at an advanced stage of enactment arising from a Court decision by Justice Mativo.

The National Land Policy 2009, proposed a tribunal to hear appeals from Commission decisions.

The function contemplated for the Committee is the same as the functions of the tribunal.

3.7 Submission by the Land Development & Governance Institute

The Land Development and Government Institute (LDGI) presented their Memorandum to the Committee on 21st December 2023 as follows–

Proposals on the Registration of Documents Act, Cap 285

110. In their Memorandum, the LDGI proposed amendments to clause 2 – 16 of the Registration of Documents Act, Cap 285. They asserted that the amendments supported the harmonization of registration of property conveyancing instruments, which would promote accountability and align the registration of land and property with the Land Policy objectives. The institute, however, recommended that the provisions of the Act be retained.

Proposals on the Land Control Act, Cap 302

111. In their Memorandum, the LDGI proposed amendments to clauses 18 – 20 of the Bill. Their justification for the amendment was that this would amend sections 3, 4 and 5 of the Land Control Act, Cap 302. They recommended that the provisions of the Act be maintained.
112. On clause 21 of the Bill. They submitted that section 6(3) of the Land Control Act, Cap 302, which was proposed for amendment, was not included in the memorandum of objects and reasons. They recommended that the initial provision of the Act be retained.
113. They also suggested an amendment to clause 22 of the Bill. The justification for the amendment was that section 9(1)(c) of the Land Control Act proposed for the deletion was not included in the memorandum of objects and reasons. They recommended that this be rectified and the provision of the Act be maintained.
114. The LDGI equally proposed an amendment to clause 23 of the Bill. They stated that the heading on Part VI of Cap 302 proposed for deletion was not included in the memorandum of objects and reasons. They recommended that this be rectified and the provision of the Act be retained.
115. Further, the LDGI sought an amendment in clause 24 of the Bill. They submitted that section 25 of Cap 302, proposed for deletion and replacement, was not included in the memorandum of objects and reasons. They recommended that this be rectified and the provision of the Act be retained.
116. The LDGI also proposed an amendment to clause 25 of the Bill. They asserted that the proposal to substitute the Provincial Land Control Appeals Board with the County Land Control Appeals Board aligned the Act with the control structure of the government as envisioned in the Constitution of Kenya, 2010. They rejected the proposal and recommended that the provision of the Act be maintained.
117. In addition, the LDGI proposed amendments to clauses 26 – 28 in the Bill. They submitted that the proposal would amend sections 12(3), 13(1) and 14 of the Land Control Act. The Committee rejected the proposal and recommended that the provisions of said sections be retained.
118. In their Memorandum, the Institute proposed an amendment to clause 29(b) of the Bill. They asserted that the proposal to have a special land control board meeting outside of the

scheduled routine land control board meetings would provide an avenue for transacting board business in a manner that was not predictable and gave room for the exclusion of some members from effective participation in the business of the board due to lack of predictability. They equally stated that that would open up room for transactions without effective public involvement and giving notice to affected members of the public and holders of interest in land. They rejected the proposal and recommended that the provision of the Act be deleted altogether.

119. They proposed an amendment in clauses 30 – 33 of the Bill. They submitted that the proposal would amend sections 23, 24, and 25(1) and repeal section 27 of Cap 302. They rejected the proposal and recommended that the provisions of the sections of the Act be maintained.
120. The LDGI proposed an amendment in clause 34 of the Bill. The proposal sought to amend the First Schedule of the Land Control Act. It proposed the introduction of a new sub-clause (c) in the First Schedule that provides for two persons nominated by the County Executive Committee member for the time being responsible for lands in the County where the board has jurisdiction. They proposed the introduction of the new paragraph 3, which provided for not less than two and not more than five persons appointed by the Cabinet Secretary to the appeals board. The LDGI argued that there was no provision for the county government to appoint any representative despite the County Land Control Appeals Board being at the county level. They also submitted that the qualifications for the appointees of the Cabinet Secretary were not stated. They opined that there should be a provision for the county government (County Executive Committee member or Governor) to appoint representatives to that board given that matters under that board related to agriculture and land use planning, which are devolved functions. On the proposal recommended that the nominees of the County Executive Committee member should have their qualifications specified and have qualifications in physical planning, surveying, land economics, land administration or agriculture. They equally recommended that the nominees should have knowledge and qualifications in planning, surveying, land administration, land economics, agriculture or natural resource management.
121. The LDGI sought an amendment to clause 35 proposing the repealing of the Second Schedule to the Land Control Act. They asserted this would be done by deleting the Second Schedule. The Committee rejected this proposal and recommended that the provision of the Act be maintained.

Proposals on the Land Registration Act, 2012

122. In their Memorandum, the LDGI proposed amendments to clauses 36 – 43 of the Bill. They stated that this would amend sections 2, 7(4), 8(1), 9(2), 54, 56, 59 and 79 of the Land Registration Act, 2012. They rejected the proposal and recommended that the provisions of the sections of the Act be retained.

Proposals on the Land Act, 2012

123. In their Memorandum, the LDGI proposed an amendment to clause 44 of the Bill. They submitted that introducing the term “Committee”, which means the Land Acquisition Committee established under section 133A, was unnecessary. They stated that this would take over the duties of the National Land Commission, which is an independent constitutional commission. They agreed with proposal and recommended that the provision be deleted.

124. The LDGI proposed to amend the Land Act in clause 45(c) of the Bill. They averred that section 13 diverts powers of allocation of public land from the National Land Commission and transfers them to the Cabinet Secretary, who is a political appointee. They stated that the Cabinet Secretary is given powers to make rules and regulations relating to land allocation and extension of leases. This presented a potential ground for abuse of powers and a conflict of interest in the discharge of this function by the Cabinet Secretary. They agreed with the justification and recommended that the proposal and the section of the Act be deleted altogether.

125. The LDGI equally proposed to repeal and replace section 20 of the Land Act, 2012, under clause 46 of the Bill. They asserted that this would ensure concurrence between the National Government, county government and the National Land Commission. They rejected this proposal and recommended that the provision of the Act be retained.

126. The LDGI also sought to amend clause 47(b) of the Bill. They submitted that the new proposed section 23(b) would give the Cabinet Secretary power to issue leases over all public land, thereby introducing risks of public land grabbing. The Institute, in response to this proposal, recommended the deletion of this clause and that the provision in the Land Act be retained.

127. The LDGI proposed an amendment to clause 48 of the Bill. They submitted that the proposed new section 28A (2) would make the Cabinet Secretary the sole determiner of the rent payable over leases from the national or county governments, thereby taking over the

power of lease administration for land allocated by county governments. Equally, they stated that in the proposed new section 28B, the Cabinet Secretary would be given the power to value all land for rental purposes, whether emanating from land allocated by national or county governments. In this regard, they opined that the provision was against the principle of devolution. They rejected the proposal submitted on the introduction of new sections 28A and B and recommended that they be deleted altogether.

128. The LDGI sought to amend clause 49 of the Bill. They submitted that section 30 be amended in the marginal note by deleting the word “Commission” and substituting, therefore, the words national government or county government. They rejected the amendment and recommended the provision of the Act be retained.

129. The LDGI further sought to amend clause 51 of the Bill. They submitted that the proposal introduced a new section 54A that provided an annual land levy on freehold land, equivalent to land rent charged on comparable leasehold land or property of the same size. They averred that this levy was a tax by the National Government on freehold land only. Their justification for this proposal was that it was discriminatory because it did not apply to all categories and interests on land. Equally, holders of freehold land paid all other taxes, including rates, stamp duty, capital gains tax, income tax, rental income tax and VAT, just like all holders of leasehold interests. On the other hand, holders of leasehold interests paid land rent to the Government because the government was the owner of such land and they were tenants who paid for holding and using such land for the lease period. On the contrary, the holders of freehold land were absolute owners in perpetuity and could not be charged rent for their own land; therefore, the levy could not be equated to rent. The provision, consequently, was against Article 201(b)(i) of the Constitution of Kenya, which requires the burden of taxation to be shared equally. The Committee agreed with the justification by the LDGI and therefore recommended that the provision was unconstitutional and should be deleted in its entirety from the Bill.

130. The LDGI proposed to amend clause 52 of the Bill. The Bill seeks to repeal section 107 of the Act by removing the function of compulsory land acquisition from the National Land Commission and placing it under the Cabinet Secretary. This amendment introduced a serious backward shift in the land reforms made after the adoption of the National Land Policy and the Constitution of Kenya 2010. They submitted that the amendment sought to rip off functions of an independent constitutional commission and give them to a politically appointed Cabinet Secretary. It also would amount to lack of accountability as the Cabinet Secretary was mandated to make regulations, represent the acquiring body, award

compensation, resolve disputes and make payments, which would be a recipe for bad land governance. They recommended that the provision be deleted in its entirety and the initial provision of the Act be maintained.

131. The LDGI proposed an amendment to clause 53 of the Bill, which sought to amend section 107A of the Act. They asserted that the amendment would allow the Cabinet Secretary to develop piecemeal land value index for some counties. This amendment would occasion the removal of the National Land Commission from the process of preparing land value index and valuation for compulsory land acquisition and place it under the Cabinet Secretary. This also would be a step back on land reforms, thus placing technical professional valuation work in the hands of political appointees and creating room for political manipulation in the valuation process. The Institute recommended that this clause be deleted and the provision of the Act be retained.
132. The LDGI proposed an amendment to clauses 54 and 55 of the Bill. They submitted that the amendment was an attack on the mandate of the National Land Commission. They recommended that the clauses of the Bill be deleted.
133. The LDGI proposed an amendment to clause 56 of the Bill. They submitted that the provision takes the function of the Commission to the Cabinet Secretary despite the conflict arising from the fact that the Cabinet Secretary represents the National Government, which is mostly the acquiring body which sets the stage for procuring injustices on proprietors of land being acquired. They recommended that the provision be deleted from the Bill.
134. The LDGI proposed an amendment to clauses 57 – 77 of the Bill. They averred that these clauses resulted in the takeover of all the roles cues played by the National Land Commission and placed them under the Cabinet Secretary, a political appointee. It was stated that the proposed amendments made the payment for compensation spread over public bodies, made tracking and accountability difficult and exposed members of the public to exploitation. They recommended that the provisions be deleted as they are a claw back to land reforms.
135. The LDGI proposed an amendment to clause 78 of the Bill to repeal Part VIIIA of the Act. They submitted that the new Part VIIIA established the Land Acquisition Committee comprising all appointees by the Cabinet Secretary without participation by stakeholders or vetting by Parliament, whose function was to hear appeals against the decisions by the Cabinet Secretary, who was the appointing authority. The LDGI stated that the Commission, as established, lacked independence and could not perform the duties assigned impartially. This

would, therefore, create room for unjust and arbitrary property acquisition without prompt and just compensation and risk procurement of injustice in the land acquisition process. They recommended that the provision be deleted from the Bill.

Proposals on the Community Land Act, 2016

136. In their Memorandum, the LDGI proposed an amendment to clause 79 of the Bill, which sought to amend section 2 of the Community Land Act. They recommended that the definition of community land be retained as it is in the Act.
137. The LDGI proposed an amendment to clause 80 of the Bill. They submitted that the gazettment of new dates of completion is agreeable; however, it should be done in accordance with the current law. They argued that this created room for actions contrary to the current statutes and the Constitution of Kenya, 2010. They recommended that the provision be retained.

Proposals on the Sectional Properties Act, 2020

138. The LDGI proposed to amend clauses 81 – 82 of the Bill that sought to amend sections 2 and 5 of the Sectional Properties Act, 2020. They recommended that the provisions be retained.
139. The LDGI proposed to amend clause 83 of the Act. They submitted that the provision for review of previously registered leases within a period of 2 years created uncertainty in the security of the tenure of leases. The provision failed to indicate who was to review the long-term leases and the criteria for review. They recommended that the provision be deleted as it lacked clarity.
140. The LDGI proposed to amend clauses 84 – 86 of the Bill. They recommended that the provisions be maintained.

3.8 Submission by Land Acquisition Tribunal

Dr. Nabil M. Orina, Chairperson, Land Acquisition Tribunal submitted through written memoranda as follows–

141. The Bill contains numerous proposals but the memorandum shall restrict comments to the section that deals with establishment of the Land Acquisition Committee under the proposed new Section 133A. Under this clause, the Bill proposes to replace the existing Land Acquisition Tribunal with the Land Acquisition Committee with essentially the same mandate but a different composition.

142. This Bill makes a useful proposal in regard to expanding the membership of this adjudicatory body to take into account important stakeholders in the process of compulsory land acquisition that is valuers and surveyors. We hereby make some suggestions to strengthen the proposals. We are also supportive of deploying this adjudicatory body within the Ministry of Lands as it will ensure that the body is facilitated with the technical expertise and staff to discharge its mandate.

They further submitted as follows:

ADJUDICATION OVER ISSUES ARISING FROM COMPULSORY ACQUISITION

143. The Constitution of Kenya under Article 40 (3) (b) (ii) gives power to Parliament to enact legislation that allows a person who has an interest in property that the State seeks to compulsorily acquire to have access to a **Court of Law**. This provision, therefore, envisages that whoever feels aggrieved by the outcome or process of compulsory acquisition can have such a grievance adjudicated upon by a court of law.

144. According to Article 162 of the Constitution of Kenya, the System of Courts shall comprise of The Supreme Court, Court of Appeal, The High Court (and Courts of equal status), and subordinate courts established under Article 169 of the Constitution. Under Article 169, subordinate courts are enumerated as: Magistrates courts, Kadhis' courts, Court martial, and any other local tribunal as shall be established through an Act of Parliament. The import of these provisions of the Constitution is, therefore, that a person aggrieved by an act of the State in regard to compulsory acquisition shall have recourse to a court of law as provided by an Act of Parliament. The Land Act, which is subject of amendment herein, establishes the Land Acquisition Tribunal. That is a court of law as per the Constitutional definition. However, the proposed Land Acquisition Committee falls short of this definition and will not stand the constitutional test. **To remedy this, we propose that a provision be included to designate the Land Acquisition Committee as a subordinate Court pursuant to Article 169 of the Constitution of Kenya. Parliament has powers to establish subordinate courts.**

145. Furthermore, Article 23(2) of the Constitution provides that Parliament shall enact legislation conferring jurisdiction upon **subordinate courts** to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. This jurisdiction cannot be exercised by a committee as envisaged under the new Section 133B (7) as this committee is not a subordinate

court unless it is so designated as proposed above. The same goes for Article 47(3) of the Constitution which makes reference to a court or an independent impartial tribunal.

APPOINTMENT OF CHAIRPERSON AND MEMBERS

146. The question of establishment of tribunals and appointment of tribunal members has been a subject of litigation before the High Court where the question before court was whether the executive should be involved in appointing tribunal members. In the case of *Okoiti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR) (Constitutional and Human Rights) (11 March 2021) (Judgment)* the High Court stated as follows:

76. There is no doubt that most of the disputes handled by the local tribunals involve the executive. As such, the executive has an obvious advantage given that it is the one responsible with the appointment and removal of the Members. In such circumstances, the executive ought not to be the appointing authority. Instead, that duty ought to be undertaken by an independent entity. As said, justice should not only be done, but should also be seen to be done.

77. It is worth-noting that such a state of affairs where the Executive overreaches and takes over the mandate of the Judiciary infringes on the independence of the Judiciary.

81... it is clear that the appointment and removal of members of the local tribunals falling under article 169(1)(d) of the Constitution by the Executive contravenes the principle of separation of power and is contrary to article 50(1) of the Constitution. That state of affairs also infringes on the independence of the Judiciary.

147. They proposed, that in order to retain independence as a court of law, the manner of appointment needs to be as it is currently where the Judicial Service Commission appoints the Chairperson while the Cabinet Secretary appoints members. This would ensure that the Tribunal or Committee is not challenged on the basis of lack of independence and possibly for violation of the principal of separation of powers.

148. Besides, the tribunal currently has only two members so the Cabinet Secretary can still appoint more members. They believe that a hybrid appointment system where the JSC appoints the Chairperson and the CS appoints members ensures balance and also would take account of other professionals like valuers and surveyors who would be part of the tribunal.

QUORUM

149. In addition to the above comments on the appointments, they support the increase of membership in the proposed amendments. **They also suggested an inclusion of a clause on quorum for the law to set the quorum at three members as long as the Chairperson is present.** This would ensure expeditious disposal of matters.

TRANSITION

150. They also note that the proposed amendment does not address the question of transition. At the moment, the Land Acquisition Tribunal is in operation and is hearing and determining disputes related to compulsory acquisition. They currently have a portfolio of about 18 active cases and more are being filed almost weekly. It would be good for continuity and institutional memory for the proposed law to provide for a manner of handling the current cases before the tribunal, were its composition or designation to change. We hereby propose that, for a smooth transition, the law should deem all the cases pending before the Tribunal as duly filed and the current members of the Tribunal to transition to the new adjudicatory body until expiry of their terms. They hereby proposed the inclusion of the following provisions on transition:

- (a) The Land Acquisition Committee established under Section 133A shall be the successor to the Land Acquisition Tribunal established by Section 133A of the Land Act (now amended) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Land Acquisition Tribunal existing at the commencement of this Act shall be automatically and fully transferred to the Land Acquisition Committee and any reference to the Land Acquisition Tribunal in any contract or document shall, for all purposes, be deemed to be a reference to the Land Acquisition Committee established under section 133A.

Preservation of judgements and rulings

- (b) The judgements, rulings or orders made by the Land Acquisition Tribunal established by Section 133A of the Land Act (now amended) are preserved.
- (c) The persons who at the commencement of this Act are the Chairperson and members of the Land Acquisition Tribunal shall become the Chairperson and members of the Land Acquisition Committee respectively, as the case may be, for the remainder of their tenure in accordance with their appointment under the amended Act.
- (d) For greater certainty and subject to paragraph (c), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Land Acquisition Committee as the case may be, as if they were appointed under section 133A.

3.9 Submission by Mr. Laibuta Mutua

Mr. Laibuta Mutua submitted a written memoranda as follows-

151. The National Land Commission is a Constitutional Commission established under article 67 of the Constitution of Kenya 2010. Article 249 of the constitution outlines the objects of Commissions and Independent offices as to protect the sovereignty of the people, secure the observance by all State organs of democratic values and principles and to promote constitutionalism.

152. One of the key mandates of the National Land Commission is to Manage and Administer public land on behalf of the National and County Governments, a mandate outlined under article 67 2(a) and 62 (2&3) of the Constitutional of Kenya.

153. In line with this mandate, I hereby expresses the following reservations against the proposed amendment section 107 of the Land Act No. 6 of 2012 by the proposed Bill which majorly recommends transfer of valuation for compulsory acquisition function from the Commission to the Ministry of Lands, Public Works, Housing and Urban Development.

154. He had reservations against the following Amendments proposed in the Land Laws (Amendment) Bill 2023 - **Clause 107, Clause 113, Clause 124, Clause 130, Clause 108, Clause 120, Clause 126, Clause 131, Clause 110, Clause 121, Clause 127, Clause 133, Clause 111, Clause 122, Clause 129 Clause 112, and Clause 112;**

155. He proposed that the referenced sections of the bill be deleted and retained as they were in the existing Land Act No. 6 of 2012 for the following reasons; -

a) Clawing back of the gains made through land reforms

156. Relocating the function of valuation for compulsory acquisition to the executive under the Ministry of lands, constitutes a regression that undermines the substantial progress achieved through land reforms.

157. National Land Policy of 2009 recognized challenges arising from the previous land acquisition processes under the presidency ranging from lack of checks and balances, irregular acquisitions, political interference and proposed reforms, including aligning the law on compulsory land acquisition with new land ownership categories, harmonizing institutional frameworks, establishing transparent criteria and procedures and empowering the National Land Commission.

158. The NLC's independence and accountability were emphasized in both the National Land Policy of 2009 and the Constitution, in particular under article 249 of the Constitution 2010. The NLC Act of 2012 further solidified its autonomy, requiring it to be accountable to Parliament for its operations and mandating ministerial policy directions to be laid before Parliament in writing.

159. The necessary checks and balances have been instituted within the Commission is oversighted by bodies including Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI), Office of the Auditor General (OAG) as well as regulators of professional conduct such as the Institution of Surveyors of Kenya (ISK) and Valuers Registration Board (VRB).

160. The Commission therefore was best placed to carry out the process of compulsory Land Acquisition.

b) Contravention of the Constitution

161. Article 67(2)(a) of the constitution 2010 mandates the National Land Commission to Manage public land on behalf of the National and County Governments. Compulsory land acquisition involves conversion of Land from either Community or Private Land to Public Land on behalf of the National or County Governments. In line with this constitutional mandate, the National Land Commission, as the custodian and administrator of the converted land, should play a central role in the conversion process.

162. Assigning the executive the responsibility of undertaking the Compulsory Land Acquisition process, directly contradicts the provisions of the Constitution of Kenya 2010.

c) Conflict of interest

163. The bill proposes changes to Section 107(1) of the Land Act No. 6 of 2012 to read "whenever the national or county government is satisfied that it may be necessary to acquire some particular land, the Cabinet Secretary or County Executive Committee Member shall submit a request for acquisition of land to the Cabinet Secretary to acquire the land compulsorily.

164. From the above, it is evident that the executive, through the Cabinet secretary or County Executive Committee member identifies the land to be acquired. It will therefore not be reasonable for the same executive, through the Ministry, to determine the value of the land being acquired as this will amount to conflict of interest.

165. In simpler terms, it's not fair for the buyer (executive), to be the one deciding what land to buy, setting the purchase price, and then paying compulsorily. Additionally, the same buyer happens to be responsible for hearing and settling disputes that arise from the same purchase through the Land Acquisition Tribunal.

166. They firmly believed that this setup creates a significant conflict of interest. Therefore, they proposed that the suggested amendment be struck off. Instead, the executive could decide which land to acquire and allocate the necessary funds for the purchase. Meanwhile, the Commission could independently determine the fair price through independently undertaking the valuation to ensure there's a system of checks and balances, maintain integrity, and uphold the principles of good governance.

d) Valuation Profession

167. Valuers are professionals who hold degrees in the field of Real Estate/Land Economics from accredited Universities. The Project Lead Valuers are registered, licenced, gazetted and are regulated by the Valuers Registration Board (VRB) established under the Valuers Act Cap. 532. Valuers are also Full Members of the Institution of Surveyors of Kenya (ISK) and are guided by the laws of the country not limited to, the Land Act No. 6 of 2012, Valuers Act Cap 532, Kenya Valuation Standards 2021 and the International Valuation Standards 2020. Reassignment of the valuation responsibilities from the Commission to the Ministry of Lands lacks a clear basis, as all valuers profess the same skill and competence.

e) Protection of Public Interest

168. The bill proposes amendment of Section 107(3&4) of the Land Act No. 6 of 2012 to empower the cabinet secretary to accept or reject any land acquisition request from either the National or County Government. The question arises, who will safeguard the public interest in a possible scenario where the current or future government either intentionally or otherwise plans to acquire land irregularly. In a hypothetical case, the cabinet secretary is likely to oblige to the executive orders while the investigative agencies, who are also under the executive may turn a blind eye to such approvals to the detriment of the public.

169. Article 249 of the Constitution shields the public against such occurrences by outlining the objects of the commissions and the independent offices; as to protect the sovereignty of the people, secure the observance by all State organs of democratic values and principles; and promote constitutionalism. The article further gives independence to the commissions and the holders of independent offices, to the extent that they are subject only to the Constitution and the law; and not subject to direction or control by any person or authority. The National Land Commission, being an independent body that subscribes to article 249 of the constitution, was better placed to safeguard and advocate for the public's interests in the compulsory acquisition process.

f) Protection and Support of Independent Commissions

170. Laws are made for posterity and not to fit specific circumstances. As such, the National Land Commission, being a check constitutional institution should enjoy protection, support and backing by the state in its quest to fulfil its roles to protect the sovereignty of the people, secure the observance by state organs of democratic values and principles, and to promote constitutionalism in line with Article 249 (1) of the Constitution.

171. Article 259 (1) (a-d) of the Constitution promotes the spirit of the constitution and stipulates how the constitution should be interpreted in a manner that promotes its purposes, good governance, values and its principles.

172. In their view therefore, the government should protect, support and enhance service delivery of Independent Commissions as opposed to taking away their functions.

g) Contravention of the separation of powers between County Governments and National Government

173. Article 67(2)(a) of the Constitution 2010 mandates the National Land Commission to Manage public land on behalf of the National and County Governments. Further, article 187(1) of the constitution prescribes transfer of functions and powers between levels of government.

174. The question arises, what is the rational in the bill proposed changes to Section 107(1) that the National Government is to value properties on behalf of the County Government yet the two levels of government are autonomous?

175. In his view, since the County Executive Committee members for Lands do not report to the Cabinet Secretary ministry of lands, the valuation for Compulsory Land Acquisition should be undertaken by the Commission on behalf of both levels of government, as a neutral constitutional body.

h) Land Value Index and Land Acquisition Tribunal

176. A similar undertaking to transfer compulsory land acquisition function from the Commission to the Ministry of Lands took place in the year 2018/19. As a result of deliberations by the stakeholders, the Land Value (Amendment) Act 2019 was enacted. The act mandated the Ministry through the Cabinet Secretary of Lands with the following.

- a) Establishing a land value index developed for the purposes of compensation. The index was to be developed six months after commencement of the Act.

- b) Establishing the Land Acquisition Tribunal - The tribunal was mandated with hearing and determining appeals from Commission decisions relating to compulsory land acquisition. The tribunal was given power to confirm, vary or quash the Commission's decision.

177. These 2019 amendments empowered the Ministry with significant responsibilities aimed at introducing checks, balances, and oversight into the compulsory acquisition process. However, it is important to highlight that the land value index is yet to be finalized while the Land Acquisition Tribunal is not yet operational.

178. In his view, the Ministry of Lands should not be responsible for conducting the acquisition process and over-sighting it. Instead, we propose that they be tasked with finalizing the land value index and providing essential safeguards as stipulated in the Land Value (Amendment) Act of 2019. It's our opinion therefore, that the proposed amendment to the law eliminates critical checks and balances in this process.

i) Political Interference of Acquisition process

179. It is his view that if the sections of the Bill proposing to cede valuation functions to the ministry succeeds, the independence of the professional conduct and protection from political interference cannot be guaranteed since the project initiation, affected persons, assessment of value, implementation and payment will be undertaken by the executive under the ministry of lands.

180. In line with the above observations, the proposed amendments to Part VIII of Land Act No. 2012 raises the following questions: -

- a) What is the justification of transfer of the Compulsory Land Acquisition function from National Land Commission to Ministry of Lands? Is the reason so weighty as to warrant change of law?
- b) Who will execute the valuation function at the Ministry of Lands if not registered and licenced valuers who are also the professionals executing the same mandate at National Land Commission?
- c) Who will prevent the glaring conflict of interest in the proposed bill whereby the Presidency determines, approves, values, and provides compensation funds in compulsory land acquisition of its own projects?
- d) Who will safeguard the process of Compulsory Land Acquisition from political interference if the Presidency, through the CS who is an appointee of the president oversee the entire acquisition process?

- e) Wouldn't there be political interference where the County Executive Committee Member (CECM) of counties which are not politically aligned with the government of the day are required to seek approval from the Cabinet Secretary (CS) in charge of Land to undertake a County Government project, yet the two levels of government are autonomous? Does this not contradict the spirit of devolution?

181. In the past, the role of compulsory land acquisition was bestowed on the Commissioner of Lands who operated under the Presidency. However, the land acquisition process faced issues such as irregular acquisitions, lack of independence, overlapping roles, lack of transparency, and subjective compensation assessments. The National Land Policy of 2009 recognized these challenges and proposed reforms, including establishing the National Land Commission, and conferring pre-emptive rights to original landowners.

182. By adopting the proposed changes to part VIII of The Land Act, 2012, which proposes reversion of compulsory land acquisition function to the Presidency, wouldn't we be clawing back these land reforms?

183. Shouldn't the government protect and enhance the functionality of constitutional Commissions as opposed to taking away their functions?

184. When or if the CS in charge of lands intends to acquire land compulsorily, will they write a request letter to themselves, approve the same, determine the value, proceed to acquire the land and issue themselves a certificate of title?

PART IV

4 COMMITTEE OBSERVATIONS

The Committee considered provisions of the Bill, evaluated submissions tabled and made the following observations.

185. The Bill proposes to amend the Registration of Documents Act; the Land Control Act, the Land Registration Act, 2012, the Land Act, 2012, Community Land Act, 2016 and the Sectional Properties Act, 2020 as follows.
186. The Bill seeks to amend the **Registration of Documents Act** by decentralizing land registries for registration of documents across the country as opposed to when such services were only available in Nairobi and Mombasa, and align the Registration of Documents Act to the Constitution of Kenya, 2010. The Committee proposes to amend the Bill to provide for proportional representation of persons during the constitution of the various committees.
187. **Under the Land Control Act**, the Bill seeks to reconstitute and align land control boards according to the Constitution of Kenya, 2010 by providing a new governance structure and enable granting consents to transact in agricultural land within paradigms of Article 65 of the Constitution which allows non-citizens to own land on leasehold terms not exceeding 99 years, as opposed to when their ownership could only be permitted by the President.
188. The Bill seeks to amend the **Land Registration Act** to streamline registration of long-term leases within the provisions of the Sectional Properties Act, 2020 and also to widen the scope under which the registrar can revoke a title obtained through fraud by the proprietor.
189. The Bill seeks to amend the **Community Land Act** to allow the Cabinet Secretary to complete pending adjudication programmes under the Land Adjudication Act beyond the 2-year period permitted by the Community land Act.
190. The Bill seeks to amend the **Sectional Properties Act** to widen the scope of the Sectional Properties Act to include phased developments, introduce a second-tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed-use sectional development.
191. The Bill seeks to amend the **Land Act** by giving clarity as to what it means by allocation of public land and the respective roles played by the National and County government as opposed to the National Land Commission.

192. The Bill seeks to amend the **Land Act** to separate the roles of renewal and extension of leases and respectively assigning them to the National Land Commission and the Cabinet Secretary.
193. The Bill seeks to amend the **Land Act** to provide for the periodical review of rent and valuation of land for rent after every ten years to be in tandem with the current property values.
194. The Bill seeks to amend the **Land Act** to vest upon the Cabinet Secretary, the mandate of handling compulsory land acquisition in order to eliminate the conflict of interest likely to occur when one entity is involved in valuation process and at the same time making compensation payments. This will also eliminate delay in acquiring land since the acquiring public body has direct control in making compensation payments as opposed to when funds were being transferred to the Commission.
195. The Committee shall propose amendments to streamline the process of compulsory acquisition by providing that the Cabinet Secretary shall drive the process of valuation and the Commission shall be responsible for paying compensation for land that has been compulsory acquired.
196. The Bill seeks to amend the **Land Act** establish the Land Acquisition Committee to replace of the Land Acquisition Tribunal. The Committee shall propose amendments to assign the role of resolving administrative disputes to the Committee to ensure that matters arising from valuation are resolved promptly to enable prompt and proportional compensation.

5. COMMITTEE RECOMMENDATION

201. The Committee, having considered and taken into account the views and recommendations of the public including relevant stakeholders, recommends that the Bill be passed with amendments as proposed in the Schedule appearing under Part V of this report.

Signed.....

Hon. Joash Nyamoko Nyamache, HSC, M.P.
(CHAIRPERSON)

Date: 09/04/2024

DATE: 09 APR 2024		DAY:
TABLED BY:		
CLERK-AT THE TABLE:		

PART V

6.0 SCHEDULE OF AMENDMENTS

THAT the Schedule to the Bill be amended —

CLAUSE 43

(a) By deleting clause 34 of the Bill and substituting therefor the following new clause—

Amendment of the
First Schedule to
Cap. 302.

51. The First Schedule to the Land Control Act is amended—

FIRST SCHEDULE

[ss. 5, 10 and 12]

1. A land control board shall consist of—

- (a) the Deputy County Commissioner for the sub-county in which the land control area or division is situated, or an Assistant County Commissioner deputed by him in writing, who shall be chairperson;
- (b) not more than two public officers;
- (c) two persons nominated by the County Executive Committee member for the time being responsible for lands in the county where the board has jurisdiction; and
- (d) not less than three and not more than seven persons resident within the area of jurisdiction of the board nominated in writing by the member of Parliament.

Provided that—

- (i) not less than eight and not more than twelve persons shall be appointed as members of the board; and
- (ii) persons appointed under subparagraph (c) and (d) as members of the board shall be owners or occupiers of agricultural land within the area of jurisdiction of the board.

1A. The Cabinet Secretary shall appoint and gazette any person under paragraph 1.

2. A County land control appeals board shall consist of—

- (a) the County Commissioner, who shall be chairperson;

- (b) not more than two other public officers appointed by the Cabinet Secretary; and
- (c) not less than two and not more than five persons, or persons equivalent to the number of sub counties, nominated by a member of parliament from each sub county, appointed by the Cabinet Secretary:

2A. The Cabinet Secretary shall appoint and gazette any person under paragraph 2.

2B. The Cabinet Secretary shall appoint a person who owns or occupies agricultural land within the county as a member of the board under subparagraph (c).

3. The central land control appeals board shall consist of—

- (a) the Cabinet Secretary, who shall be chairperson;
- (b) the Cabinet Secretary for the time being responsible for economic planning;
- (c) the Cabinet Secretary for the time being responsible for agriculture;
- (d) the Cabinet Secretary for the time being responsible for home affairs;
- (e) the Cabinet Secretary for the time being responsible for co-operatives and social services; and
- (f) the Attorney-General.

4. Notwithstanding the foregoing provisions of this Schedule, no person shall be appointed a member of more than one board.

Justification: The amendment is a substitution. The amendment proposes to delete and substitute the First Schedule to the Bill to provide and streamline the membership of a land control board, a county land control appeals board and the central land control appeals board with the structures in the constitution.

(b). That clause 43 of the Bill be amended by inserting the following new amendment immediately before the proposed new subsection (2)—

Amendment of
section 79 of
No.3 of 2012

43. section 79 of the Land Registration Act, 2012 is amended in subsection (1) by inserting the words “chief land” immediately before the word “registrar”

The Justification. The amendment proposes to have a centralized system in place and have one person accountable for cancellation of titles.

(c) in the proposed amendments to the Land Act, 2012—

(i) in clause 45 of the Bill, by deleting paragraph (c).

(ii) by deleting clause 48 and substituting therefor the following new amendment—

Rent for the
several periods.

“28A. The annual rent payable under a lease under this Part shall be the rent reserved in the lease and for each subsequent period of ten years which shall be charged at such percentage of the unimproved value of the land assessed every ten years by the Commission and as gazetted by the Cabinet Secretary.”

Valuation of land
for rent.

28B.(1) Notwithstanding anything contained in any lease, the Commission shall every tenth year, until the expiration of the term, cause the land which is the subject of a lease under this Part to be valued for the purpose of determining the rent which shall be payable for the second or subsequent period of such lease, whichever next follows the year in and in respect of which the valuation is made and the rent so determined shall be payable as from the beginning of the period for which it is determined to be payable.

(2) Where the lessee successfully objects to the valuation under section 28C, the rent payable shall, on the determination of the objection, be varied so as to be in accordance with the valuation determined under that section, and the lessee shall be entitled to a refund of the rent overpaid by him.

Lessee to be
notified of rent to
be paid after
valuation.

28C. (1) Each valuation provided for in section 28B has been made and before the expiration of the year in which the valuation was made, the Cabinet Secretary shall cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by him during the next following period and calling upon the lessee to state in writing whether he objects to the valuation.

(2) A person may not submit a defence that any notice required by this section to be served on a lessee has not been served in an action for any rent payable under a lease granted under this section.

Justification: The amendment is a substitution. It proposes to delete and substitute clause 48 of the Bill to provide a streamlined approach on matters relating to valuation of land rent.

(iii) inserting the following new clause immediately after clause 45 of the Bill.

Amendment of section 12 of No 6 of 2012	45A. section 12 of the Land Act, 2012 is amended by inserting the following new subsection immediately after subsection (1)—
---	--

(1A) Notwithstanding the provisions under subsection (1), whenever the Commission is satisfied that it may be necessary to allocate the whole or part of a specific public land, the Commission may take necessary action provided under subsection (1)(a), (b), (c), (d), (e) or (f).

Justification: The amendment is an insertion. It proposes to insert a new subsection to empower the National Land Commission to act on its own volition where it is satisfied that it may be necessary to allocate the whole or part of a specific public land.

(iv) deleting clause 49 of the Bill;

Justification: The amendment is a deletion. It proposes to delete clause 49 of the Bill to the effect that the Commission shall remain responsible for suing any person to recover a debt on unpaid rents and other payments.

(iv) deleting clause 50 of the Bill;

Justification: The amendment is a deletion. It proposes to delete clause 50 of the Bill because the words “leased public land” do not appear in section 34(1).

(v) deleting clause 51 of the Bill and substituting therefor the following new clause;

Insertion of new section 54A of No 6 of 2012	51. The Land Act, 2012 is amended by inserting the following new section immediately after section 54—
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Levy on freehold land	54A. (1) The owner of any freehold land situated within the boundaries of a city or an urban area gazetted by the Cabinet Secretary shall pay an annual land levy.
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(2) The annual land levy under subsection (1) shall be equivalent to land rent charged on a comparable leasehold land or property of the same size in the same zone located within a city or an urban area that may be gazetted by the Cabinet Secretary.

(3) The owner of freehold land that is used for agriculture shall not pay the annual land levy under subsection (1).

Justification: The amendment is a substitution. It proposes to delete and substitute clause 51 of the Bill to provide that the freehold land situated within a city or an urban area gazetted by the Cabinet Secretary shall pay an annual land levy.

(vi) by deleting clause 52 of the Bill and substituting the following new sub clause—

Deletion and substitution of section 107 of No.6 of 2012. **52.** Section 107 of the Land Act, 2012, is deleted and substituted with the following new section—

Preliminaries to acquisition.

107. (1) Whenever the public body is satisfied that it may be necessary to acquire some particular land under section 110, the accounting officer shall submit a request for acquisition of land to the Cabinet Secretary to acquire the land compulsorily.

(2) The Cabinet Secretary shall prescribe rules providing criteria and guidelines to be adhered to by an acquiring public body in the acquisition of land.

(3) The Cabinet Secretary may reject the request of an acquiring public body, to undertake an acquisition if the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution.

(4) Where the Cabinet Secretary rejects the request of an acquiring public body in accordance with subsection (3), the Cabinet Secretary shall within fourteen days of the decision inform the acquiring public body of the decision to reject the request and state the reason for the rejection.

(5) If the Cabinet Secretary establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Cabinet Secretary shall—

- (a) map out and value the land to be acquired using the valuation criteria set out under this Act; and
- (b) establish whether an acquiring public body has identified the number and maintained a register of persons in actual occupation of the land, confirming for each such occupation, the duration of uninterrupted occupation, or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.

(6) The Cabinet Secretary shall forward a request that complies under subsection (5) to the Commission.

(7) Upon receiving a request under subsection (1), the Commission shall publish a notice to that effect in the *Gazette* and deliver a copy of the notice to the Registrar and every person who has an interest in the land.

(8) The notice issued under subsection (6) shall contain—

- (a) the purpose for which the land is to be compulsorily acquired; and
- (b) the location, general description and approximate area of the land.

(9) Upon receipt of the notice under subsection (7), the Registrar shall make an order, pursuant to section 76(1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land until it vests in the acquiring public body.

(9) Upon receipt of the notice under subsection (7), the Registrar shall make an entry in the register of the intended acquisition.

(10) For the purposes of sections 107 to 133, an interested person shall include any person whose interests appear in the land register and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

(11) All land to be compulsorily acquired shall be geo-referenced and authenticated by the statutory body responsible for survey.

Justification: The amendment as proposed assigns the role of applying for compulsory acquisition to the accounting officer of an entity. The accounting officer applies to the Cabinet Secretary using prescribed criteria. Where the request for acquisition complies with the criteria established by the Cabinet Secretary, the request is forwarded to the National Land Commission. The National Land Commission gazettes the request and forwards the request to the Registrar. Thereafter, the Registrar places a restriction on any dealings affecting the land to be acquired.

(vii) by deleting clause 56 of the Bill and substituting therefor the following new clause—

Payment for damage
caused by entry for
inspection.

109. (1) As soon as practicable after entry has been made under section 108, the Cabinet Secretary shall determine the damage resulting from entry to enable the Commission to promptly pay just compensation for the damage.

(2) A determination under subsection (2) shall be made within a period of thirty days.

Justification: The amendment proposes to amend clause 56 of the Bill to provide that the Commission shall pay compensation by an acquiring authority and introducing a timeline for payment of compensation.

(viii) in clause 58 of the Bill, by deleting the proposed amendment to paragraph (a) and substituting the following paragraphs—

(a) deleting subsection (1A) and substituting therefor the following new subsection—

“(1A) The acquiring public body shall submit to the Cabinet Secretary proof in form of documentation from the National Treasury that compensation funds are available.

(1AA) The acquiring public body shall deposit compensation funds including survey fees, registration fees, vesting costs, and any other costs to the Commission before the acquisition is undertaken.

(1AAA) Where an acquiring body does not comply with subsection (1AA), compensation shall only be available in the manner provided under subsection (1B) (a), (c), (d), (e) or (f).

Justification: The amendment proposes to amend paragraph (a) of clause 58 of the Bill to provide that where a body fails to prove that there are funds then a person who is entitled to compulsory acquisition may be compensated in another way as provided under the Land Act.

(ix) in clause 58 of the Bill, by deleting the proposed amendment to paragraph (b) and substituting the following paragraphs—

(b) in subsection (2), by deleting the word “Commission” and substitute therefor the words “Cabinet Secretary”.

Justification: The amendment proposes to amend paragraph (b) of clause 58 of the Bill to provide that the Cabinet Secretary responsible for matters relating to land shall make rules to regulate the assessment of just compensation in consultation with the National Land Commission. The amendment provides consistency as the Act provides for rules and format for enacting subsidiary legislation.

(iv) in clause 60 of the Bill, by deleting paragraph (c) and substituting the following new paragraph—

- (a) Delete and substitute therefor the following new subsection—

“(4) Every award shall be filed in the office of the Cabinet Secretary and a copy sent to the Commission and the acquiring public body.”

Justification: The amendment proposes to amend clause 60 of the Bill by deleting the word Cabinet Secretary with Land Compensation Inquiry Committee. The effect of the proposal is that Land Compensation Inquiry Committee shall undertake the valuation process and not the Cabinet Secretary.

- (vi) by deleting clause 62 of the Bill.

Justification: The amendment is a deletion. It proposes to delete clause 62 of the Bill to the effect that the National Land Commission shall pay compensation for a compulsory land acquisition and not the acquiring entity.

- (vii) by deleting clause 63 of the Bill.

Justification: The amendment is a deletion. It proposes to delete clause 63 of the Bill to the effect of that the National Land Commission shall recover any monies paid in error during the process of compensation for a compulsory land acquisition and not the acquiring entity.

- (viii) by deleting clause 64 of the Bill.

Justification: The amendment is a deletion. It proposes to delete clause 64 of the Bill to the effect of that the National Land Commission shall pay interest accruing from a payment for a compulsory land acquisition and not the acquiring entity.

- (x) by deleting clause 69 of the Bill and substituting therefor the following new clause—

Amendment to
section 123 of
No.6 of 2012.

69. Section 123 of the Land Act, 2012, is amended by—

- (a) deleting subsection (1) and replace it with a new subsection—

“(1) At any time before possession is taken of any land acquired under this Act, the Cabinet Secretary may, revoke a direction to acquire the land, and, shall determine all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land to enable the Commission to make compensation”;

Justification: The amendment is a substitution. It proposes to delete and substitute clause 69 of the Bill to provide that the Commission shall pay compensation.

(x) by deleting clause 71 of the Bill and substituting therefor the following new clause—

71. Section 125 of the Land Act, 2012, is deleted and substituted therefor the following new section—

Payment of compensation.

125. (1) The Cabinet secretary shall send a copy of the award of compensation made under section 124 to the Commission.

(2) The Commission shall, as soon as is practicable, pay full and just compensation to all persons interested in the land.

Justification: The amendment is a substitution. It proposes to delete and substitute clause 71 of the Bill to provide that: (1) the Cabinet Secretary shall send an award to the Commission. Thereafter, the Commission shall pay the amount determined for compensation by the award.

(xi) by deleting clause 73 of the Bill.

Justification: The amendment is a deletion. It proposes to delete clause 73 of the Bill to the effect that the Commission shall remain responsible for reference of matters to the Court for determination.

(xii) by deleting clause 74 of the Bill.

Justification: The amendment is a deletion. It proposes to delete clause 74 of the Bill to the effect that the Commission shall remain responsible for entering into land for purposes of effecting any matter relating to compulsory acquisition.

(xiii) by deleting clause 76 of the Bill.

Justification: The amendment is a deletion. It proposes to delete clause 76 of the Bill to the effect that the Commission shall remain responsible for service of all notices relating to compulsory acquisition.

(xv) by deleting clause 77 of the Bill.

75. Section 133 of the Land Act is amended by deleting and substituting it with a new section—

Regulations.

133. The Cabinet Secretary in consultation with the Commission may make rules generally for carrying out the purposes and provisions of this Part.

Justification: The amendment is a substitution. It proposes to delete and substitute clause 77 of the Bill to the effect that the Cabinet Secretary shall consult the Commission in making any rules on any matter relating to compulsory acquisition.

(x) by deleting clause 78 of the Bill and substituting therefor the following new clause—

Deletion and
substitution of Part
VIII A of No. 6 of
2012.

78. Section 133 of the Land Act is amended by inserting the following NEW PART immediately after —

PART VIIIAA - THE LAND ACQUISITION APPEALS COMMITTEE

Establishment of the
Land Acquisition
Committee.

133A. (1) There is established a Committee to be known as the Land Acquisition Committee which shall consist of five members appointed by the Cabinet Secretary by notice in the Gazette.

(2) The Committee which shall consist of—

- (a) a person who is admitted as an advocate and who has practiced as an advocate for ten years, who shall be the chairperson;
- (b) two persons who are registered as valuers and each person shall have ten years of experience practicing valuation in a public body, one of whom is a woman;
- (c) two persons who are licensed surveyor, each of whom has practiced for ten years as a licensed surveyor, one of whom is a woman.

(3) The Cabinet Secretary shall appoint persons under from among a list of names of two persons nominated by the Commission and two persons nominated by the acquiring body.

(4) The Cabinet Secretary shall deploy such staff as may be necessary to provide secretariat services to the Committee.

(5) The Committee may co-opt an expert to advise it on any matter before it and shall regulate its own procedure.

(6) The chairperson of the Committee shall serve for a term of four years and shall be eligible for re-appointment for one further term of four years.

(7) A member of the Committee shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(8) The Chairperson and members of the Committee shall serve on a part time basis.

(9) The members of the Committee shall be paid such allowances or other remuneration as the Cabinet Secretary may, on the advice of the Salaries and Remuneration Commission, determine.

(10) The Cabinet Secretary may constitute as many committees as may be necessary for the effective discharge of the functions provided under section 133B.

133B. (1) The Committee shall hear and determine administrative appeals from the decision on an award in matters relating to the compulsory land acquisition process.

(2) A person dissatisfied with an award under subsection (1) shall apply to the Committee in the prescribed manner within thirty days.

(3) The Committee shall hear and determine the application made under subsection (1) within **ninety** days of the filing of an application.

(4) Despite subsection (3) the Committee may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient

(5) If, on an application to the Committee, the sum which in the opinion of the Committee ought to have awarded as compensation is greater than the sum in the award under subsection (1), the Committee may direct that the Commission pay interest in accordance with section 125.

(6) (a) Despite the provisions of sections 127, 128 and 148(5),

(i) a matter that relates to compulsory acquisition of land or creation of way leaves, easements and public right of way; and

(ii) that amounts to administrative action under the Fair Administrative Action Act,

shall be referred to the Committee for resolution.

(7) The provisions of section 127, 128 and 148(5), shall come into operation where the Committee is unable to resolve the matter within 30 days.

(8) Subject to this Act, the Committee shall have the power to confirm, vary or quash the decision of the Cabinet secretary.

Cap. 7L

(8) The Committee may, in matters relating to compulsory using the framework set out under the Fair Administrative Action Act, 2015 or any other law.

Judicial Review.

133C. (1) A party to an application to the Committee who is dissatisfied with the decision of the Committee may seek judicial review in the manner provided under section 7 of the Fair Administrative Action Act.

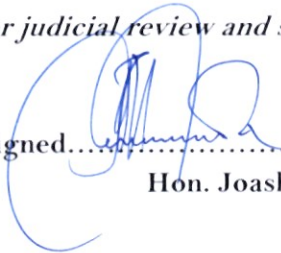
Limitation
liability.

133D. A members of the Committee shall not be personally liable for any act or default done or committed in good faith in the course of exercising the powers conferred by this Act.

Cap. 7L

Justification: The amendment is a substitution. It proposes to delete and substitute clause 78 to insert a Land Acquisition Committee to hear and hear and determine administrative appeals from the decision on an award in matters relating to the compulsory land acquisition process within 30 days. Where an appeal cannot be determined by the Committee, the matter may be considered for judicial review and submitted to the Tribunal.

Signed.....



Date:.....

09/04/2024

Hon. Joash Nyamoko Nyamache, HSC, M.P
(CHAIRPERSON)



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Lands, have pursuant to Standing Orders 216 (5)(c), adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date: 12/03/2024

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



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – THIRD SESSION, 2024

DEPARTMENTAL COMMITTEE ON LANDS.

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD AT WALNUT 1 CONFERENCE ROOM, PANARI SKY CENTRE, ON TUESDAY, 12TH MARCH 2024 AT 10:00 AM.

PRESENT

- | | |
|--|--------------------|
| 1. Hon. Nyamoko Joash Nyamache, M.P. | -Chairperson |
| 2. Hon. Kihara Jayne Wanjiru Njeri, M.P. | - Vice Chairperson |
| 3. Hon. Rachel Kaki Nyamai, CBS, M.P | |
| 4. Hon. Shimbwa Omar Mwinyi, M.P. | |
| 5. Hon. Passaris Esther Muthoni, M.P. | |
| 6. Hon. Gitari Joseph Gachoki, M.P. | |
| 7. Hon. Guyo Ali Wario, M.P. | |
| 8. Hon. Nzambia Thuddeus Kithua, M.P. | |
| 9. Hon. Katana Paul Kahindi, M.P. | |
| 10. Hon. Robi Mathias Nyamabe M.P. | |

APOLOGIES

1. Hon. Ogolla Gideon Ochanda, M.P.
2. Hon. Ndung'u George Koimburi, M.P.
3. Hon. Mupe Anthony Kenga, M.P.
4. Hon. Joseph Hamisi Dena, M.P.
5. Hon. Lelmengit Josses Kiptoo Kosgey, M.P.

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|-------------------------------------|
| 1. Mr. Joshua Ondari | - | Clerk Assistant/Head of Secretariat |
| 2. Mr. Binensa Mabungu | - | Clerk Assistant III |
| 3. Mr. Sidney Lugaga | - | Senior Legal Counsel |
| 4. Ms. Audrey Ogutu | - | Legal Counsel II |
| 5. Ms. Brenda Michira | - | Research Officer III |
| 6. Mr. Murimi Mwangi | - | Media Relations Officer III |
| 7. Mr. Yeziel Jillo | - | Sergeant at Arms |

MIN/NO./NA/DC-LANDS/2024/090:

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten o'clock with a word of prayer by Hon. Kihara Jayne Wanjiru Njeri, M.P.

MIN/NO./NA/DC-LANDS/2024/091:

CONFIRMATION OF MINUTES

The confirmation of the previous sitting's minutes was postponed to a later date.

MIN/NO./NA/DC-LANDS/2024/092:

MATTERS ARISING

There were no matters arising.

MIN/NO./NA/DC-LANDS/2024/093:

ADOPTION OF THE AGENDA

AGENDA

1. Prayers
2. Preliminaries;
3. Confirmation of Minutes.
4. Matters Arising;
5. **Meeting:**
 - a) **Consideration and adoption of the Report on the Land Laws (Amendment) (No.2) Bill, 2023**
 - b) **Consideration and Adoption of the Report on the National Land Commission (Amendment) Bill, 2023**
6. Any Other Business
7. Adjournment

The agenda of the meeting was adopted after it was proposed by Hon. Nzambia Thuddeus Kithua, M.P. and seconded by Hon. Passaris Esther Muthoni, M.P.

MIN/NO.NA/DC-LANDS/2024/094:

**CONSIDERATION AND
ADOPTION OF THE REPORT ON
THE LAND LAWS (AMENDMENT)
(NO.2)(NATIONAL ASSEMBLY
BILL NO. 76, 2023)**

The Senior Legal Counsel took the Committee through the draft report with emphasis on the following;

The Committee considered provisions of the Bill, evaluated submissions tabled and made the following observations;

1. The Bill I proposes to amend the Registration of Documents Act; the Land Control Act, the Land Registration Act, 2012, the Land Act, 2012, Community Land Act, 201 and the Sectional Properties Act, 2020 as follows.
2. The Bill seeks to amend the **Registration of Documents Act** by decentralizing land registries for registration of documents across the country as opposed to when such services were only available in Nairobi and Mombasa, and align the Registration of Documents Act to the Constitution of Kenya, 2010. The Committee proposes to amend the Bill to provide for proportional representation of persons during the constitution of the various committees.
3. **Under the Land Control Act**, the Bill seeks to reconstitute and align land control boards according to the Constitution of Kenya, 2010 new governance structure and enable granting consents to transact in agricultural land within paradigms of Article

- 65 of the Constitution which allows non-citizens to own land on leasehold terms not exceeding 99 years, as opposed to when their ownership could only be permitted by the President.
4. The Bill seeks to amend the **Land Registration Act** streamline registration of long-term leases within the provisions of the Sectional Properties Act, 2020 and also to widen the scope under which the registrar can revoke a title obtained through fraud by the proprietor.
 5. The Bill seeks to amend the **Community Land Act** to allow the Cabinet Secretary to complete pending adjudication programmes under the Land Adjudication Act beyond the 2-year period permitted by the Community land Act.
 6. The Bill seeks to amend the **Sectional Properties Act** to widen the scope of the Sectional Properties Act to include phased developments, introduce a second-tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed-use sectional development.
 7. The Bill seeks to amend the **Land Act** by giving clarity as to what it means by allocation of public land and the respective roles played by the National and County government as opposed to the National Land Commission.
 8. The Bill seeks to amend the **Land Act** to separate the roles of renewal and extension of leases and respectively assigning them to the National Land Commission and the Cabinet Secretary.
 9. The Bill seeks to amend the **Land Act** to provide for the periodical review of rent and valuation of land for rent after every ten years to be in tandem with the current property values,
 10. The Bill seeks to amend the **Land Act** to vest upon the Cabinet Secretary, the mandate of handling compulsory land acquisition, eliminate conflict of interest likely to occur when one entity is involved in valuation process and at the same time making compensation payments and eliminate delay in acquiring land since the acquiring public body has direct control in making compensation payments as opposed to when funds were being transferred to the Commission. The Committee shall propose amendments to streamline the process of compulsory acquisition by providing that the Cabinet Secretary shall drive the process of valuation and the Commission shall be responsible for paying compensation for land that has been compulsory acquired.
 11. The Bill seeks to amend the **Land Act** establish the Land Acquisition Committee to replace of the Land Acquisition Tribunal. The Committee shall propose amendments to assign the role of resolving administrative disputes to the Committee to ensure that matters arising from valuation are resolved promptly to enable prompt and proportional compensation.

Adoption of the Report

The Report on the Land Laws (Amendment) (No.2) Bill (National Assembly Bill No. 76 of 2023) was adopted having been proposed by The Hon. Gitari Joseph Gachoki, M.P and seconded by The Hon. Katana Paul Kahindi, M.P

The Senior Legal Counsel took the Committee through the Draft Report on The National Land Commission (Amendment) (National Assembly Bill No. 43 of 2023) with emphasis on the following;

Having considered the Bill, the Committee made the following observations:

- (a) There are still many cases relating to grants and dispositions of public land and historical land injustices claims that require to be reviewed and processed by the Commission to provide reprieve to aggrieved persons.
- (b) Section 14 of the Act is couched as a transitional provision that was to expire five years following its enactment hence the provisions of subsection (1).
- (c) To this end, an amendment to subsection (1) as contained in the proposal may not be in order noting the subsequent subsections in particular subsection (9) is premised on the transitional nature of the provision.
- (d) In this regard, Clause 2 ought to be amended by deleting the entire section and replacing it accordingly with the necessary amendments.
- (e) Clause 3 of the proposed Bill also requires to be amended as the amendment to section 15(3)(e) of the Act may not serve its purpose noting subsection (11) envisages that the power of Commission to determine historical land injustices claims shall expire within ten years of the enactment of the section.
- (f) Based on the statistics of the historical land injustice claims processed so far by the Commission and noting the proposed amendment to Section 15(3)(e), there is need also to delete subsection (11) as it may not be feasible and tenable for the Commission to process all the historical land injustices claims already admitted and continue receiving new claims by 2026, being the time within which the section shall stand repealed.
- (g) Additionally, the amendment to Section 15(11) of the Act is also necessary to align the Act with Article 67(2)(e) of the Constitution, which confers upon the Commission the power to deal with historical land injustices claims without any time limitations.
- (h) The Committee proposes to delete and amend clauses 2 and 3 of the Bill to address the matters raised under paragraphs (c), (f), (g) and (h).
- (i) The Committee noted that there is an emerging practice where courts grant orders attaching the accounts of the Commission to enforce a debt through garnishee or charging orders. The practice undermines the ability of the National Land Commission to carry out its functions including review of grants and dispositions, compulsory acquisition, and historical injustices. The Committee proposes to amend the Act to prevent courts from issuing garnishee or charging orders against the bank accounts of the National Land Commission.

Adoption of the Report

The Report on the National Land Commission (Amendment) (National Assembly Bill No. 43 of 2023) was adopted having been proposed by The Hon. Robi Mathias Nyamabe, M.P and seconded by The Hon. Rachael Kaki Nyamai, CBS, M.P

MIN/NO.NA/DC-LANDS/2024/096:

ANY OTHER BUSINESS

There was no other business.

MIN/NO.NA/DC-LANDS/2024/097:

ADJOURNMENT

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

SIGNED.....

DATE.....

12/03/2024

HON. JOASH NYAMACHE NYAMOKO, MP
(CHAIRPERSON)

TALKING NOTES BY HON. ALICE WAHOME
CABINET SECRETARY, MINISTRY OF LANDS PUBLIC
WORKS, HOUSING AND URBAN DEVELOPMENT
DURING PRESENTATION BEFORE THE
PARLIAMENTARY COMMITTEE ON LAND ON THE
LAND LAWS (AMENDMENT) BILL, 2023 ON 1ST
FEBRUARY, 2024

Chairperson, Committee on Departmental Committee on Lands

Honourable Members of the Committee on Lands

Chairperson of the Taskforce on Review of the Land Laws (Amendment)
Bill, 2023, Staff from the Ministry

Ladies and gentlemen

1. I take this opportunity to thank you for calling us to appear before you today on this noble task of legislating the Land Laws (Amendment) Bill, 2023.
2. Mr. Chairman, as you could be aware, the land-sector is currently undergoing through many changes and reforms that calls for a corresponding review of the legal framework that speak to such changes.
3. One of the many legislative reviews we are undertaking comes you through the Land Laws (Amendment) Bill, 2023 which Bill proposes to amend the following land-sector statutes—

- (a) Registration of Documents Act, Cap 285
- (b) Land Control Act, Cap 302
- (c) Land Registration Act, 2012
- (d) Land Act, 2012

- (e) Community land Act, 2016
- (f) Sectional Properties Act, 2020

4. Before we make a detailed presentation touching on every statute proposed to be amended, allow me Honourable Chairman to point out some of the gains we seek to make on behalf of the citizenry—

- a) To bring statutes into conformity with the Constitution of Kenya, 2010.
- b) To bring services associated with registration of documents closer to all across the country by permitting registration of documents at any registry, under the Registration of Documents Act.
- c) To re-state in uncertain terms under which circumstances can a registrar cancel a title issued under fraudulent means, under the Land Registration Act
- d) To provide for a framework of appointing the Land Control Boards that includes representation from the County Government as well as provide for express processing of consents, under the Land Control Act.
- e) To provide for a mechanism of completing the land adjudication process in areas already declared as Adjudication Areas as opposed to migrating the process to the Community Land Act which requires completing of the process within three years from enactment of the Community Land Act, under the Community Land Act.
- f) To expand the scope of the Sectional Properties Act to include phased development of land parcels without necessarily closing the mother title on registration of a sectional plan.
- g) To eliminate the discriminative and differential tax regime over leasehold properties by bringing on board leasehold properties on peppercorn rent to be at par with other leasehold properties when it comes to assessment of land rent to be paid, under the Land Act.
- h) To give more clarity on respective roles played by the Cabinet Secretary and the National Land Commission when it comes to allocation of public land, renewal and extension of leases.

- i) To provide for a mechanism for review of rent periodically, and also valuation of land for purpose of rent.
5. Hon. Chair, as you will note from the documents we have placed before you, we are happy to inform you that before this Bill was brought to the House, the same was subjected to a public participation exercise where the taskforce visited various parts of the country to physically engage with members of the public.
6. The areas visited include Nakuru, Nyeri, Meru, Kisii, Kisumu, Kakamega, Eldoret, Kitui, Malindi and Nairobi. In the same vein, written memoranda were also received and considered.
7. Subsequently Honourable Chairman, the views given were reviewed and collated to inform the Bill that is now before you.
8. Once again, I take this opportunity to thank you and the honourable members of the Committee for affording us this opportunity to appear before you as we continue soliciting for your invaluable support in passing this Bill.

THANK YOU

LAND LAWS (AMENDMENT) BILL, 2023 WITH RATIONALES

1. REGISTRATION OF DOCUMENTS ACT

Clause	Sec. Particulars	Amendment	Rationale
1.		This Act may be cited as the Land Laws (Amendment) Act, 2023.	
2.	2	Section 2 of the Registration of Documents Act is amended by— (a) deleting the definition of the term “Principal Registrar”; (b) deleting the definition of the term “registrar” and substituting therefor the following new definition— “registrar” has the meaning assigned in the Land Registration Act, 2012. (c) inserting the following new definitions in their proper alphabetical sequence— “registration unit” has the meaning assigned to it under section 2 of the Land Registration Act, 2012; “registry” has the meaning assigned to it under section 2 of the Land Registration Act, 2012;	So as to decentralize registration of documents registries to all registries in Kenya as opposed to only being in Nairobi and Mombasa registries. To make the Act in harmony with the Land registration Act
3.	3. Registries (1) A registry shall be kept at Nairobi for the whole of Kenya except the Coast Province, and shall be known as the Principal Registry, and another registry	The Registration of Documents Act is amended by repealing section 3.	Introduction of the term ‘registry’ to mean every registry under the Land Registration Act renders this section superfluous

	shall be kept at Mombasa for the Coast Province only, and shall be known as the Coast Registry. (2) The Registrar may establish and maintain the Principal and Coast registries in electronic form. [Act No. 41 of 1956, s. 3, Act No. 21 of 1966, Second Sch, Act No. 1 of 2020, s. 5.]		
4.	4(1) (vii) any document registrable under the provisions of the Government Lands Act (Cap. 280), the Registration of Titles Act (Cap. 281), the Land Titles Act (Cap. 282) or the Registered Land Act (Cap. 300); Provided that, if any such document relates to land registrable under any such Act and also to land not so registrable, such document shall also be registered under this Act.	Section 4(1) of the Registration of Documents Act is amended by— (a) by deleting subparagraph (vii) and substituting therefor the following new subparagraph— (vii) any document registrable under the Land Registration Act, 2012; (b) deleting the proviso and substituting therefor the following new proviso— Provided that if any such document relates to land registrable under the Land Registration Act, 2012 and also to land not registrable under the Land Registration Act, 2012, such document shall also be registered under this Act.	1. To do away with the many repealed statutes by the land Registration Act. 2. To eliminate reference to repealed statutes and refer to the consolidated registration regime being the Land Registration Act.
5.	6. As to documents not written in specified languages If any document duly presented for registration is not written in English, Arabic, Kiswahili or Gujarati, or such other language as may from time to time be prescribed, either generally or locally, the registrar may refuse to register the same unless it is accompanied by a true	The Registration of Documents Act is amended by repealing section 6 and replacing it with the following new section— 6. documents not written in specified languages. If any document duly presented for registration is not written in English or Kiswahili, the registrar may refuse	The official languages are English and Kiswahili

	translation in English, certified to the satisfaction of the registrar. [Act No. 19 of 1959, s. 2.]	to register the document unless it is accompanied by a true translation in English, certified to the satisfaction of the registrar.	
6.	11. Registry at which document to be registered (1) Any document relating to immovable property situate in a place other than the Coast Province shall be registrable only in the Principal Registry, and any document relating to immovable property situate in the Coast Province shall be registrable only in the Coast Registry: Provided that if any document relates to immovable property in the Coast Province and elsewhere it shall be registrable in either or both the registries. (2) Any document not relating to immovable property shall, if the duties to be performed under the document are to be performed in a place other than the Coast Province, be registrable in the Principal Registry, and, if the duties are to be performed in the Coast Province, it shall be registrable in the Coast Registry: Provided that, if any such duty or duties under a document may be performed in the Coast Province and elsewhere, the documents shall be registrable in either or both the registries. [Act No. 41 of 1956, s. 4, Act No. 21 of 1966, Second Sch.]	The Registration of Documents Act is amended by repealing section 11 and replacing it with the following new section— 11. Registry at which document to be registered (1) (1) Any document relating to immovable property situate within a registration unit shall be registrable only in a registry in that registration unit: Provided that if any document relates to immovable property within a given registration unit and elsewhere it shall be registrable in either of the registries in or both the registries. (2) Any document not relating to immovable property shall, if the duties to be performed under the document are to be performed in a place, it shall be registrable in a registry within a registration unit in which the duty is to be performed: Provided that, if any such duty or duties under a document may be performed in a registration unit or elsewhere, the documents shall be registrable in either or both the registries.	To streamline where documents are to be registered given the decentralized structure as opposed to when designated registries were two in Kenya

7.	19. Books to be kept by registrars The following books shall be kept in both registries—	Section 19 of the Registration of Documents Act is amended by deleting the words “both registries” and substituting therefor the words “a registry”.	Every registry shall be required to keep the books as opposed to when they were required to be kept only in Mombasa and Nairobi registries
8.	22. Registrar may notify applications for registration Upon receiving for registration any instrument relating to immovable property the registrar may give public notice thereof in such manner with such particulars as the Principal Registrar may from time to time direct.	Section 22 of the Registration of Documents Act is amended by deleting the words “the Principal Registrar may from time to time direct” and substituting therefor the words “may be prescribed in the regulations”.	To diminish the discretion imputed on the part of the principal registrar (deleted) and make it more predictable by way of regulations
9.	23. Method of registration (2) Subject to the provisions of this Act, the registrar shall register the document by filling a photostatic copy thereof in the register in such manner as the Principal Registrar may direct, and shall number every such copy consecutively and shall inscribe thereon the day of the month and year when it was presented for registration.	Section 23(2) of the Registration of Documents Act is amended by deleting the words “the Principal Registrar may direct” and substituting therefor the words “may be prescribed in the regulations”.	To diminish the discretion imputed on the part of the principal registrar (deleted) and make it more predictable by way of regulations
10.	25. Indexes to be kept At each registry indexes shall be kept of all registered documents in such form and containing such particulars as the Principal Registrar may direct.	Section 25 of the Registration of Documents Act is amended by deleting the words “the Principal Registrar may direct” and substituting therefor with the words “may be prescribed in the regulations”.	To diminish the discretion imputed on the part of the principal registrar (deleted) and make it more predictable by way of regulations
11.	30. Principal Registrar to superintend The Principal Registrar shall exercise a general superintendence over both registries. [Act No. 41 of 1956, s. 6.]	The Registration of Documents Act is amended by repealing section 30.	The term “registrar” introduced in section 2 suffices because the same includes the Chief Land

			Registrar and connotes a supervisory role over other registrars.
12.	34. Appeals against refusals to register from registrars to Principal Registrar An appeal shall lie against an order of refusal or of cancellation from any registrar to the Principal Registrar, and the Principal Registrar may reverse or alter such order; and if the order of the Principal Registrar directs the document to be registered the registrar shall register it. [Act No. 24 of 1950, s. 5.]	Section 34 of the Registration of Documents Act is amended by deleting the words "Principal Registrar" wherever they occur and substituting therefor the words "Chief Land Registrar".	For consistency with the established structure of registrars as provided under the Land Registration Act
13.	35. Appeal from Principal Registrar to Court (1) When the Principal Registrar—	Section 35(1) of the Registration of Documents Act is amended by deleting the words "Principal Registrar" and substituting therefor the words "Chief Land Registrar".	For consistency with the established structure of registrars as provided under the Land Registration Act
14.	36. Registrars protected for acts done in good faith The Principal Registrar or any registrar shall not be liable to any suit, claim or demand by reason of anything in good faith done or omitted to be done in his official capacity.	Section 36 of the Registration of Documents Act is amended by deleting the words "Principal Registrar" and substituting therefor the words "Chief Land Registrar".	For consistency with the established structure of registrars as provided under the Land Registration Act
15.	37. Defects in appointment or procedure not to invalidate acts done in good faith Nothing done in good faith pursuant to this Act or any regulations thereunder by the Principal Registrar or any registrar shall be deemed invalid merely by reason of any defect in his appointment or procedure.	Section 37 of the Registration of Documents Act is amended by deleting the words "Principal Registrar" and substituting therefor the words "Chief Land Registrar".	For consistency with the established structure of registrars as provided under the Land Registration Act

16.	39. Searches Any person desiring information may apply in person at the Principal Registry or at the Coast Registry (as the case may require), and, on completion of the prescribed form and on payment of the prescribed fee, may inspect the register relating to the document mentioned in the form. [Act No. 19 of 1959, s. 6.]	The Registration of Documents Act is amended by repealing section 39 and replacing it with the following new section— 39. Searches Any person desiring information in any registry may apply in person at the registry or by electronic means, and, on completion of the prescribed form and on payment of the prescribed fee, may inspect the register relating to the document mentioned in the form or the same be made available by electronic means.	Searches to be conducted in respective registries where the information sought is domiciled
17.	40.		

2. LAND CONTROL ACT

Clause	Sec. Particulars	Proposed amendment	Rationale
17	“a board” means a land control board, a provincial land control appeals board or the central land control appeals board; “county council” means a county council established under the Local Government Act, (Cap. 265);	Section 2 of the Land Control Act is amended by— (a) in the definition of “agricultural land” by deleting the word “Minister” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary”; (b) in the definition of “a board” deleting the words “a provincial land control	To align the definition to fit into the prevailing administrative structure spelled out in the Constitution of Kenya, 2010

	“provincial land control appeals board” means a provincial land control appeals board established under <u>section 10</u>;	appeals board” and substituting therefor the words “a county land control appeals board”; (c) in the definition of “land control area” by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”; (d) deleting the definition of the term “county council”; (e) deleting the term “provincial land control appeals board”; (f) inserting the following new definitions in their proper alphabetical sequence— (i) “county government” has the meaning assigned to it under the County Governments Act, 2012. (ii) “county land control appeals board” means a county land control appeals board established under section 10;	
18	3. Minister	Section 3 of the Land Control Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.	To harmonise with the Constitution of Kenya, 2010

19	4. Minister	Section 4 of the Land Control Act is amended by deleting the word "Minister" and substituting therefor the words "Cabinet Secretary".	
20	5. Minister	Section 5(1) of the Land Control Act is amended by deleting the word "Minister" and substituting therefor the words "Cabinet Secretary".	
21	6(3) (b) a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.	Section 6(3) of the Land Control Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph— (b) a transaction to which the national government, the Land Settlement Fund or (in respect of community land) a county government is a party.	1. To cite the correct name of a fund under section 135 of the Land Act 2. To replace county council with county government
22	9. Granting or refusal of consent (1) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall— (a) have regard to the effect which the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of standards of good husbandry within the land control area; (b) act on the principle that consent ought generally to be refused where— (i) the terms and conditions of the transaction (including the price to be paid) are markedly unfair	Section 9 of the Land Control Act is amended in subsection (1) by deleting paragraph (c).	1. The Land (Group Representatives) Act, 1968 was repealed by the Community Land Act, 2016. 2. The constitution has set out terms under which non-citizens can own land regardless of use. Article 65 allows non-citizens to own land on leasehold tenure for a term not exceeding 99 years. 3. Article 40 of the Constitution of Kenya, 2010 grants every person

	or disadvantageous to one of the parties to the transaction; or (iv) in the case of the division of land into two or more parcels, the division would be likely to reduce the productivity of the land; (c) refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not— (i) a citizen of Kenya; or (ii) a private company or co-operative society all of whose members are citizens of Kenya; or (iii) group representatives incorporated under the Land (Group Representatives) Act, 1968 (Cap. 287); or (iv) a state corporation within the meaning of the State Corporation Act, 1986 (Cap. 446)		the right, either individually or in association with others to acquire and own property of any description and in any part of Kenya. This right is subject to limitations set out in Article 65 above.
23	PART VI – PROVINCIAL LAND CONTROL APPEALS BOARD	The Land Control Act is amended by deleting the heading of Part VI and substituting therefor the following new heading— COUNTY LAND CONTROL APPEALS BOARD	To align appeal board to established administrative boundaries.

24	10. Establishment of provincial land control appeals boards (1) The Minister shall establish for each province which contains a land control area, in consultation with the Provincial Commissioner of that province, a provincial land control appeals board. (2) The membership of a provincial land control appeals board shall be as provided in paragraph 2 of the Schedule.	The Land Control Act is amended by repealing section 10 and replacing it with the following new section— 10. Establishment of county land control appeals boards. (1) The Cabinet Secretary shall establish for each County which contains a land control area, in consultation with the County Commissioner of that County, a County land control appeals board. (2) The membership of a County land control appeals board shall be as provided in paragraph 2 of the Schedule.	Establishing appeals board in terms of established administrative units
25	Appeal to provincial land control appeals board (1) Where a land control board refuses to grant consent in respect of a controlled transaction, the applicant may, within thirty days of the copy of the board's decision being delivered or posted under section 16(2) of this Act, appeal to the provincial land control appeals board for the province in which the land in question is situated. (2) A provincial land control appeals board shall, in its absolute discretion, hear and determine all appeals made to it under subsection (1), and, subject to the right of	Section 11 of the Land Control Act is amended— (a) in the side note by deleting the word “provincial” and substituting therefore the word “county”; (b) in subsection (1) by deleting the words “the provincial land control appeals board for the province; and substituting therefor the words “the county land control appeals board for the county”; (c) in subsection (2) by deleting the words “A provincial land control appeals board; and	Appeals board established in terms of the established governance structure as opposed to the erstwhile provincial administration which was repealed by the constitution of Kenya, 2010

	appeal conferred by section 13, the decision of a provincial land control appeals board shall be final and conclusive and shall not be questioned in any court.	substituting therefor the words "A county land control appeals board";	
26	12. Establishment of central land control appeals board (1) There is hereby established a central land control appeals board. (2) The membership of the central land control appeals board shall be as provided in the First Schedule. (3) The Commissioner of Lands shall be the secretary of the Central land control appeals board, and shall attend and may speak at meetings, but may not vote.	Section 12(3) of the Land Control Act is amended by deleting the words "Commissioner of Lands" and substituting therefor the words "Director of Land Administration".	The office of the Commissioner of lands no longer exists since the Governments Lands Act was repealed by the Land Registration Act.
27	13. Appeal to central land control appeals board (1) Any person whose appeal has been dismissed by a provincial land control appeals board may, within thirty days of the copy of the board's decision being delivered or posted under <u>section 16(2)</u> of this Act, appeal to the central land control appeals board. (2) The central land control appeals board shall, in its absolute discretion, hear and determine all appeals made to it under subsection (1) of this section, and its decision of the central land control appeals board shall be final and	Section 13(1) of the Land Control Act is amended by deleting the word "provincial" and substituting therefor the word "county".	To harmonise with the established County land control appeals board established under section 10 above

	conclusive and shall not be questioned in any court.			
28	14. Minister	Section 14 of the Land Control Act is amended by deleting the word "Minister" wherever it occurs and substituting therefor the words "Cabinet Secretary".	To align with the Constitution	
29	15. Procedure of boards (1) If the chairman of a board is absent from a meeting of the board, the members present at the meeting shall elect one of their number to preside at that meeting. (2) The quorum of a meeting of a land control board or a provincial land control appeals board, where the total number of members of the board is an even number, shall be one-half of that number, and where the total number is an uneven number it shall be one-half of the even number which is greater than the uneven number by one. (3) The quorum of a meeting of the central land control appeals board shall be three. (4) If there is an equality of votes on any matter before a board, the chairman of the board or other member presiding shall have a casting vote as well as an original vote.	Section 15 of the Land Control Act is amended— (a) by deleting the word "provincial" and substituting therefor the word "county" in sub-section (2). (b) By deleting sub-section (3) and substitute therefor a new subsection— "(3) the Land Control Board may schedule a special land control board meeting outside of the scheduled normal land control board meetings as may be necessary from time to time.	County land control appeals board established under section 10 above in terms of the current governance structure	
30	23. Prohibition of land transactions The President may, by notice in the <i>Gazette</i> , prohibit any controlled transaction or any class of controlled transaction.	Section 23 of the Land Control Act is amended by deleting the word "President" and substituting therefor the words "Cabinet Secretary".	To fast track transactions when such need arises.	

31	24. Exemptions The President may, by notice in the <i>Gazette</i>, exempt— (1) any land or share, or any class of land or share; or (2) any controlled transaction, or any class of controlled transaction; or (3) any person in respect of controlled transactions or some class of controlled transaction, from all or any of the provisions of this Act, or from any prohibition made under <u>section 23</u> of this Act, on such conditions (if any) as he may think fit to impose.	Section 24 of the Land Control Act is amended by deleting the word “President” and substituting therefor the words “Cabinet Secretary”.	To fast track transactions when such need arises.
32		Section 25(1) of the Land Control Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.	
33	27. Amendment of laws The written laws specified in the first column of the Second Schedule of this Act are amended, in relation to the provisions thereof specified in the second column of that Schedule, in the manner specified in relation thereto in the third column of that Schedule.	Section 27 of the Land Control Act is repealed.	To harmonise with changes
34	1. A land control board shall consist of— (a) the District Commissioner of the district in which the land control area or division is situated, or a District Officer deputed by him in writing, who shall be chairman; (b) not more than two other public officers;	The First Schedule to the Land Control Act is amended— (a) in paragraph 1 by— (i) deleting the words “the District Commissioner of the district” appearing	To harmonise schedule with changes made in the Act

	(c) two persons nominated by the county council having jurisdiction within the area of jurisdiction of the board; and (d) not less than three and not more than seven persons resident within the area of jurisdiction of the board, appointed by the Minister: Provided that— (i) not less than eight and not more than twelve persons shall be appointed as members of the board; and (ii) more than one-half of the members of the board shall be owners or occupiers of agricultural land within the area of jurisdiction of the board. 2. A provincial land control appeals board shall consist of— (a) the Provincial Commissioner, who shall be chairman; (b) not more than two other public officers appointed by the Minister; and (c) not less than two and not more than five persons appointed by the Minister: Provided that more than one-half of the members of the board shall be owners or occupiers of agricultural land within the province.	in subparagraph (a) and substituting therefor the words "the Deputy County Commissioner for the sub-county"; (ii) deleting subparagraph (c) and substituting therefor the following new paragraph— (c) two persons nominated by the County Executive Committee member for the time being responsible for lands in the county where the board has jurisdiction. (b) by deleting paragraph 2 and substituting therefor the following new paragraph— 2. A County land control appeals board shall consist of— (a) the County Commissioner, who shall be chairman; (b) not more than two other public officers appointed by the Cabinet Secretary; and (c) not less than two and not more than five persons appointed by the Cabinet Secretary: Provided that more than one-half of the members of the board shall be
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	owners or occupiers of agricultural land within the county.	
	(c) in paragraph 3 by— (i) deleting the word “Minister” appearing in subparagraph (a) and substituting therefor the words “Cabinet Secretary; (ii) deleting the word “Minister” appearing in subparagraph (b) and substituting therefor the words “Cabinet Secretary; (iii) deleting the word “Minister” appearing in subparagraph (c) and substituting therefor the words “Cabinet Secretary; (iv) deleting the word “Minister” appearing in subparagraph (d) and substituting therefor the words “Cabinet Secretary; (v) deleting the word “Minister” appearing in subparagraph (e) and substituting therefor the words “Cabinet Secretary;	
35	The Land Control Act is amended by deleting the Second Schedule.	To harmonise with changes made in the Act

3. LAND REGISTRATION ACT

Clause	Sec. Particulars	Amendment	Rationale
36	"building" means a structure or erection of any kind, whether permanent or temporary, movable or immovable and whether completed or not;	Section 2 of the Land Registration Act, 2012, is amended in section 2 by deleting the definition of the term "building" and substituting therefor the following new definition— "building" means one or more structures on the same parcel	To bring the interpretation into harmony with the Sectional Properties Act
37	(4) The land register shall include the following features— (d) the user of the land; and	Section 7(4) of the Land Registration Act, 2012, is amended by deleting the word "user" appearing in paragraph (d) and substituting therefor the word "use".	To make correction to reflect the correct term
38	(1) Subject to the legislation on community land made pursuant to Article 63 of the Constitution, there shall be maintained in each registration unit, a community land register in which shall be kept— (d) the user of the land;	Section 8(1) of the Land Registration Act, 2012, is amended by deleting the word "user" appearing in paragraph (d) and substituting therefor with the word "use".	To make correction to reflect the correct term
39		Section 9(2) of the Land Registration Act, 2012, is amended by deleting the word "user" appearing in paragraph (d) and substituting therefor the word "use".	To make correction to reflect the correct term
40	(4) The land register maintained under section 7 of this Act shall be deemed to be the land register for purposes of the Sectional Properties Act, 1987 (No. 21 of 1987).	Section 54 of the Land Registration Act, 2012, is amended—	1. To bring it into conformity with the Sectional Properties Act, 2020 repealing the

	(5) The Registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land.	(a) in subsection (4) by deleting the expression “the Sectional Properties Act, 1987 (No. 21 of 1987)” and substituting therefor the expression “the Sectional Properties Act, 2020 (No. 21 of 2020)” . (b) by deleting subsection (5) and substituting therefor the following new subsection— (5) The Registrar shall register long-term leases and issue certificates of lease in respect of interests in freehold and leasehold land if the respective interests are captured in a sectional plan drawn by a surveyor and approved by the authority responsible for land survey. (c) by inserting the following a new subsection immediately after subsection (5)— (5A) Where long-term leases under subsection (5) are created over sectional units on a leasehold land to confer the entire leasehold interest by the transfer of such leases by the proprietor without retaining any interest including a reversionary interest, the registrar shall register each sectional unit and issue a certificate of lease in accordance with the Sectional Properties Act, 2020	Sectional Properties Act, 1987 2. To bring registration of longterm leases into harmony with the Sectional Properties Act 3. To have all longterm leases registration premised on a sectional plan. 4. To eliminate confusion brought about by what it means by “georeferencing” as opposed to “sectional plan” whereas they mean the same thing. 5. To enable closure of the mother title upon registration of the sectional plan
41	56(4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.	Section 56 of the Land Registration Act, 2012, is amended—	To give more clarity to the section

		(a) by deleting subsection (4) and substitute therefor with a new subsection— (4) The registrar shall not register a charge unless the registrar is satisfied that land rent is not owing or unless the land is freehold. (b) by deleting subsection (5A)	
42	59. If a charge contains a condition, express or implied by the borrower that the borrower will not, without the consent of the lender, transfer, assign or lease the land or in the case of a lease, sublease, no transfer, assignment, lease or sublease shall be registered until the written consent of the lender has been produced to the Registrar.	Section 59 of the Land Registration Act, 2012, is amended by deleting the word “borrower” appearing immediately after the words “implied by the” and substituting therefor the word “lender”.	To eliminate error and give proper context
43	(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless— (a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or (b) it would for any other reason be unjust for the alteration not to be made. Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.	Section 79 of the Land Registration Act, 2012, is amended by deleting subsection (2) and substituting therefor the following new subsection— (2) No alteration or cancellation affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless— (c) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or (d) it would for any other reason be unjust for the alteration or cancellation not to be made:	1. To clarify the meaning of rectification of the register to include cancellation as well as reduce the notice period from 90 to 30 days. 2. To re-enforce the means of taking actions through the administrative or quasi-judicial means to deal with cases of fraud in the land sector effectively and promptly.

		Provided that a written notice of thirty days shall be given to the proprietor of such intention to make the alteration or cancellation.	
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4. THE LAND ACT

	Sec. Particulars	Proposed Amendment	Rationale
44	"allocation of land" means the legal process of granting rights to public land"	Section 2 of the Land Act, 2012, is amended by— By deleting the definition "allocation of land" and substitute therefor with a new definition to read— "allocation of land" means alienation of public land. (a) deleting the definition "allocation of land" and substitute therefor with a new definition— "allocation of land" means alienation of land by either the national government or the county government as the case may be, by way of issuance of a letter of allotment by the National Land Commission to any person to hold the land either under leasehold or freehold tenure; (b) deleting the definition of the term "alienation of public land"; (c) deleting the definition of the term "tribunal";	1. 'Allocation of land' connotes the same meaning as 'alienation of public land'. 2. To streamline the meaning of terms that mean the same and remove any ambiguity in interpreting the land Act 3. To give more clarity in a land allocation process 4. To give emphasis that land is designated private upon acceptance by the allottee. 5. To give meaning to what it means by Committee set up under Part VIII A of the Act.

		(d) inserting the following new definitions in their proper alphabetical sequence— “acquiring public body” means a public body that wishes to acquire land through compulsory acquisition; “Committee” means the Land Acquisition Committee established by section 133A; “letter of allotment” means a written expression of offer by the National Land Commission to a person who duly accepts the offer of being granted rights to hold public land in an alienation of public land or allocation of land process. “public body” means— (a) the national or county government; or (b) any authority, board, commission or other body which has or performs, whether permanently or temporarily, functions of a public nature, or which engages or is about to engage in any activity that is of public purpose;	
45	13. (1A) where a lease is not granted after an application under sub-section (1), the Commission shall give the lessee the reasons for not granting the lease, in writing	Section 13 of the Land Act, 2012, is amended—	1. To set a clear line between extension and renewal of leases and to have the Commission play a role in

(2)(a) prescribing the procedures for applying for extension of leases before their expiry; (2)(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; (2)(c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land;	(a) by deleting subsection (1A) and substituting therefor the following new subsection— (1A) Where a letter of allotment is not issued to the lessee after an application under subsection (1), the Commission shall in writing give the lessee the reasons for not allocating the land to the lessee. (b) in subsection (2) by — (i) deleting paragraph (a) and substituting therefor the following new paragraph— (a) prescribing the procedures for applying for renewal of leases before their expiry; (ii) deleting paragraph (b) and substituting therefor the following new paragraph— (b) prescribing the factors to be considered by the Commission in re-allocating the land to the lessee; (iii) deleting paragraph (c) and substituting therefor the following new paragraph— (c) the stand premium or the annual rent to be paid by the lessee in consideration of re-allocation of the land; (c) inserting the following new subsections immediately after subsection (2)—	the renewal of leases or re-allocation of land process and have the Cabinet Secretary deal with extension of leases 2. To be specific on the role of the Commission in the renewal of lease process 3. The role of the Commission in the renewal process terminates at allocation 4. Extension of lease can only happen while the term of lease is unexpired and therefore subject land is private hence the mandate of the cabinet secretary 5. The cabinet secretary is responsible for extension of leases and therefore right-placed to make regulations
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		(3) An application for extension of a lease shall be made to the Cabinet Secretary. (4) The Cabinet Secretary may make regulations on extension of leases prescribing the application procedure, factors to be considered, stand premium and annual rent payable.	
46	20. Licence for Temporary Purposes (1) The Commission may grant a person a licence to use unalienated public land for a period not exceeding five years subject to planning principles as it may prescribe. (2) The Commission may serve a notice to quit upon the licensee at any time after the expiration of nine months from the date of the licence. (3) The fee payable under a licence under this section, the period and the agreements and conditions of the licence, shall be prescribed by the Commission (4) The licensee may, with the consent of the Commission, transfer the benefit of a licence under this section, and the transfer and the consent thereto shall be endorsed on the licence	The Land Act, 2012, is amended by repealing section 20 and replacing it with the following new section— 20. Whenever the national or county government is satisfied that it may be necessary to grant licence to any person to use unalienated public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission to handle the process including— (a) determining the criteria to be used in granting licence to any person for a period not exceeding five years subject to planning principles as it may prescribe. (b) issuing a notice to quit upon the licensee at any time after the expiration of nine months from the date of the licence. (c) determining the fee payable under a licence under this section, the period and the agreements and conditions of the licence. (d) the manner of giving consent upon transfer of the benefit of a licence.	The desire and need to give out unalienated public land on licence terms should begin from the either the national or county government. Grant of licences to be done at the behest of the national or county government.

47	23. Implied covenants and conditions by lessor (1) In every lease relating to public land, unless the lease expressly provides otherwise, there is an implied covenant by the lessor— (a) that the lessor has full power to the land or lease; and (b) that the lessee, paying the rent and fulfilling the conditions of the lease, shall enjoy quiet possession of the premises without interruption by the lessor or any person claiming under the lessor, except so far as the laws for the time being in force may permit. (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.	Section 23 of the Land Act, 2012, is amended— (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph— (b) that the lessor has full power to lease the land; and (c) by deleting subsection (2) and substituting therefor the following new subsection— (2) A lease of public land shall be issued and sealed by the Cabinet Secretary on behalf of the national government or county government as the case may be. (d) By deleting paragraph (a) subsection (1) and replacing it with another paragraph to read “(a) that the lessor has full power to lease the land; and” (e) by deleting subsection (2) and replacing it with a new subsection to read- “(2) a lease of public land shall be issued and sealed by the Cabinet Secretary on behalf of the national Government or County government as the case may be.”	1. To give more clarity on implied covenant on the part of the lessor on power to lease. 2. To clarify respective roles of national government and NLC on issuing of leases once the allocation process is completed by issue of letter of allotment by the NLC 3. To remove confusion brought about by the use of the words “private land within the meaning of article 64(b) of the Constitution” 4. To vest issuing of titles on the National Government and guarantor of all titles to land issued.
48		The Land Act, 2012, amended by inserting the following new sections immediately after section 28— 28A. Rent for the several periods. (1) The annual rent payable including peppercorn rent under a lease shall be the rent reserved in the lease and for each subsequent period of ten years.	To entrench periodical review of rent in the Act To include peppercorn rent in the review process To provide valuation for the purpose of review of rent

		(2) The annual rent payable under subsection (1) shall be charged at such percentage, of value of the land upon assessment after every ten years, as the Cabinet Secretary may by order in the <i>Gazette</i> determine. 28B. Valuation of land for rent. (1) Notwithstanding any provision of a lease under this Part, the Cabinet Secretary shall, at every tenth year from the commencement of the lease until the expiry of the term of a lease under this Part, cause the land which is the subject of a lease under this Part to be valued for the purpose of determining the rent which shall be payable for the second or subsequent ten year period of the lease, whichever next follows the year in respect of which the valuation is made. (2) The rent determined under subsection (1) shall be payable with effect from the beginning of the date for which it is determined to be payable and such date shall not apply retrospectively. 28C. Lessee to be notified of rent to be paid after valuation. (1) Upon the valuation under section 28B, the Cabinet Secretary shall, before the expiration of the year in which the valuation was made, cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by the lessee during	To provide for mechanism of appeals to the dissatisfied
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		the next following period and calling upon the lessee to state in writing whether he objects to the valuation. (2) Where the lessee successfully objects to the valuation under subsection (1), the rent payable shall, upon the determination of the objection, be varied to be in accordance with the valuation determined under section 28B(1), and the lessee shall be entitled to a refund of any overpaid rent paid by the lessee. (3) It shall be no defence to an action for any rent payable under a lease granted under this Part that any notice required by this section to be served on the lessee has not been served.	
49	30. Commission may sue for rent, etc., in arrears	Section 30 of the Land Act, 2012, is amended by deleting the marginal note by deleting the word "Commission" and substituting therefor the words "national government or county government".	To align with other provisions over rent
50	34(1) If the national government or county government as the case may be proposes to resurvey the boundaries of any leased public land, or to sub-divide land that is the subject of any interests or cautions, the Commission may, with the reasonable notice to the holders of the interests, or of the relevant cautioners, by order incorporating a survey plan or revised survey plan authenticated by the office or authority responsible for survey, make such adjustments to those boundaries as-	Section 34(1) of the Land Act, 2012, is amended by deleting the words "leased public land" and substituting therefor the words "leasehold land".	To ensure consistency in the manner terms are used in the Act. It is not clear as to what leased public land is other than construing it to mean leasehold land

51	(a) The national government or county government as the case maybe consider necessary; and (b) According to any proposed plan of subdivision approved under the law relating to physical planning, Without any obligation to make or pay compensation	The Land Act, 2012 is amended by inserting the following new section immediately after section 54— 54A. Levy on freehold land The owner of any freehold land situate within the boundaries of any urban area or city shall pay an annual land levy equivalent to land rent charged on a comparable leasehold land or property of the same size in the same zone. Provided that any owner of freehold land that is put to agricultural use may be exempt from the annual land levy.	To provide for levy on freehold land in urban areas and cities. To have equitable tax regime User to dictate tax regime in an urban setting
52	Section 107 of the Land Act is hereby deleted and replaced with a new section— “107. Preliminaries to acquisition (1) 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 land to the Cabinet	The Land Act, 2012, is amended by repealing section 107 and replacing it with the following new section— 107.(1) 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 land to the Cabinet Secretary to acquire the land compulsorily.	To replace the preliminary role of the Commission with that of the Cabinet Secretary, as far as compulsory land acquisition is concerned.

	Secretary to acquire the land compulsorily. (2) The Cabinet Secretary shall prescribe a criteria and guidelines to be adhered to by the acquiring public bodies in the acquisition of land. (3) The Cabinet Secretary may reject a request of an acquiring public body, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution. (4) Where the Cabinet Secretary rejects a request of an acquiring public body in accordance with subsection (3), the Cabinet Secretary shall inform the relevant acquiring public body within fourteen days of the decision to reject the request. (5) If the Cabinet Secretary establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Cabinet Secretary shall— (a) cause the affected land to be mapped out and valued using the valuation criteria set out under this Act; and (b) establish that the acquiring public body has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in	(2) The Cabinet Secretary shall prescribe a criteria and guidelines to be adhered to by the acquiring public bodies in the acquisition of land. (3) The Cabinet Secretary may reject the request of an acquiring public body, to undertake an acquisition if the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution. (4) Where the Cabinet Secretary rejects the request of an acquiring public body in accordance with subsection (3), the Cabinet Secretary shall within fourteen days of the decision inform the acquiring public body of the decision to reject the request and state the reason for the rejection. (5) If the Cabinet Secretary establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Cabinet Secretary shall— (a) cause the affected land to be mapped out and valued using the valuation criteria set out under this Act; and (b) establish whether the acquiring public body has identified the number and maintained a register of persons in actual occupation of the land, confirming for each such occupation the duration of uninterrupted occupation or ownership of interest in the land prior to the
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	uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon. (6) Upon approval of a request under subsection (1), the Cabinet Secretary shall publish a notice to that effect in the <i>Gazette</i> and shall deliver a copy of the notice to the Registrar and every person interested in the land. (7) The notice issued under subsection (6) shall contain the following particulars— (a) the purpose for which the land is to be compulsorily acquired; and (b) the location, general description and approximate area of the land. (8) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76 (1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring public body. (9) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition. (10) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually	date of the request for acquisition of the land, and the improvements thereon. (6) Upon approval of a request under subsection (1), the Cabinet Secretary shall publish a notice to that effect in the <i>Gazette</i> and deliver a copy of the notice to the Registrar and every person who has an interest in the land. (7) The notice issued under subsection (6) shall contain— (a) the purpose for which the land is to be compulsorily acquired; and (b) the location, general description and approximate area of the land. (8) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76(1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land until it vests in the acquiring public body. (9) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition. (10) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land register and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.
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	occupying the land and the spouse or spouses of such person. (11) All land to be compulsorily acquired shall be geo-referenced and authenticated by the office or authority responsible for survey at both the national and county government	(11) All land to be compulsorily acquired shall be geo-referenced and authenticated by the statutory body responsible for survey.	
53		Section 107A of the Land Act, 2012 is amended— (a) by adding the following new subsections immediately after subsection (3)— (3A) the Cabinet Secretary may on developing a land value index in respect of a particular county or counties immediately transmit such land value index to the National Assembly and the Senate without necessarily waiting to develop a land value index covering the entire republic of Kenya. (3B) A land value index may be reviewed after every five years. (b) in subsection (7)— (i) by deleting the word “Commission’s” appearing in paragraph (a) and substituting therefor the words “Cabinet Secretary’s”; (ii) by deleting the word “Commission’s” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary’s”;	To give clarity on progressive manner of preparing land value index To provide for periodical review of land value index

		(iii) by deleting the word “Commission” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary”; (iv) by deleting the word “Commission” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary”; (c) in subsection (8) by deleting the word “Commission” and substituting therefor the words “Cabinet Secretary”. (a) in subsection (9)— (i) by deleting the word “Commission’s” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary’s”; (ii) by deleting the word “Commission” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary”.	
54		Section 107B of the Land Act, 2012 is amended by deleting paragraph (c) and substituting therefor the following new paragraph— (c) any other criteria which the Cabinet Secretary may in consultation with county governments prescribe in Regulations with	

		the approval of the National Assembly and the Senate;	
55		Section 108 of the Land Act, 2012, is amended by deleting the word “Commission” appearing in subsection (1) and substituting therefor the words “Cabinet Secretary”.	
56		the Land Act, 2012, is amended by repealing section 109 and substituting therefor the following new section— 109. Payment for damage caused by entry for inspection. As soon as practicable after entry has been made under section 108, the Cabinet Secretary shall determine the damage resulting from entry to enable the acquiring public body to promptly pay, just compensation for the damage.	
57		Section 110 of the Land Act, 2012, is amended— (a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”; (b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;	

		(c) by deleting the word "Commission" appearing in subsection (3) and substituting therefor the word "Cabinet Secretary";	
58		Section 111 of the Land Act, 2012, is amended— (a) by deleting subsection (1A) and substituting therefor the following new subsection— (1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary survey fees, registration fees, and any other costs before the acquisition is undertaken. (b) by deleting subsection (2) and replacing it with a new subsection— (2) The Cabinet Secretary shall make regulations to regulate the assessment of just compensation.	
59		Section 112 of the Land Act, 2012, is amended— (a) by deleting the word "Commission" appearing in subsection (1) and substituting therefor the word "Cabinet Secretary"; (b) by deleting the word "Commission" appearing in subsection (2) and substituting therefor the word "Cabinet Secretary";	

		(c) by deleting the word "Commission" appearing in subsection (3) and substituting therefor the word "Cabinet Secretary"; (d) by deleting the word "Commission" appearing in subsection (4) and substituting therefor the word "Cabinet Secretary"; (e) by deleting the word "Commission" appearing in subsection (5) and substituting therefor the word "Cabinet Secretary";	
60		Section 113 of the Land Act, 2012, is amended— (a) by deleting the word "Commission" appearing in subsection (1) and substituting therefor the word "Cabinet Secretary"; (b) by deleting the word "Commission" appearing in subsection (2) and substituting therefor the word "Cabinet Secretary"; (c) by deleting subsection (4) and substituting therefor the following new subsection— (4) Every award shall be filed in the office of the Cabinet secretary and a copy sent to the acquiring public body.	

61		Section 114 of the Land Act, 2012, is amended by deleting the word “Commission” wherever it occurs and substituting therefor the words “Cabinet Secretary”.	
62		Section 115 of the Land Act, 2012, is amended— (a) by deleting subsection (1) and substituting therefor the following new sub-section— (1) After notice of an award has been served on all the persons determined to be interested in the land, and a copy sent to the acquiring public body, the acquiring public body shall, promptly pay compensation in accordance with the award to the persons entitled thereunder, except in a case where— (a) there is no person competent to receive payment; (b) the person entitled does not consent to receive the amount awarded; or (c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid. (b) by deleting subsection (2) and substituting therefor the following new subsection—	

		(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the acquiring public body may keep the amount of the compensation in a separate account and notify any persons interested accordingly. (c) by deleting the word "Commission" appearing in subsection (3) and substituting therefor the words "Cabinet Secretary".	
63		Section 116 of the Land Act is amended by deleting the word "Commission" wherever it occurs and substituting therefor the words "acquiring public body".	
64		Section 117 of the Land Act, 2012, is amended by deleting the word "Commission" wherever it occurs in subsection (1) and substituting therefor the words "acquiring public body".	
65		Section 118 of the Land Act, 2012, is amended— (a) by deleting the word "Commission" appearing in subsection (1) and substituting therefor the word "Cabinet Secretary"; (b) by deleting the word "Commission" appearing in subsection (2) and substituting therefor the word "Cabinet Secretary";	

66		Section 120 of the Land Act, 2012, is amended— (a) by deleting subsection (1) and substituting therefor the following new subsection— (1) After the Cabinet Secretary makes an award and serves notice on every person who has an interest in the land notifying of the specific day possession of the land and title to the land will vest in the national or county government as the case may be, the acquiring public body may take possession of the respective land: Provided that such taking of possession shall not result in any persons being rendered homeless. (b) by deleting subsection (2) and replace it with a new subsection— (2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the acquiring public body may on expiration of fifteen days from the date of publication of the notice of intention to acquire, take possession of the land in the manner prescribed under	
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		subsection (1), notwithstanding that no award has been made. (c) by deleting subsection (3) and replace it with a new subsection— (2) Upon taking possession of land under subsection (1) or subsection (2), the Cabinet secretary shall serve upon— (a) the Commission; (b) the registered proprietor of the land; and (c) the Registrar, a notice that possession of the land has been taken and that the land has vested in the national or county government as the case may be.	
67		Section 121 of the Land Act, 2012, is amended by deleting the word “Commission” appearing in subsection (1) and substituting therefor the words “Cabinet secretary”.	
68		Section 122 of the Land Act is amended— (a) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;	

		(b) by deleting the word “Commission” appearing in subsection (3) and substituting therefor the word “Cabinet Secretary”; (c) by deleting the word “Commission” appearing in subsection (5) and substituting therefor the word “Cabinet Secretary”.	
69		Section 123 of the Land Act, 2012, is amended— (a) by deleting subsection (1) and replace it with a new subsection— (1) At any time before possession is taken of any land acquired under this Act, the Cabinet Secretary may, revoke a direction to acquire the land, and, shall determine all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land to enable the acquiring public body to make compensation. (b) by deleting subsection (2) and replace it with a new subsection— (2) The principles relating to the determination of compensation as may be set out in the regulations shall apply, so far as they are relevant, to the determination of compensation payable under this section.	

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		Section 124 of the Land Act, 2012, is amended— (a) by deleting subsection (1) and replacing with a new subsection— (1) If the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that— (a) the possession of the land is necessary for public purpose or public interest; (b) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and (c) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing, possession of such land may be taken for that period under this section.	

		(b) by deleting the word “Commission” wherever it occurs in subsection (2) and substituting therefor the words “Cabinet Secretary”. (c) by deleting subsection (3) and replacing it with a new subsection— (3) At the end of seven days after service of notices has been completed under subsection (2), the acquiring public body may take possession of the land by entering, personally or by agents, on the land and posting on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.	
71		Section 125 of the Land Act, 2012, is deleted and replaced with a new section— 125. Payment of compensation. The Cabinet secretary shall on making of an award under section 124, send a copy of the award of compensation to the acquiring public body to, as soon as is practicable, pay full and just compensation to all persons interested in the land.	To split role of making an award and that of making compensation between the CS and acquiring public body as opposed to what obtains where the Commission plays both.
72		73. Section 126 of the Land Act, 2012, is repealed and replaced by the following new section— 126. Compensation for damages.	

		If the Cabinet Secretary is satisfied that any land of which the occupation or use has been secured under section 124 is needed solely as a means of access to any other land, then— (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and (b) the compensation to be paid under section 124(3) shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.	
73		Section 127 of the Land Act, 2012, is amended— (a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”; (b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;	
74		Section 129 of the Land Act, 2012, is amended by deleting the word “Commission” and substituting therefor the words “Cabinet Secretary”.	

75		Section 130 of the Land Act, 2012, is amended by deleting the word "Commission" and substituting therefor the words "Cabinet Secretary".	
76		Section 131 of the Land Act, 2012, is amended by deleting the word "Commission" appearing in paragraph (e) and substituting therefor the words "Cabinet Secretary".	
77		The Land Act, 2012 , is amended by repealing section 133 and replacing it with a new section— 133. Regulations The Cabinet Secretary may make regulations generally for carrying out the purposes and provisions of this Part.	
78	There is established a Committee to be known as the Land Acquisition Committee which shall consist of five members appointed by the Cabinet Secretary through a notice in the <i>Gazette</i> .	The Land Act, 2012, is amended by repealing Part VIIIA and replacing it with the following new Part— PART VIIIA-THE LAND ACQUISITION COMMITTEE 133A Establishment of the Land Acquisition Committee (1) There is established a Committee to be known as the Land Acquisition Committee which shall consist of five members appointed by the Cabinet Secretary through a notice in the Gazette (2) The Land Acquisition Committee which shall consist of—	To provide an alternative dispute resolution mechanism within the control of the Cabinet Secretary for fast resolution of disputes. To avoid the procedural entanglements characteristic of Tribunals

		a) an advocate of at least ten years standing, who shall be the chairperson; b) two registered valuers with at least ten years' experience in statutory valuation in a public body; c) one licensed surveyor of at least ten years' standing; and d) one person with extensive knowledge and experience in the informal sector representing the public. (3) The Cabinet Secretary shall deploy such staff as may be necessary to provide secretariat services to the Committee. (4) The Committee may co-opt an expert to advise it on any matter before it and shall regulate its own procedure. (5) The chairperson of the Committee shall serve for a term of four years and shall be eligible for re-appointment for one further term of four years. (6) A member of the Committee shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.	
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		(7) The Chairperson and members of the Committee shall serve on a part-time basis. (8) The members of the Committee shall be paid such allowances or other remuneration as the Cabinet Secretary may, on the advice of the Salaries and Remuneration Commission, determine.	
		133B. Functions of the Committee. (1) The Committee shall hear and determine appeals from the decision of the Cabinet Secretary in matters relating to the compulsory land acquisition process. (2) A person dissatisfied with the decision of the Cabinet Secretary shall, within thirty days, apply to the Committee in the prescribed manner. (3) The Committee shall hear and determine the application made under subsection (1) within ninety days of the filing of an application. (4) Despite subsection (3) the Committee may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.	

	(5) If, on an application to the Committee, the form or sum which in the opinion of the Committee is ought to have awarded as compensation is greater than the sum which the Cabinet Secretary did award, the Committee may direct that the Cabinet Secretary pay interest on the excess at the prescribed rate. (6) Despite the provisions of sections 127, 128 and 148(5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way, shall in the first instance, be referred to the Committee. (7) Subject to this Act, the Committee shall have the power to confirm, vary or quash the decision of the Cabinet Secretary. (8) The Committee may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23(2) and 47(3) of the Constitution, using the framework set out under the Fair Administrative Action Act, 2015 or any other law.	
	133C. Appeals (1) A party to an application to the Committee who is dissatisfied with the decision of the Committee may, in the prescribed time and manner, appeal to the court on any of the following grounds—	

		(a) the decision of the committee was contrary to law or to some usage having the force of law; (b) the Committee failed to determine some material issue of law or usage having the force of law; or (c) substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case. (2) An appeal from the decision of the Committee may be made on a question of law.	
		133D. Limitation of liability A members of the Committee shall not be personally liable for any act or default done or committed in good faith in the course of exercising the powers conferred by this Act.	

5. THE COMMUNITY LAND ACT, 2016

Clause	Sec. Particulars	Proposed Amendment	Justification
79	"Community land" means includes-	Section 2 of Community Land Act, 2016, is amended by deleting the definition of the term "community	1. To conform to the definition of community land in the Constitution without necessarily expanding it.

	(a) land declared as such under Article 63(2) of the Constitution; (b) land converted into community land under any law.	land" and substituting therefor the following new definition— "community land" means land declared as such under Article 63(2) of the Constitution;	2. To comply with orders in Nairobi ELC Petition No. 35 of 2017 Kelly Malenya vs AG and Others where the court in its judgement delivered on 7 th June, 2019 nullified Section 2 of the Community Land Act on the basis that the meaning of the term "community land" as provided in the Act goes beyond Article 63 (2) of the Constitution.
80	46(7) If at the lapse of the time specified by the Cabinet Secretary under subsection (6) there is any adjudication programme not finalized, the Cabinet Secretary shall gazette new completion dates and finalize the registration under the provisions of this Act.	Section 46 of the Community Land Act, 2016, is amended by deleting subsection (7) and substituting therefor the following new subsection— (7) If at the lapse of the time specified under subsection (6) there is any adjudication programme not finalized, the Cabinet Secretary shall gazette new completion dates and finalize the registration under the law applicable to it immediately before the commencement of this Act.	1. It is technically difficult to apply Community Land Act in existing adjudication sections where individual rights leading to issuance of freehold titles have already been ascertained. 2. implementation of the Community Land Act can run concurrently with the completion of the existing adjudication sections under the adjudication Act.

SECTIONAL PROPERTIES ACT

Clause	Sec. Particulars	Proposed amendment	Rationale
81		Section 2 of the Sectional Properties Act, 2020, is amended by inserting the following new definitions in their proper alphabetical sequence—	

		“consolidated sectional plan” means a sectional plan that is a composition of all registered sectional plans of a building or buildings on a phased development or any other development; “long-term lease” means a lease for an unexpired residue of the term of not less than twenty-one years; “management company” means a corporate entity incorporated to manage common property and to hold reversionary interest in trust for owners of long-term leases encumbering a specific parcel of land; “part sectional plan” means a sectional plan on part of land designated for developing each phase of a phased development, and shall be prepared before development commences; “phased development” means development of buildings on a parcel of land in phases in accordance with a duly approved plan for a phased development that clearly sets out timelines within which development in respect of each phase is to be done and completed; “reversionary interest” means the residue of the unexpired term of a lease reserved for the lessor.	
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82	The Sectional Properties Act, 2020, is amended by inserting the following new section immediately after section 5— 5A. Registration of part sectional plans of a phased development. (1) An owner or developer of land shall before making a phased development cause a part sectional plan to be prepared by a surveyor, based on a master plan that has been approved by a county government, for land designated for each phase and apply to the registrar for the registration of all the part sectional plans of a phased development. (2) An application for the registration of part sectional plans under subsection (1) shall be accompanied by the master plan approved by the county government and a phased development declaration containing the information set out in the Schedule and executed by the owner. (3) The registrar may register part sectional plans prepared under subsection (1) and issue, in respect of each sectional plan, a sectional certificate of title or lease as the case may be and close the mother title or head lease of the parcel. (4) Upon the issuance of a sectional certificate of title or lease under subsection (3), the owner or developer of land shall, develop land in respect of which a sectional certificate or lease has issued in	To provide for phased development in one parcel of land without closure of title as opposed to what obtains. To provide for parcel of land for each phase to have part-sectional plans. To provide closure of part-sectional plans on completion of development of all phases to give way to consolidated sectional plan. To provide for master plan for entire development taking place in phases. To preserve common areas and utilities for eventual use of sectional owners.
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		accordance with the master plan approved by a county government and prepare a sectional plan on the building for registration. (5) The registrar may on application for registration of a sectional plan prepared under subsection (4) issue certificates of title or lease as the case may be for each unit in a building and close the sectional certificate of title or lease issued under subsection (3). (6) Where the development on land that is subject of a phased development is complete and an application for registration of a sectional plan on a building on the last phase is made, the owner or developer of land shall be required to file a consolidated sectional plan with the registrar.	
83	13(2) All long term sub-leases that are intended to confer ownership of an apartment, flat, maisonette, town house or an office that were registered before the commencement of this Act shall be reviewed to conform to section 54 (5) of the Land Registration Act, 2012 (No. 3 of 2012) within a period of two years of the commencement to this Act.	Section 13 of the Sectional Properties Act, 2020, is amended— (a) by deleting subsection 2 and substituting a new subsection— (2) All long-term leases that were intended to confer the entire leasehold interest over an apartment, flat, maisonette, town house or an office that were registered before the commencement of this Act shall be reviewed to conform to section 54(5) of the Land Registration Act,	To give clarity on regularization and conversion of long-term leases to sectional leases. To set clear-cut line between long-term leases retaining reversionary interest to the lessor and those that confer entire leasehold interest which now should be registered under sectional properties Act.

		2012 within a period of two years of the commencement to this Act. (b) by adding the following new subsection immediately after subsection (2)— (3) A long-term lease under subsection (2) that by agreement provided for the vesting or eventual vesting of reversionary interest on the management company in trust for the unit owners shall be converted to a sectional unit under this Act. (c) by adding the following new subsection immediately after subsection (3)— (4) In this section, “to confer entire leasehold interest” means the transfer of a unit within a building on a parcel of land held on a leasehold tenure with an unexpired residue of the term of not less than twenty-one years, by a developer or owner without retaining any interest including reversionary interest.	
84		The Sectional Properties Act, 2020, is amended by inserting a new section immediately after section 17— 17A. Establishment of an umbrella Corporation	To create management model that is well-suited for large sectional development.

		(1) The registrar may register an umbrella corporation upon application by two or more corporations sharing a common property within any development, in the prescribed form, on the registration of a consolidated sectional plan or at any time after the registration of a consolidated sectional plan. (2) The registrar may register an umbrella corporation under the name "The Owners, Consolidated Sectional Plan No. (the number to be specified being the number given to the consolidated sectional plan on registration)" and issue a certificate of registration of an umbrella corporation. (3) The board of management of the umbrella corporation shall be constituted by members nominated by the board of management of corporations incorporating the umbrella corporation. (4) The duties and powers of the corporation provided under this Act shall with necessary modifications apply on the umbrella corporation and as may be further provided in the umbrella corporation by-laws. (5) Provisions relating to the corporation under this Act shall with necessary modifications apply on the umbrella corporation.	
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		(6) The Cabinet Secretary shall make regulations to govern the umbrella corporation.	
85		Section 52 of the Sectional Properties Act, 2020, is amended by deleting the words “a rating authority” and substituting therefor the words “the national government or a county government”.	
86		The Sectional Properties Act, 2020, is amended by inserting the following Schedule immediately after section 60— SCHEDULE (s. 5A(2)) INFORMATION CONTAINED IN A PHASED DEVELOPMENT DECLARATION A phased development declaration executed by the owner or owners of the land shall contain the following— (a) a statement that the plan is to be developed in phases; (b) certification by an approving officer that the planning authority has approved the elements in the phased development	To give guide on nature of declaration to accompany the master plan for phased development so as to bind the developer to commitments made.

		(c) a schedule setting out the estimated due date for the beginning and completion of construction for each phase; (d) the minimum and maximum number of units to be included in the entire phased project; (e) a description of the units and common property included in the initial phase; (f) description of the units and the common property to be included in each of the subsequent phases; (g) zoning use or uses of the units and common property for each phase; (h) a list of the common facilities that the owners shall share after the creation of common property in a subsequent phase if it is to be available for the use of the owners in the previous phases; (i) an statement indicating when the facilities would be completed and available to those owners; (j) the extent to which the developer will contribute to the common expenses relating to the building and land during the development and sale of each phase and on the completion and sale of the entire phased project;	
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		(k) the method used to determine the allocation or distribution of administrative expenses with respect to all of the units in each separate phase and for all of the units in the entire completed project; (l) the basis for allocating unit factors in the phased development; (m) contingency plan describing what happens if any subsequent phase does not proceed and the effect of this to the unit owner's contribution for common expenses; (n) any additional information required by the regulations.	



INSTITUTION OF SURVEYORS OF KENYA

2nd February 2024

ISK/COU/EN/2023/62

Jeremiah M. Ndombi,
Clerk of the National Assembly,
P.O. Box 41842-00100, Nairobi.

Dear Jeremiah,

RE: Institution of Surveyors of Kenya's position on the Proposed Land Laws (Amendment) Bill, 2023

Further to your request for the submission of views on the proposed Land Laws (Amendment) (No. 2) Bill, 2023, please find attached our views on the same for your further consideration.

In principle, we are of the opinion that the role of compulsory land acquisition should remain with the National Land Commission and a mechanism be provided for the Government to challenge the valuation determinations. There is established a land acquisition committee, which is to be appointed by the Cabinet Secretary (CS). Some of the matters to be heard relate to the decisions made by the Cabinet Secretary. Payment to the members shall be done by the CS. The committee shall have power to confirm, vary or quash a decision of the Cabinet Secretary. For all intents and purposes, the committee can only be well applied under the oversight of the NLC.

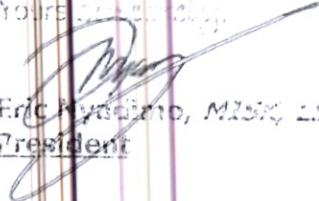
We support most of the amendments under the Sectional Properties Act, 2020 so as to include phased development as well as mixed use developments a phenomenon that is increasingly occurring and which needs to be provided for in law.

On the Land Control Act, we support the amendments and urge for the need to professionalize the Land Control Boards by ensuring that they have within their ranks a Surveyor, Planner and a Land Officer. This we believe will enhance the work of the Boards.

We support the amendments to the Registration of Documents Act so as to align it to the Land Registration Act, 2012.

We look forward to consideration of our concerns.

Yours faithfully,


Eric Kyalo, MISK, LS(K)
President

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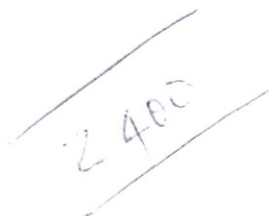
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PROPOSED LAND LAWS (AMENDMENT) (No. 2) BILL, 2023

Proposed Amendments to the Land Control Act, Cap 302

S/No	Proposed Amendment	ISK Comment	Rationale
34 a) (ii)	Substituting paragraph 1 of the 1 st schedule and replacing it with - "Two persons nominated by the County Executive Committee Member for the time being responsible for lands in the county where the board has jurisdiction	The CECM should nominate a Land Surveyor and a Physical Planner. This should not be left open. 	We recommend that this committee needs to have professionals in the Land sector. A land Surveyor and a Physical Planner are necessary for the proper functioning of the Land Control Board
34 b) (2)	b) not more than two other public officers appointed by the CS c) not less than two and not more than five persons appointed by the Cabinet secretary	For public service- specify from which departments It is important to state the criteria for this selection. 	Specify the composition of this persons otherwise the statement appears vague. One of these officers should be a Land Officer. 

Proposed Amendments to the Land Registration Act, No. 3 of 2012

S/No	Proposed Amendment	ISK Comment	Rationale
Section 40 (b)	54(5) "The Registrar shall register long-term leases and issue certificates of lease in respect of interests in freehold and leasehold land if the respective interests are captured in a sectional plan drawn by a surveyor and approved by the authority responsible for land survey"	Change to "The Registrar shall register long-term leases and issue certificates of lease if the respective interests are captured and "georeferenced" in a section plan drawn by a "Surveyor" and approved by the Authority responsible for land survey	The plan should be georeferenced by a land surveyor otherwise the Director of Surveys can be compelled to authorize surveys from other quarters.
Section 41	"(4) The registrar shall not register a charge unless the registrar is satisfied that land rent is not owing or unless the land is freehold";	Retain the initial provision which includes the phrase "Georeferenced by a surveyor"	There is need to retain the certificate of rent clearance so that it is not dependent on judgement by the registrar. The potential buyers have an obligation to ensure the property is up to date in terms of rent and rates payments. In any case, if someone

			buys a property that has rent and rates arrears, the obligation shifts to him. We propose that this be embedded on ArdhiSasa, the system should simply refuse to finalize a transaction for property that has arrears.
Section 43 (b)	It would be, for any reason, unjust for the alteration or cancellation not to be made: Provided that a written notice of thirty days shall be given to the proprietor of such intention to make the alteration or cancellation	Provide a written notice of 60 days	30 days is too short and 90 days was too long so 60 days is a compromise

Proposed Amendments to the Land Act, No. 6 of 2012

S/No	Proposed Amendment	ISK Comment	Rationale
47 b)	A lease of public land shall be issued and sealed by the cabinet Secretary on behalf of the national Government or county government as case may be	Retain the Initial provision	This usurps the NLC Act 2012
48(1)	<i>Annual Rent</i>	ISK proposes that the annual rent be based on an unimproved site value to be assessed every 10 years	Rent should not be pegged on developments that have been made on the land
49	<i>Deleting the word "commission" and substitution thereof the word Nation al government or county Government</i>	Retain the former provision	This usurps the NLC Act 2012
51	<i>The owner of any freehold land situate within the boundaries of any urban area or city shall pay an annual land levy equivalent to land rent charged on a comparable leasehold land or</i>	Delete this section <i>Handwritten: Land value is not... Rent is not... 2008...</i>	Freehold land should not attract any annual levy or rent. You cannot pay rent or a levy to someone who doesn't own the land. This would be unfair and can be challenged in a court of law.

	<i>property of the same size in the same zone</i>		
52	107(1) Whenever the national or county government ..., the respective Cabinet Secretary or the County Executive Committee Member shall....	Whenever a public body, the respective accounting officer shall....	There is included in the list of definitions, a public body. We think the definition was included because of this section.
52	107 (1) 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 CECM shall submit a request for acquisition of land to the CS to acquire the land compulsorily	Retain the former provision. Application to be made to the commission (NLC) Once the land is acquired, it becomes public land which is managed by National Land Commission. Thus the need to have the acquisition being done by National Land Commission	This is to limit the executive's involvement on the acquisition process which is to be done by an independent body. This will eliminate possible conflict of interest as the Cabinet Secretary is usually spearheading the Government agenda which may prejudice land owners.
53	Section 107A (7), (8), (9) Deleting the word commission and replacing it with the words Cabinet secretary	Retain the former provision	Limit the involvement of the Executive on the matter of compulsory Land acquisition in order to retain checks and balances.

52-57	107B(c), 108,109, 110, 111,112,113,114-118,120-127, 129-133 - Transfers the roles previously carried out by the Commission to the Cabinet Secretary	We propose that the role is retained by the National Land Commission	The Commission is an independent body whose functions have historical significance as far as management of public land is concerned.
52	Section 107 (1); (5) (a, b, c) <i>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 land to the Cabinet Secretary to acquire the land compulsorily.</i>	Review to read <i>Whenever the national or to acquisition 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 land to the Commission to acquire the land compulsorily.</i>	This goes against Section 5 - that details the one of the functions of the Commission to (a) to manage public land on behalf of the national and county governments; The Cabinet Secretary is an interested party that may need to apply for the land, hence cannot apply to get land from himself/herself. The independence of the Commission should be maintained. The clauses undermine the spirit of the National

			Land Policy, 2009 that gives independence to the Commission.
			This goes against best practices where Commissions are independent bodies.
52	107(11) All land to be compulsorily acquired shall be geo-referenced by the office or authority responsible for survey both at the national and county government	107(11) All land to be compulsorily acquired shall be geo-referenced by a Licensed Surveyor and the result be authenticated by the office/authority responsible for survey and mapping before determination of compensation. 107(12) The authority responsible for survey and mapping shall amend the cadastral map with the georeferenced information upon vesting of the acquired land in the acquiring entity.	1. Authentication of land surveys is a function of the national Government. 2. Ensure that geo-referencing is done before compensation and hence reduce the disputes emanating from compensation. 3. Effect amendment of the cadastral map before vesting. 4. Emphasise the role of geo-referencing land to be acquired in the acquiring body.
59	Section 112 of the Land Act is amended by	Retain the former provision	This should be the work of the National Land Commission
60	Section 113 of the Land Act is amended by	Retain the former provision	This should be the work of the National Land Commission

70	Section 124 (1) if the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, possession of such land may be taken for that period under this section if-	We are of the opinion that such a short period should not necessitate acquisition, but mechanisms be made for rental of the property for the period required. Acquisition has the understanding that it is an outright purchase.	The Registrar may be asked to register the lease in the manner provided it is prepared in the manner prescribed in the Land Registration Act. After the lease period, the land is to revert to the owner. Costs are to be borne by the leasing public entity.
Part VIIIA	<i>PART VIIIA- The Land Acquisition Committee</i>	The composition of the committee is okay however the nominations should be done by the professional bodies – we suggest that ISK nominates both the Registered Valuers and Licensed Surveyor.	This is a welcome idea, the nomination of professionals by professional bodies will give the committee the independence that it deserves
Part VIIIA	The committee shall comprise of- a) an advocate of at least 10 years standing, who shall be the chairperson; b) two registered Valuers with at least 10 years' experience	The committee shall comprise of- a) one Licensed Valuer with at least 10 years' experience in statutory valuation in a public body, who shall be the chairperson;	1. Most of the complaints will be of a valuation nature; 2. The advocate will provide legal guidance on the deliberations and be a secretary of the committee; 3. From the experience of the NLC, the Chairperson ought to be a

	in statutory valuation in a public body; c) one licensed surveyor of at least 10 years' standing one person with extensive knowledge and experience in the informal sector representing the public	b) an advocate of at least 10 years standing, who shall be the secretary; c) one Licensed Valuer of at least 10 years' standing; d) one licensed surveyors of at least 10 years' standing; e) One Land Administration who is a Full Member of the Institution of Surveyors of Kenya with at least 10 years' experience	person with extensive knowledge in valuation principles, have widespread experience in compulsory acquisition and has knowledge of statutory valuations 4. The committee is not a tribunal so as to be chaired by an Advocate 5. There is need for a person with Land Administration knowledge for purposes of understanding the tenure system as well as traditional uses. 6. One person with extensive knowledge and experience in the informal sector representing the public is vague and not clear who such person is and what they have studied
133 (A)(3) The committee may co-opt an expert to advise it on	Delete this provision	All the experts have been included there is no need for an additional	

	any matter before it and shall regulate its own procedure		expert. The aspect of regulating procedure seems misplaced here
	133 (A)(4) The chairperson of the committee shall serve for a term of four years	Limit the term to 3 years renewable once	This is the standard procedure that has been adopted across board.
Section 81	Section 2 of the SPA, 2020 Definition of Phased Development	Add the word master after the word duly – so as to read duly approved master plan	Phased development requires a master plan
Section 83	Section 13 (2) of the SPA, 2020	Clarify when the 2 year period starts	ISK assumes that the 2 years starts from the time the SPA, 2020 was enacted and not the proposed Land Laws Amendment Bill

General Comments on Proposed Amendments of Land Act No. 6 of 2012

The proposed amendments to Part VIII of Land Act No.6 of 2012 raises the following questions: -

1. Who will prevent the glaring conflict of interest in the proposed bill whereby the executive determines, approves, values and provides compensation funds in compulsory land acquisition of its own projects?
2. Who will safeguard the process of Compulsory Land Acquisition from political interference if the executive, through the Cabinet Secretary who is an appointee of the president are in charge of the entire process?
3. Wouldn't there be political interference where the County Executive Committee Member (CECM) of counties which are not politically aligned with the government of the day are required to seek approval from the Cabinet Secretary (CS) of the National Government to undertake a County Government project yet the two levels of government are autonomous? Does this not contradict the spirit of devolution?
4. In the past, the role of compulsory land acquisition was bestowed on the Commissioner of Lands who operated under the Executive. However, the land acquisition process faced issues such as irregular acquisitions, lack of independence, overlapping roles, lack of transparency, and subjective compensation assessments. The National Land Policy of 2009 recognized these challenges and proposed reforms, including establishing the National Land Commission, and conferring pre-emptive rights to original landowners. By adopting the proposed changes to part VIII of The Land Act, 2012, which proposes reversion of compulsory land acquisition function to the executive, wouldn't we be clawing back these land reforms?
5. Shouldn't the government protect and enhance the functionality of independent Commissions as opposed to taking away their functions?

PRESENTATION BY:

THE ASSOCIATION OF LICENSED LAND SURVEYORS OF KENYA (ALLSK)

To: THE DEPARTMENTAL COMMITTEE ON LANDS

On: THE LAND LAWS (AMENDMENT) (No. 2) BILL, 2023 | Date: 02nd Jan 2024

Based on the background and the importance of the Land Laws, we recommend amendments to the following clauses of the Land Laws (Amendment) (No. 2) Bill 2023 to align it with the constitution of Kenya 2010 and to improve the management and administration of our Land resource;

Section.	Written Law	CLAUSE/ SECTION	CITATION OF OFFENDING CLAUSES	OBSERVATION/COMMENTS	ALLSK PROPOSAL
34.	Land Control Act, Cap 302	First Schedule to Cap302 34 (a) (iii)	Two persons nominated by the County Executive Committee member for the time being responsible for lands in the county where the board has jurisdiction	This clause needs to clarify the qualification of these two members to mitigate against nomination of cronies of the appointing authority or unqualified individuals	Delete the paragraph and substitute therefor with – “ Two persons nominated by the County Executive Committee member for the time being responsible for lands in the county where the board has jurisdiction who must have post secondary education training in a land related field ”
36.	Land	2 -definition of	“ building” means	While the 2nd, noun,	Insert the word “

	Registration Act No. 2 of 2012	"building"	one or more structures on the same parcel	meaning of structure is a building; it does not exclude semi-permanent structures such as container and wooden structures. • ALLSK is concerned this may create disputes in interpretation of the definition • For avoidance of doubt, let the definition go further to exclude semi permanent structures.	permanent immediately after the word more and before the word structure
40	Land Registration Act No. 2 of 2012	54 (b)(5)	The Registrar shall register long-term leases and issue certificates of lease in respect of interests in freehold and leasehold land if the respective interests are captured in a sectional plan drawn by a surveyor and	• The term "drawn" is misleading because the surveyor does not draw but prepares. • The subsection should not be limited to land only but, land, should come in as additional to what was listed in the written law	Delete the word "drawn" appearing immediately after the word plan and before the word by and substitute therefor with the word "prepared" and Delete the subsection and substitute therefor with

				approved by the authority responsible for land survey		(5) The Registrar shall register long -term leases and issue certificates of lease in respect of interests in freehold and leasehold land, apartments, flats, maisonettes ,townhouses, townhouses or offices having the effect of conferring ownership if the respective interests are captured in a georeferenced sectional plan prepared by a surveyor and approved by the authority responsible for land survey”;	
43	Land Registration Act No. 2 of 2012	79 Proviso for notice timeline	Provided that a written notice of thirty days shall be given to the proprietor of such intention to make the alteration or cancellation.	• Thirty days may be too short for the proprietor and provide appropriate response in view of the current scenario of travel possibilities • It is proposed 60 days would be more appropriate	Delete the word thirty appearing immediately after the word of and before the word days and substitute therefor with the word “sixty”		

48	Land Act No 6 of 2012	New Section: 28 B (2)	(2)The rent determined under subsection (1) shall be payable with effect from the beginning of the date for which it is determined to be payable and such date shall not apply in retrospectively.	Clearly state who rent is payable to. Who is the rent payable to? The National or the county Government? The bill should specify that pursuant to article 62(2) and 62(3) of the constitution of Kenya 2010.	Delete the subsection 28 B(2) and substitute therefor with- (2) The rent determined under subsection (1) shall be payable to the national government or the county government as the case may be, with effect from the beginning of the date for which it is determined to be payable and such date shall not apply retrospectively.
51.	Land Act, No 6 of 2012	54A	The owner of any freehold land situated within the boundary of any urban area or city shall pay an annual land levy equivalent to land rent charged on a comparably leasehold land or property of the same size in the same zone: Provided that any owner of freehold	- Levying freehold interest violates the spirit and the letter behind article 64(a) of the Kenyan constitution that ensures locals has long term control over their land and promotes national sovereignty. - If the government wants to levy freehold interests; it should, either first convert it	54A: Be deleted since it purports to re-define freehold or absolute land tenure which variance is at variance with the spirit of the CoK 2020 and best practice world over. ii) If the clause must be retained, which we do not agree with;

			land that is put to agricultural use may be exempt from the annual land levy.	into leasehold interest upon which such levy shall apply constitutionally; otherwise not.	Then the 2 nd paragraph be deleted and substitute therefor with "Provided that any owner of freehold land that is put to agricultural and or owners dwelling residences shall be exempt from the annual land levy."
52	Land Act No 6 of 2012	New Section 107	107(1) Whenever the National or the County Government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or County Executive Member shall submit a request to the Cabinet Secretary to acquire the Land compulsorily.	The acquisition of land for government using public money is a Public Land management and Administration process, which is a constitutional function of the NLC. It must therefore be done by the NLC. However the CS, who is the custodian of the Land Register and is the authority that guarantees titles to Land; there is an urgent need to reconsider the compulsory acquisition with a view to ensure a fast, transparent and efficient process devoid of unnecessary delays leading	ALLSK proposes as follows – Sections 107(1), (2), (3), (4) be retained as they are In section 107(5) delete the words " , the Cabinet Secretary shall " appearing after the word Constitution and before the word "shall" and substitute therefor with the words " , shall authorize the acquiring entity to "

				to undesired outcomes in infrastructure projects' implementations. • Perhaps the CS may be the one to initiate the process, provide the criteria and guidelines to be adhered to • The acquiring body and or entity to undertake the survey and georeferencing including but not limited to supervising consultants and effect all payments in respect of acquisitions • Valuation for compensation be done by the CS in consultation with the acquiring body or entity. • The NLC to undertake the vesting of the acquired land after georeferencing In the event of a fraudulent claim for compensation, an independent body should be the one to review the	
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				authenticity of the title, The process of review by the NLC as per Sec. 14 of the NLC Act is the one that ascertains the validity of the claims, not the CS because that could result in a conflict of interest	
52	Land Act No 6 of 2012	107.(5)(a)	Cause the affected land to be mapped out and valued using the valuation criteria set out under under this Act; and	- The terminology "mapped out" is ambiguous and may be an avenue of introducing sketches in this process. - Clarity be introduced by stating clearly that the land has to be surveyed and georeferenced	delete the subsection and substitute therefor with " cause the affected land to be surveyed and georeferenced by a surveyor and valued using the valuation criteria set out under this Act, and"
52	Land Act No 6 of 2012	107 (5)(b)	establish whether the acquiring public body has identified the number and maintained a register of persons in actual occupation of the land, confirming for each such occupation the duration of uninterrupted	Since this must have happened before the request to acquire, then the pending item is to confirm to the CS and perhaps notify the Commission.	Delete the words "establish whether" and substitute therefor with "confirm to the Cabinet Secretary and notify the Commission in the prescribed form that"

			occupation or ownerships of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.		
53	Land Act No 6 of 2012	107A	Section 107A of the Land Act, 2012 is amended _	Section 107A does not exist. The narrative has to be amended to read section 107	Delete the word narrative "A" appearing after the digit 107 and before the word "of"
58.	Land Act No 6 of 2012	111(a)(1A)	"(1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary survey fees, registration fees and any other costs before the acquisition is undertaken";	While it is necessary to demonstrate that the compensation funds are available; the only funds to be deposited are the registration and valuation fees, if any; since it is more efficient for the acquiring entity to do or use consultants to undertake the survey and thereafter pay the Persons Affected by Project (PAPs) directly	Delete the subsection and substitute therefor with- "(1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary registration fees and valuation costs, if any, before the acquisition is undertaken";
59.	Land Act No 6 of 2012	112(a) to (e)	..Deleting the word "Commission" appearing in these	This replacement will introduce a Conflict of interest since the Cabinet Secretary is	Deleting the word " Cabinet Secretary " and inserting the word

			subsection and substituting therefor "Cabinet Secretary"	the custodian of property data and records Allow the NLC to handle the role of conducting the enquiries as to the proprietary rights and claims to compensations	"Commission" • This to be replicated in all subsequent sections through to section 61 & 65
60.	Land Act No 6 of 2012	113(4)	(4) Every award shall be filled in the office of the Cabinet Secretary and a copy sent to the acquiring public body.	Conflict of interest. The NLC to handle that role. The award to be filled in the office or the Commission not the CS.	Deleting the word "Cabinet Secretary" and inserting the word "Commission"
66	Land Act No 6 of 2012	120(a)(1)	(1) After the Cabinet Secretary makes an award	Let the vesting Communication be made by Commission after they conduct the enquiries and verify the claims for compensation.	Delete the words "Cabinet Secretary" and substitute therefor with "Commission"
78	Land Act No 6 of 2012	133 A (2) (b) ,(c) & (d)	(2) The Land acquisition committee shall consist of- (a)... (b)... (c) ... (d) ...	* What is the import of the term " statutory valuation" * There is need to be clear on who is to nominate members Professional members to this committee. The Valuers and Licensed Surveyors should be nominated by the ISK in consultation with their respective professional	delete the paragraph (b) and substitute therefor with (b) " two registered valuers with at least ten years' experience in valuation nominated by the Institution of Surveyors of Kenya delete the paragraph

				Associations, and must be in private practice Introduce an option of co-opting a member from an acquiring entity.	(b) and substitute therefor with (c) one licensed land surveyor of at least seven years' experience nominated by the Institution of Surveyors of Kenya in consultation with the Association of Licensed Surveyors of Kenya Insert after paragraph (d) as follows- " the committee may co-opt a member from the acquiring entity who shall serve for a specified duration of time"
78	Land Act No 6 of 2012	133 B	Annotation of sub-section (2) is duplicated		Re annotate subsections 2,2,3,4 5,6,7 as follow- 2,3,4,5,6,7,8
78	Land Act No 6 of 2012	133 B (7)	Function of the committee subject to this Act Cabinet Secretary	A committee appointed by the CS cannot quash the decision of the CS	Delete the word Cabinet Secretary and substitute therefor with Commission
81	Sectional Properties Act No 21 of	2; Definitions	"part sectional plan" means a sectional plan on	There is no reference nor the quality check	The definition to read as follows:- "part sectional plan"

	2020		part of land designated for developing each phase of a phased development, and shall be prepared before development commences;	necessary for this document • It should be prepared by a Surveyor and • It shall be approved by the authority responsible for survey	means a sectional plan on part of land designated for developing each phase of a phased development - prepared by a surveyor and approved by the authority responsible for survey before development commences;
82	Sectional Properties Act No 21 of 2020	New Section, 5A	5A (1) An Owner or developer of land shall before making a phased development cause a part sectional plan to be prepared by a surveyor, based on a master plan that has been approved by a county government, for land designated for each phase and apply to the registrar for the registration of all the part sectional plans of a phased development	• There is no reference to the quality check necessary for the part sectional plan shall be approved by the authority responsible for survey	Insert the words “ and approved by the Authority responsible for survey” immediately after the word “surveyor” and the “,”

NOTES:

1. ALLSK Notes with appreciation the improvements made to the Sectional Properties Act 2020 by addressing the gaps which have been identified during implementation of the Act with no provisions for Phased developments in this emerging sector.
2. NLC was made necessary by the CoK 2010 in order to fight corruption and poor land governance. Compensation for compulsory acquisition was initially done by Commissioner of Lands whose role was taken up by the NLC.
If the NLC has underperformed we don't go back to the old fainted system but must look for an alternative.

ALLSK Proposal is that -

- **Cabinet Secretary** to provide guidance and criteria on Compulsory land acquisitions among other policy decisions
 - **The acquiring public body** to undertake the technical acquisition processes necessary themselves and or with assistance of professional consultants under the policies and guidelines established by the Cabinet Secretary
 - **National Land Commission** to conduct all propriety enquiries and claims for compensations, process awards and eventual vesting documentation;
Any attempt to revert land acquisition process to the CS, in entirety, may not be the cure of the challenges which are existing in this process currently.
3. Create an appeals (supervisory) part time committee appointed by the CS and drawing members from stakeholders including the acquiring body, the committee made up of commissioners as currently constituted should continue performing their duties. That way we have CS acting on behalf of national government, NLC administering the process and the committee as fall back by citizens

.....
Abdulkadir Khalif | LS (K)

President

Association of Licensed Land Surveyors of Kenya

P.o Box 37625 - 00100, NAIROBI. KENYA | **Email:** licensedsurveyors.ke@gmail.com

.....
Christopher Kinyua Tiras | LS (K)
Secretary



Kenya National Highways Authority

Quality Highways, Better Connections

Barabara Plaza, Block A & C, Jomo Kenyatta International Airport (JKIA), Off Airport South Road, along Mazao Road,
P.O Box 49712 - 00100 Nairobi, Tel 020 - 4954000 / 0700 423 606 Email dg@kenha.co.ke / Website www.kenha.co.ke

OFFICE OF THE DIRECTOR GENERAL

Ref: KeNHA/04.D/S/Vol.52/51

Dated: 31st January, 2024

Mr. Samuel Njoroge
Clerk of the National Assembly
Main Parliament Building, Parliament Road
P.O. Box 41842-00100
NAIROBI

Joshua Ondari
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5/2/24

Dear *Sir*,

RE: THE KENYA GAZETTE SUPPLEMENT NO. 237 (NATIONAL ASSEMBLY
BILLS NO. 76

THE LAND LAW AMMENDMENT NO. 2 (BILL 2023)

Reference is made to the above Land Law Amendment Bill which was circulated to the public for comments.

As an Authority dealing extensively with survey issues during the fulfilment of our mandate as per the Roads Act 2007, attached please find our comment on the proposed Land Law Amendment Bill.

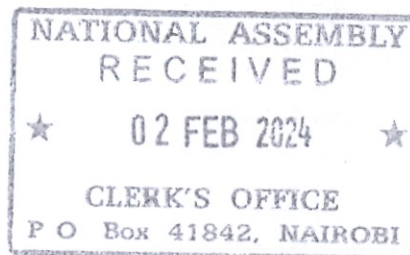
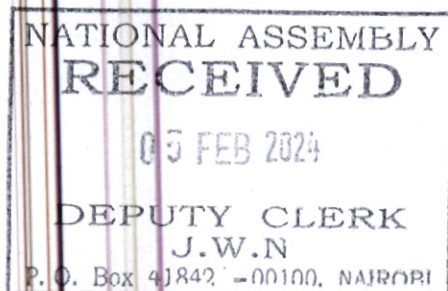
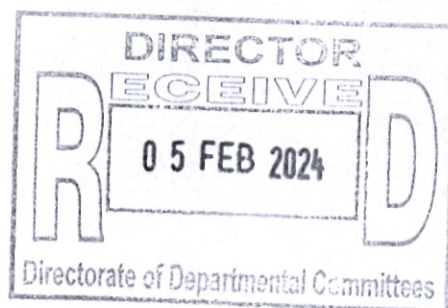
Yours

Sincerely
Ezekiel Fukwo

Ezekiel Fukwo

For: DIRECTOR GENERAL

Encl.



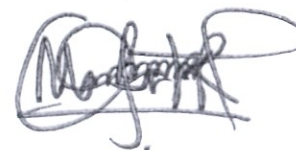
COMMENTS TO THE LAND LAWS AMENDMENT BILL, 2023

Clause	As Proposed in the Bill	Our Proposal	Justification
52	Preliminaries to acquisition S107 (11) All land to be compulsorily acquired shall be geo-referenced and authenticated by the statutory body responsible for survey	Preliminaries to acquisition S107 (11) All land to be compulsorily acquired shall be geo- referenced	Generally and in practice, the authentication of the survey work for the acquired land is done after compensation is fully paid and final survey is undertaken. In most instances, there are changes in the parcels or areas to be acquired during the acquisition process and thus the actual area can only be ascertained after compensation has been paid and vesting to the government undertaken
58	S111 Compensation to be paid (1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary survey fees, registration fees, and any other costs before the acquisition is undertaken.	S111 Compensation to be paid (1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, shall avail to the Cabinet Secretary the funds required in carrying out the land acquisition activities.	The costs for various activities in the land acquisition process are determined during the execution of specific activities. The funds are therefore not determined in the initial stages to enable the acquiring public body to deposit the same with the Cabinet Secretary. There are also instances whereby the road is re-aligned once the Consultant reviews the design on site and thus the need for degazettement arises if the land was already gazetted or exclusion from the list of acquisition if gazettelement had not been done.
60	S113 Award of compensation	S113 Award of compensation (4) Every award shall be filed in the office of the Cabinet Secretary and a copy of the	The valuation report is required by the acquiring public bodies in dealing with various issues e.g. Office of the Auditor

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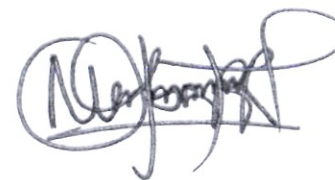
Mission: To develop and manage Quality and Adequate National Trunk Roads through Innovation and Optimal utilization of resources for Sustainable Development

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Clause	As Proposed in the Bill	Our Proposal	Justification
	(4) Every award shall be filed in the office of the Cabinet Secretary and a copy sent to the acquiring public body	award together with the respective valuation report sent to the acquiring public body	General, OAG audits, legal disputes, queries from Project Affected Persons (PAPs) etc.
65	S118 Final Survey (1) If part of the land comprised in documents of title has been acquired, the Cabinet Secretary shall, as soon as practicable, cause a final survey to be made of all the land acquired. (2) Upon completion of final survey under subsection (1), the Cabinet Secretary shall cause to be issued new title documents for every affected parcel.	S118 Final Survey (1) If part of the land comprised in documents of title has been acquired, the Acquiring Body shall, as soon as practicable, carry out the final Survey on all the land acquired. (1A) The final survey shall be authenticated by the statutory body responsible for survey (2) Upon completion of final survey under subsection (1), the Cabinet Secretary shall cause to be issued new title documents for every affected parcel.	This is intended to reduce the bureaucracy and speed up the process of the final survey since the acquiring body is in possession of the initial survey data (acquisition drawings). Many of the acquiring public bodies have surveyors who can ensure the final survey is done either in-house or through outsourcing. The Cabinet Secretary should only provide a list of the parcels fully compensated including the acreages to enable the Acquiring Body to carry out the final survey.
	S119 Condition for payment of compensation. (a) Payment of compensation shall be made only upon the exercise of due diligence which shall include final survey and the determination of acreage, boundaries, ownership and value.	S119 Condition for payment of compensation. (a) Payment of compensation shall be made only upon the exercise of due diligence which shall include the determination of parcel identification , acreage, boundaries, ownership and value.	Final survey of the acquired land is done after full compensation is paid. It is therefore not advisable to consider final survey to be a condition for payment of compensation.
66	S120 Formal taking of possession (3) Upon taking possession of land under subsection (1) or subsection (2), the Cabinet Secretary shall serve upon— (a) The commission;	S120 Formal taking of possession (3) Upon taking possession of land under subsection (1) or subsection (2), the Cabinet Secretary shall serve upon— (a) the commission;	The acquiring public body requires to be given a copy of the notice of taking possession to facilitate the follow up and for execution of the works

Clause	As Proposed in the Bill	Our Proposal	Justification
	(b) the registered proprietor of the land, and; (c) the Registrar, a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be	(b) the registered proprietor of the land, (c) the Registrar, and; (d) the acquiring public body a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be	
68	122. Acquisition of other land on account of severance (3) If the Cabinet Secretary is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land	122. Acquisition of other land on account of severance (3) If the Cabinet Secretary is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring public body to acquire the remaining land	



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NATIONAL LAND COMMISSION

MEMORANDUM ON THE LAND LAWS (AMENDMENT) BILL, 2023

SUBMITTED TO

CLERK OF THE NATIONAL ASSEMBLY

9TH FEBRUARY, 2024

INTRODUCTION

The National Land Commission welcomes and appreciates the opportunity to give comments to the Land Laws (Amendment) Bill, 2023. We appreciate the concerns in the lands sector and therefore the need to regularly review land laws. In line with this, we propose to strengthen the proposals in the land laws to bring clarity. Where we have expressed an objection, it is because of the need to ensure adherence of the provisions of the statutes to the Constitution and to avoid potential conflict with other existing laws.

PREAMBLE

The Commission's comments are anchored on Article 62(2) and (3) of the Constitution which provides that Public land shall vest in and be held by a national or county government in trust for the people resident in the country and county, and be administered on their behalf by the National Land Commission. Further Article 67(2)(a)(h) of the Constitution provides functions of the National Land Commission including to manage public land on behalf of the national and county governments and to assess tax on land and premiums on immovable property in any area designated by law. Article 248 of the Constitution provides that the objects of the commissions and the independent offices are to protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles, and to promote constitutionalism. Article 68 requires Parliament to enact legislation that gives effect to Part V of the Constitution and revise sectoral land use laws in accordance with the principles set out in Article 60.

The Commission takes this opportunity to submit proposed amendments that if adopted will go a long way in strengthening the mandates of land administration and management and compulsory acquisition. As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission because of its Constitutional independence unlike Ministries and acquiring entities where compensation funds will be exposed to the other competing priorities and recalled at the end of the financial year (Section 45(1) and (2) of the PFM Act) hence there is a high risk the funds not being available to pay the project affected persons whenever they are due. Further Section 26 of the NLC Act provides that the receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purposes of this Act in accordance with Article 206(1)(a) and (b) of the Constitution hence ensuring the project affected persons will be paid promptly.

The Commission also notes that some proposed provisions may offend the principle of checks and balances and create potential conflict of interest, specifically where national government requests and approves compulsory land acquisition. This will negate the principle of separation of powers between the National and County Governments as envisaged under article 175(a) of the Constitution of Kenya especially

where a county government is the acquiring entity. A constitutional Commission is best placed to create the link between the national government, the county governments and the public given its mandate under Article 249 of CoK.

Further, some of the proposals may violate the national values and principles of governance in Article 10(2)(c) of the Constitution on good governance, integrity, transparency, and accountability. They may also violate Article 60(1)(a),(c),(d) on equitable access to land, sustainable and productive management of land resources, transparent and cost effective administration of land. They may also violate the preamble of the Constitution: RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law; and EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution. Article 201(a) of the Constitution requires openness and accountability, including public participation in financial matters hence there is need to ensure that these principles are complied with.

HISTORICAL CONTEXT

Land, as a factor in social and economic activity in Kenya, has been a subject of constant interest, and of controversy, especially from a political standpoint. Thus, the special importance of Chapter Five of the Constitution. Such a background is relevant as an informative dimension. The post-independence land laws were inefficient, ineffective, incoherent, and inconsistent. The land administration set-up, and the land-rights delivery systems were bureaucratic, expensive, and undemocratic, resulting in inordinate delays, apart from lending themselves to corrupt practices.

The comprehensive policy statement on land management and administration in Kenya is contained in the *National Land Policy 2009 (Sessional Paper No. 3 of 2009)*. The content of the National Land Policy is critical in resolving land management and administration issues, as the policy took cognizance of findings from previous Government initiatives in land reform, such as the Presidential Commission of Inquiry into the Land Law System of Kenya (Njonjo Land Commission), the Ndung'u Land Commission, and the Constitution of Kenya Review Commission Final Report (CKRC Final Report).

Provisions of Chapter Five of the Constitution are closely modelled on the National Land Policy, and the objective of the NLC is reflected in both the Constitution, and Section 5(2) of the NLC Act. Principles under Article 60, relating to land governance and management in Kenya, are a replica of those in the various drafts of the Constitution: the Bomas Draft (Clause 77); the Wako Draft (Clause 78); the Committee of Experts Draft (COE); the Harmonized Draft (Clause 77); and Revised Harmonized Draft (Clause 73). Principles regarding land are consistent with a summary of what the people told the CKRC in relation to land, and which is set out in the CKRC Final Report.

History shows that the administration of public land in Kenya had been marred by corruption and political patronage. Section 8 of the Land Act provides for the role of the NLC in the "management of land". By virtue of Section 9(4) of the Land Act, the NLC has to keep a register

of private land converted to public land, as well as community land converted to private or public land; and that by virtue of Sections 9(5), 10 and 11 of the Land Act, the NLC is to develop guidelines on the management of public land.

As indicated earlier above the independence of the NLC is governed by Article 249 of the Constitution, and involves three elements: terms of appointment (the appointees should not be under obligation to those who have a vested interest in the outcome of decisions); terms of operation; and security of tenure. On NLC and its independence, as a principle, while the classical understanding of the separation of powers relates to the three arms of Government, independent Commissions, in modern Constitutions, are perceived as the fourth arm of Government. Relying on Articles 62 and 67 of the Constitution, the NLC was intended to be independent, and that the Constitution did not contemplate it as part of Government. It is erroneous to amend sections in Part VIII of the Land Act No. 6 of 2012 apportion functions between the Ministry of Lands and NLC as though the NLC falls within the Executive arm of Government. The NLC should remain an independent organ, to be treated in the same way as any other Commission under Chapter Fifteen of the Constitution.

Please find the proposals below:

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
1	2	44	Section 2 of the Land Act, 2012, is amended by— (a) deleting the definition “allocation of land” and substitute therefor with a new definition— “allocation of land” means alienation of land by either the national government or the county government as the case may be, by way of issuance of a letter of allotment by the National Land Commission to any person to hold the land either under leasehold or freehold tenure; b) deleting the definition of the term “alienation of public land”; (c) deleting the definition of the term “tribunal”;	Retain the definition of Tribunal as it is in the Land Act. Retain the definition of “allocation of land” as it is in the Land Act. Delete the definition of alienation of land. Committee is not necessary and the Commission does not support the introduction of the Committee in place of the Tribunal Definition of a letter of allotment may not be necessary as it is not used in the Act.	The definition of a public body is already implied in Article 260 of the Constitution. Further, the Constitution and the Land Act, 2012 already defines the Commission as the National Land Commission. Acquiring body should refer to the respective Cabinet Secretary that is submitting the request for compulsory land acquisition to the Commission.

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			(a) inserting the following new definitions in their proper alphabetical sequence— “acquiring public body” means a public body that wishes to acquire land through compulsory acquisition; “Committee” means the Land Acquisition Committee established by section 133A; “letter of allotment” means a written expression of offer by the National Land Commission to a person who duly accepts the offer of being granted rights to hold public land in an alienation of public land or allocation of land process. “public body” means— (a) the national or county government; or (b) any authority, board, commission or other body which has or performs, whether permanently or temporarily, functions of a public nature, or which engages or is about to engage in any activity that is of public purpose	Definition of public body is not necessary as it is not used in the Act.	The proposed amendment threatens to violate the national values and principles of governance principles in Article 10(2)(c) of the Constitution on good governance, integrity, transparency and accountability. The proposed amendment threatens the Article 60(1)(a),(c),(d) equitable access to land, sustainable and productive management of land resources, transparent and cost effective administration of land. The proposed amendment threatens to violate the preamble of the Constitution: to RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law: EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution. This threatens Article 201(a) of the Constitution which require

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
					openness and accountability, including public participation in financial matters.
2	13	45	Section 13 of the Land Act, 2012, is amended— (a) by deleting subsection (1A) and substituting therefor the following new subsection— “(1A) Where a letter of allotment is not issued to the lessee after an application under subsection (1), the Commission shall in writing give the lessee the reasons for not allocating the land to the lessee”; (b) in subsection (2) by — (i) deleting paragraph (a) and substituting therefor the following new paragraph— (a) prescribing the procedures for applying for renewal of leases before their expiry; (ii) deleting paragraph (b) and substituting therefor the following new paragraph— (b)prescribing the factors to be considered by the Commission in re-allocating the land to the lessee; (iii) deleting paragraph (c) and substituting therefor the following new paragraph— (c) the stand premium or the annual rent to be paid by the lessee in consideration of re-allocation of the land; (c) by inserting the following new subsections immediately after subsection (2)— “(3) An application for extension of a lease shall be made to the Cabinet Secretary.”	Section 13 of the Land Act 2012 should remain as it is. However, the Commission proposed insertion of the word “not” after the words “reasons for” in Section 13(1A).	The proposed amendment are against the provisions of Articles 62 and 67 of the Constitution of Kenya. The proposed amendment threatens to violate Article 6 of the Constitution which provides that the National and county governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			“(4) The Cabinet Secretary may make regulations on extension of leases prescribing the application procedure, factors to be considered, stand premium and annual rent payable.”		
3	20	46	The Land Act, 2012, is amended by repealing section 20 and replacing it with the following new section— 20. Whenever the national or county government is satisfied that it may be necessary to grant licence to any person to use unalienated public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission to handle the process including— (a) determining the criteria to be used in granting licence to any person for a period not exceeding five years subject to planning principles as it may prescribe. (b) issuing a notice to quit upon the licensee at any time after the expiration of nine months from the date of the licence. (c) determining the fee payable under a licence under this section, the period and the agreements and conditions of the licence. (d) the manner of giving consent upon transfer of the benefit of a licence.	The Commission supports the proposed amendment. However, the provision should only apply to County Government that should submit the request for issuance of a licence. Section 20 should be amended as follows: “Any person or entity may submit an application for a license on unalienated public land to the County government. Whenever the county government is satisfied that it may be necessary to grant a licence to any person to use unalienated public land, the County Executive Committee member responsible for matters relating to land shall submit a	The proposed amendment provides clarity on the process issuance of licence to unalienated public land. Article 62 (1) provides that unalienated 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. For this reason, the requests to the Commission should only be submitted by the County Government.

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
				request to the Commission to handle the process including”...	
4	23	47	Section 23 of the Land Act, 2012, is amended— (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph— “(a) that the lessor has full power to lease the land;” (b) by deleting subsection (2) and substituting therefor the following new subsection— “(2) A lease of public land shall be issued and sealed by the Cabinet Secretary on behalf of the national government or county government as the case may be.”	The Commission supports the proposed amendment to subsection (1)(a) The Commission proposes the amendment of 23(2) to read as follows: “A lease or licence for public land shall be prepared and executed by the Commission and registered by the Chief Land Registrar.”	The current provision and proposed amendment to Section 23(2) is against the provisions of Article 62 of the Constitution that defines public land and provides that the Commission shall administer the land on behalf of both National and County governments. Article 67(2)(a) mandates the Commission to manage public land on behalf of both the National and County governments. The proposal to have the Chief Land Registrar prepare the leases for public land is against the tenets of the principals of devolution as provided for under Article 175(a). Further, the Supreme Court Advisory opinion No. 2 of 2014, Courts and an Advisory opinion from the Attorney General have on several occasions pronounced themselves on this matter that the

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
					National Land Commission should execute leases on public land and such leases shall be registered by the Cabinet secretary.
5	28	48	The Land Act, 2012, amended by inserting the following new sections immediately after section 28- “28A. (1) The annual rent payable including peppercorn rent under a lease shall be the rent reserved in the lease and for each subsequent period of ten years.” (2) The annual rent payable under subsection (1) shall be charged at such percentage, of value of the land upon assessment after every ten years, as the Cabinet Secretary may by order in the Gazette determine.” 28B.(1) Notwithstanding any provision of a lease under this Part, the Cabinet Secretary shall, every tenth year from the commencement of the lease until the expiry of the term of a lease under this Part, cause the land which is the subject of a lease under this Part to be valued for the purpose of determining the rent which shall be payable for the second or subsequent ten year period of such lease, whichever next follows the year in respect of which the valuation is made. (2) The rent so determined under subsection (1) shall be payable with effect from the beginning of the date for which it is determined to be payable and such date shall not apply retrospectively.	The Commission supports the amendment. However, the amendments should provide for the following: Under Section 28A, the Commission should gazette. The Commission should undertake the mandate of determining rent payable on behalf of the Counties and National government. We propose that revision of rent should be done every 5 years not 10 years due to high inflation. Under the proposed amendment under 28C (1), the Commission and not the Cabinet Secretary should cause notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in	Article 67(2)(a) and (g) mandate the Commission to manage public land on behalf of the national and county governments and to assess tax on land and premiums on immovable property in any area designated by law. Commission does the initial assessment and the National government should not gazette for county governments as the two are distinct and county governments are not subservient to the National government and should operate on the basis of mutual cooperation and collaboration under the principles of devolution in Article 175 of the Constitution of Kenya. The proposed amendment threatens to violate Article 6 of the Constitution which provides that the National and county governments at the national and

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			28C. (1) Upon the valuation under section 28B, the Cabinet Secretary shall, before the expiration of the year in which the valuation was made, cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by the lessee during the next following period and calling upon the lessee to state in writing whether he objects to the valuation (2) Where the lessee successfully objects to the valuation under subsection (1), the rent payable shall, upon the determination of the objection, be varied so as to be in accordance with the valuation determined under that section 28B(1), and the lessee shall be entitled to a refund of the rent overpaid by him. (3) It shall be no defence to an action for any rent payable under a lease granted under this Part that any notice required by this section to be served on the lessee has not been served.	accordance with such valuation will be payable by him during the next following period and calling upon the lessee to state in writing whether he objects to the valuation.	county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.
6	30	49	Section 30 of the Land Act, 2012, is amended in the marginal note by deleting the word Commission and substituting therefor with the words "national government or county government".	The Commission supports the amendment	
7	34	50	Section 34(1) of the Land Act, 2012 by deleting the words "leased public land" and substituting therefor the word "leasehold land".	The proposed amendment to Section 34(1) is already in force and therefore not necessary.	The Act was amended already.

LAND ACT NO. 6 OF 2012					
#	CLAUSE THAT IS PROPOSED TO BE AMENDED	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
8	54	51	The Land Act, 2012 is amended by inserting the following new section immediately after section 54—54A. The owner of any freehold land situate within the boundaries of any urban area or city shall pay an annual land levy equivalent to land rent charged on comparable leasehold land or property of the same in the same zone: Provided that any owner of freehold land that is put to agricultural use may be exempt from the annual land levy.	The proposal should be deleted. The Commission supports but the land rent should be determined by the Commission in line with its constitutional mandate. However, the Commission notes that the proposal touches on the provisions of the Urban Areas and Cities Act.	Freehold interest is not comparable to a leasehold interest. There should be no levy charged on freehold land apart from rates. Freehold interests are superior interest and there is no landlord and therefore no rent can be owed. Introduction of a levy would amount to double taxation. The proposal touches on provisions under the urban areas and cities Act. The proposal requires the Senate approval.

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
1	107 (1)	52	The Land Act, 2012, is amended by repealing section 107 and replacing it with the following new section- 107.(1) 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 Member shall submit a	Delete the clause	Retain as per the existing law. This amendment affects the Constitutional Provision in Article 174 & 175 on the objects of devolution which promotes the autonomy of the national and county governments.

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			request for acquisition of land to the Cabinet Secretary to acquire the land compulsorily.		- Article 60 principles of land policy, 62 (2 &3) and 67(2)(a) of COK mandates the Commission to manage and administer public land on behalf the national and county governments. Under compulsory land acquisition, the conversion of private or community land into public land is undertaken by the Commission and commences with the publication of a notice of intention to acquire, and at which the process of administration begins. Upon vesting, the converted land is now managed by the Commission on behalf of the two levels of governments. The process of land acquisition is therefore within the land administration process which falls under the mandate of the National Land Commission. - The National Land Policy of 2009, under 3.2.1.1 pointed out the problems of irregular acquisition where the process of compulsory land acquisition being undertaken by the Commissioner of Lands were abused and not adhered to. The policy proposed harmonization of laws with clear criteria processes and procedures of compulsory land

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					acquisition. The policy proposed the formation of the National Land Commission to undertake the function. • The Supreme Court Advisory Opinion Ref. No. 2 of 2014, confirmed that the provisions of the Land Act 6 of 2012 were consistent with the COK on the Commission's mandate to protect and oversee public interests and rights. • The proposed amendment will create a conflict of interest whereby the National Government determines the location of projects, approves the acquisition, determines the value, provides compensation funds and makes the payment. • It also exposes the process of Compulsory Land Acquisition to political interference.
2	107(2)	52	107(2) The Cabinet Secretary shall prescribe a criteria and guidelines to be adhered to by the acquiring public bodies in the acquisition of land.	Delete the clause	Retain as per the existing law. Regulations, criteria and guidelines are better developed by a Constitutional Commission with independent mandate to safeguard public interest.

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					Hypothetically, in line with Article 174 & 175 of CoK (2010) on Objects of Devolution & Principles of devolved government, the county governments can argue that they can undertake compulsory land acquisition process on their own. This would mean in addition to the Cabinet Secretary, 47 administrative units will have their own processes and procedures. To avoid such a scenario, the Commission is best placed to undertake this process by ensuring uniformity in processes, procedures & guidelines, limiting misuse of the process by observing safeguards such as land index, tribunal & promotes public interest.
3	107(3)	52	107(3) The Cabinet Secretary may reject a request of an acquiring public body, to undertake an acquisition if the request does not meet the requirements prescribed under subsection 2 and Article 40(3) of the Constitution.	Delete the clause	Retain as per the existing law. This proposal will introduce conflict of interest where national government requests and approves compulsory land acquisition. This will negate the principle of separation of powers between the National and County Governments as envisaged under article 175(a) of the Constitution of Kenya especially where a county government is the acquiring entity.

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					A constitutional commission is best placed to create the link between the national government, the county governments and the public given its mandate under Article 249 of CoK.
4	107(4)	52	107(4) Where the Cabinet Secretary rejects request of an acquiring public body in accordance with subsection (3), the Cabinet Secretary shall within fourteen days of the decision inform the acquiring public body of the decision to reject the request and state the reason for the rejection.	Delete the clause	Retain as per the existing law. Every project has to be approved at either cabinet level or at county executive committee level before implementation in which the Cabinet Secretary is a member. Exposing the same projects to the approval of the Cabinet Secretary to either accept or reject, amounts to duplication in approval. This role is better placed to be done by the another constitutional entity.
5	107(5)	52	107(5) If the Cabinet Secretary establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Cabinet Secretary shall: - (a) cause the affected land to be mapped out and valued using the valuation criteria a set out under this Act; and (b) establish whether the acquiring public body has identified the number and maintained a	Delete the clause	Retain as per the existing law. This offends the principle of checks and balances and creates a potential conflict of interest. Projects are approved by either cabinet or county executive committees at national and county level respectively hence exposing the same projects to the approval of the Cabinet Secretary to either accept or reject amounts to duplication in approval.

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			register of persons in actual occupation of the land, confirming for each such occupation the duration of uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.		The county governments will have to seek approvals for projects already approved by the County Assemblies from the National Government through the Cabinet Secretary for Lands. This appears to undermine the authority of the county governments and the county assemblies. This would make county governments subservient to the National Government which is against the spirit of Article 174 and 175 of the COK (2010). This role is better placed to be done by a constitutional commission with independent mandate.
6	107(6)	52	107(6) Upon approval of a request under subsection (1), the Cabinet Secretary shall publish a notice to that effect in the <i>Gazette</i> and deliver a copy of the notice to the Registrar and every person who has an interest in the land.	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) The Cabinet Secretary will identify the land, notify the affected persons without undertaking an assessment to determine public interest as required. It will be prudent to have the Commission to take care of public interest as was articulated in the National Land Policy No. 3 of 2009 and firmed up under Article 249 of the COK (2010).

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7	107(7)	52	107(7) The notice issued under subsection (6) shall contain - (a) the purpose for which the land is to be compulsorily acquired; and (b) the location, general description and approximate area of the land	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107(5A).
8	107(8)	52	107(8) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76 (I) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land until it vests in the acquiring public body.	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107(5B).
9	107(9)	52	107(9) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition.	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107(6).
10	107(10)	52	107(10) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such persons.	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107(7).
11	107(11)	52	107(11) All land to be compulsorily acquired shall be geo-referenced and authenticated by the statutory body responsible for survey.	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107(8).
12	107A(3A)	53	(a) By inserting the following new subsections immediately after subsection (3)-	New clauses to the Bill Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (1).

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			“(3A) the Cabinet Secretary may on developing a land value index in respect of a particular county or counties immediately transmit such land value index to the National Assembly and the Senate without necessarily waiting to develop a land value index covering the entire republic of Kenya.		This new clause introduces a conflict of interest because the cabinet secretary identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value based on the same index developed by the same Cabinet Secretary. To achieve checks and balances, the roles should be split as provided in s.107A (1) of the Land Act No. 6 of 2012; whereby the cabinet secretary develops the land value index while the Commission adopts the Index in assessing value among other market considerations. Article 40(3)(b) stipulates that when the State acquires land compulsorily, it must provide prompt, full, fair, and just compensation to the affected landowners or occupants. Development & use of a land index may contravene the above as the values employed are predetermined and may at the time of the acquisition be outdated hence leading to unfair & unjust compensation.
13	107A(3B)	53	(3B) A land value index may be reviewed after every five years”;	New clause to the Bill Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (7).

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					This new clause introduces a conflict of interest because the cabinet secretary identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value.
14	107A(b)(i)	53	deleting the word “Commission’s” appearing in paragraph (a) and substituting therefor the words “Cabinet Secretary’s”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (7). This clause introduces a conflict of interest because the national government identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value.
15	107A(b)(ii)	53	deleting the word “Commission’s” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary’s”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (7). This clause introduces a conflict of interest because the national government identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value.
16	107A(b)(iii)	53	deleting the word “Commission’s” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary’s”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (7). This clause introduces a conflict of interest because the national government identifies the

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
					land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value.
17	107A(b)(iv)	53	deleting the word “Commission’s” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary’s”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019)– s.107A (7). This clause introduces a conflict of interest because the national government identifies the land to be acquired, approves the acquisition, determines the basis of value through the land value index and assesses the value.
18	107A(c)	53	in subsection (8) by deleting the word “Commission” and substituting therefor the words “Cabinet Secretary”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (8).
19	107A(d)(i)	53	deleting the word “Commission’s” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary’s”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (9).
	107A(d)(ii)	53	deleting the word “Commission” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.107A (9).
20	107B	54	Section 107B of the Land Act, 2012 is amended by deleting paragraph (c) and substituting therefor the following new paragraph- “c) any other criteria which the Cabinet Secretary may in consultation with county governments prescribe in Regulations with the	New section Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019)– s.107B (2)(c). Regulations, criteria and guidelines are better developed by a Constitutional Commission with independent mandate in consultation with both levels of government with the

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			approval of the National Assembly and the Senate”.		approval of the National Assembly and the Senate to safeguard public interest. The allocation and renewal of leases are already administrative roles of the Commission. In line with the Commission’s roles in the management of public land, it is best suited to develop regulations and guidelines on the land acquisition processes in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate. This will further enhance the principle of separation of powers between the National and County Governments as envisaged under Article 175(a) of the CoK (2010).
21	S.108	55	deleting the word “ Commission” appearing in subsection (i) and substituting therefor the words “Cabinet Secretary”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.108A (1). This clause introduces a conflict of interest because the national government identifies the land to be acquired, approves the acquisition, inspects the land to ascertain its suitability for the intended purpose, determines the basis of value through the land value index and assesses the value.
22	109	56	The Land Act, 2012, is amended by repealing section 109 and substituting therefor the following new section-	New section. Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.109.

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			109. As soon as practical after entry has been made under section 108, the Cabinet Secretary shall determine the damage resulting from entry to enable the acquiring public body to promptly pay, just compensation for the damage.		This is best undertaken by the Commission in line with Article 249 of the Constitution which requires that such a Commission should protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles, and promote constitutionalism.
23	S.110(a)	57	deleting the word “ Commission” appearing in subsection (1) and substituting therefor the words “Cabinet Secretary”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.110 (1). This role is best executed by the Commission as a constitutional commission with an independent mandate as per Article 249 of the Constitution and only subject to the constitution and the law.
24	S.110(b)	57	deleting the word “ Commission” appearing in subsection (2) and substituting therefor the words “Cabinet Secretary”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.110 (2). This role is best executed by the Commission as a constitutional commission with an independent mandate as per Article 249 of the Constitution and only subject to the constitution and the law.
25	S.110(c)	57	deleting the word “ Commission” appearing in subsection (3) and substituting therefor the words “Cabinet Secretary”	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.110 (3).

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					This role is best executed by the Commission as per Article 249 (1)(a) of CoK which mandates constitutional Commissions to protect the interest of the public.
26	111	58	Section 111 of the Land Act, 2012, is amended by- (a) Deleting subsection (1A) and substituting therefor the following new subsection- “(1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary survey fees, registration fees, and any other costs before the acquisition is undertaken”;	Retain	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.111. The Commission has enhanced compulsory land acquisition policy by ensuring that no letter of awards is served to the project affected persons (PAPs) unless deposits of funds have been made into its compensation account. As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission due to its Constitutional independence unlike acquiring entities where compensation funds will be exposed to the acquiring entities other competing priorities and recalled at the end of the financial year as per Section 45(1) and (2) of the PFM Act.
27	111	58	b) deleting subsection (2) and replacing it with a new subsection-	New section Delete clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.111 and the rules as developed by the Commission under ‘The Land Assessment

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			“(2) The Cabinet Secretary shall make regulations to regulate the assessment of just compensation”.		(Just Compensation) Legal Notice No. 283 of 2017.
28	112(1)	59	(a) deleting the word “Commission” appearing in subsection (1) and substituting thereof the word “Cabinet Secretary,”; (b) the word “Commission” appearing in subsection (2) and substituting thereof the word “Cabinet Secretary,”; (c) the word “Commission” appearing in subsection (3) and substituting thereof the word “Cabinet Secretary,”; (d) the word “Commission” appearing in subsection (4) and substituting thereof the word “Cabinet Secretary,”; (e) the word “Commission” appearing in subsection (5) and substituting thereof the word “Cabinet Secretary,”;	Delete the clause	Retain as per the Land Act, No. 6 of 2012. This negates independence of the commission as per Article 249 of the Constitution which mandates commissions to protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles; and promote constitutionalism. In exercising their mandates Commissions are independent and not subject to direction or control by any person or authority. The mandate of inquiry is to be performed through a quasi-judicial process as it is under the current law. This is best handled by the Commission. Nightshade case Petition No. 33 of 2019 entrenched the quasi-judicial function of the Commission as an independent body. The NLC already provides of Committees. This can be addressed administratively. Sect 19(1) the Commission shall make rules for better carrying out of its mandate. Offends the principle of checks and balance.

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36	s.113 (1)	60	Section 11 of the Land Act, 2012 is amended by- (a) deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.113 (1).
37	s.113 (2)	60	(b) delete the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019)– s.113 (2).
38	s.113 (4)	60	(c) deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary” “(4) Every award shall be filed in the office of the Cabinet Secretary and a copy sent to the acquiring public body”	Delete and amend as follows: - “(4) Every award shall be filed in the office of the Commission and a copy sent to the acquiring public body”	The Commission proposes that in addition to retaining copy of the award and serving a copy to the project affected person, the acquiring entity should be given a copy of the award as well.
39	114	61	Section 114 of the Land Act, 2012, is amended by deleting the word “Commission” wherever it occurs and substituting therefor the words “Cabinet Secretary”.	New clause Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.114.
40	115	62	Section 115 of the Land Act, 2012 is amended by – (a) deleting subsection (1) and substituting therefor the following new subsection- “(1) After notice of an award has been served on all persons determined to be interested in the	New clause Delete clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.111. The Commission has enhanced compulsory land acquisition policy by ensuring that no letter of awards is served to the project affected persons (PAPs) unless deposits of

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			land, and a copy sent to the acquiring public body, the acquiring public body shall, promptly pay compensation in accordance with the award to the persons entitled thereunder except in a case where- (a) there is no person competent to receive the payment; (b) the person entitled does not consent to receive the amount awarded; or (c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid”;		funds have been made into its compensation account. As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission due to its Constitutional independence unlike acquiring entities where compensation funds will be exposed to the acquiring entities other competing priorities and repayment back to the National exchequer account due to lapse of appropriations that are unspent at the end of the financial year as per Section 45(1) and (2) of the PFM Act.
41		62	(d) deleting subsection (2) and substituting therefor the following new subsection- “(2) In any of the cases referred to in paragraph (a), (b) and (c) of subsection (1), the acquiring public body may keep the amount of the compensation in a separate account and notify any persons interested accordingly”; a)		Retain in the Land Act as it is. The funds are best protected with the Constitutional independence of the Commission.

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
42		62	(c)Deleting the word “Commission” appearing in subsection (3) and substituting therefor the words “Cabinet Secretary”.		The funds are best protected with the Constitutional independence of the Commission.
43	116	63	Section 116 of the Land Act, 2012, is amended by deleting the word “Commission” wherever it occurs and substituting therefor the words “Cabinet Secretary”.		The funds are best protected with the Constitutional independence of the Commission.
44	117	64	Section 117 of the Land Act, 2012, is amended by deleting the word “Commission” wherever it occurs in subsection (1) and substituting therefor the words “acquiring public body”.		The funds are best protected with the Constitutional independence of the Commission.
45	118	65	Section 118 of the Land Act, 2012, is amended by- (a) deleting the word “Commission” appearing in subsection (1) and substituting therefor the words “Cabinet Secretary”. (b) deleting the word “Commission” appearing in subsection (2) and substituting therefor the words “Cabinet Secretary”.		The funds are best protected with the Constitutional independence of the Commission.
46	120	66	Section 120 of the Land Act, 2012, is amended by-	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.120 (1).
			(a) Deleting subsection (1) and substituting therefor the following new subsection- (I) After the cabinet secretary makes an award and serves a notice on		It offends the principle of checks and balances and creates potential conflict of interest. The Commission as the manager of public land is best placed to undertake this function.

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			every person who has an interest in the land notifying of the specific day possession of the land and title to the land will vest in the national or county government as the case may be, the acquiring public body may take possession of the respective land: Provided that such taking possession shall not occasion any person occupying the land to be rendered homeless,” (b) Deleting subsection (2) and replace it with a new subsection – “(2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the acquiring public body may on expiration of fifteen days from the date of publication of the notice of intention to acquire, take possession of land in the manner specified under subsection (1) notwithstanding that no award has been made.”		
47		66	(c) Deleting subsection (3) and replace it with a new subsection -	Delete the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019)

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			“(3) Upon taking possession of the land under subsection (1) or subsection (2), the Cabinet secretary shall serve upon— (a) the Commission (b) the registered proprietor of the land; and (c) the Registrar a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be”		
48	121	67	Section 121 of the Land Act, 2012, is amended by deleting the word “Commission” appearing in subsection (1) and substituting thereof the word “Cabinet Secretary”	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.121 (1). Offends the principle of checks and balances and creates potential conflict of interest.
49	122	68	Section 122 of the Land Act is amended by – (a) deleting the word “Commission” appearing in subsection (2) and substituting therefor the words “Cabinet Secretary”. (b) deleting the word “Commission” appearing in subsection (3) and substituting therefor the words “Cabinet Secretary”.	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019)– s.122 (2) & (3). Offends the principle of checks and balances and creates potential conflict of interest.

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			(c) deleting the word "Commission" appearing in subsection (5) and substituting therefor the words "Cabinet Secretary".		
50	123)	69	Section 123 of the Land Act, 2012 is amended by – (a) Deleting subsection (1) and replace it with a new subsection- “(1) At any time before possession is taken of any land acquired under this Act, the Cabinet Secretary may, revoke a direction to acquire the land, and, shall determine all damage suffered and all costs and expenses reasonably incurred by the persons interested in the land by reason of or in consequence of the proceedings for acquiring the land to enable the acquiring public body to make compensation”;	New clause Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.123 (1). As the manager of public land the Commission is best suited perform the function. Offends the principle of checks and balances and creates potential conflict of interest.
51	123)	69	(b)Deleting subsection (2) and replace it with a new subsection- “(2) The principles relating to the determination of compensation as may be set out in the regulations shall apply, so far as they are relevant, to the determination of compensation payable under this section”;	New clause Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.123 (1), (2).

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52	124(1)	70	Section 124 of the Land Act, 2012 is amended - (a) Deleting subsection (1) and replacing with a new subsection— “(1) if the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that — (a) the possession of the land is necessary for public purpose or public interest; (b) the possession of the land is necessary in the interests of defense, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and (c) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing, possession of such land may be taken for that period under this section”; (b) deleting the word “Commission” wherever it occurs in subsection (2) and substituting therefor the words “Cabinet Secretary”	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.124 (1) (2) (3). Offends the principle of checks and balances and creates potential conflict of interest. This role is best executed by the Commission as per Article 249 (1)(a) of CoK which mandates constitutional commissions to protect the interest of the public and secure the observance by all state organs of democratic values and principles.

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			(c) Deleting subsection (3) and replacing it with a new subsection - “(3) At the end of seven days after notices have been served under subsection (2), the acquiring public body may take possession of the land by entering, by representatives or by agents, on the land and posting on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.”		
53	125	71	Section 125 of the Land Act, 2012, is deleted and replaced with a new section- 125. The Cabinet secretary shall on making of an award under section 124, send a copy of the award of compensation to the acquiring public body to, as soon as is practicable, pay full and just compensation to all persons interested in the land.	New clause Review the clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019)-s.125. As per Article 40(3)(b)(1) of the Constitution obliges the State to make prompt, full and just compensation for compulsory acquisition. These requirements are best guaranteed by the Commission due to its Constitutional independence unlike acquiring entities where compensation funds will be exposed to the acquiring entities other competing priorities and repayment back to the National exchequer account due to lapse of appropriations that are unspent at the end of the financial year as per Section 45(1) and (2) of the PFM Act. Section 26 of the NLC Act also provides that the receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for

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#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
					the purposes of this Act in accordance with Article 206(1)(a) and (b) of the Constitution. Offends the principle of checks and balances and creates potential conflict of interest.
54	126	72	Section 126 of the Land Act, 2012, is repealed and replaced by the following new section- 126. If the Cabinet Secretary is satisfied that any land of which the occupation or use has been secured under section 124 is needed solely as a means of access to any other land, then- a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by the body; and b) the compensation to be paid under section 124(3) shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.	New clause	Retain as per the Land Act No. 6 of 2012 (Rev. 2019).

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
55	127	73	Section 127 of the Land Act, 2012, is amended by- a) deleting the word 'Commission' appearing in subsection (1) and substituting therefor the words 'Cabinet Secretary'; b) deleting the word 'Commission' appearing in subsection (2) and substituting therefor the words 'Cabinet Secretary';	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.127. Offends the principle of checks and balances and creates potential conflict of interest.
56	129	74	Section 129 of the Land Act, 2012 is amended by deleting the word 'Commission' and substituting therefor the words 'Cabinet Secretary'.	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.129. Offends the principle of checks and balances and creates potential conflict of interest.
57	130	75	Section 130 of the Land Act, 2012 is amended by deleting the word 'Commission' and substituting therefor the words 'Cabinet Secretary'.	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.130.
58	131	76	Section 131 of the Land Act, 2012 is amended by deleting the word 'Commission' and substituting therefor the words 'Cabinet Secretary'.	Delete the clause.	Retain as per the Land Act No. 6 of 2012 (Rev. 2019) – s.131 (e).
59	133	77	The Land Act, 2012, is amended by repealing Section 133 and replacing it with a new section-133. The Cabinet Secretary may make regulations generally for carrying out the purposes and provisions of this Part.		

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
60		78	The Land Act, 2012, is amended by repealing Part VIIIA and replacing it with the following new Part- PART VIIIA THE LAND ACQUISITION COMMITTEE 133A (1) There is established a Committee to be known as the Land Acquisition Committee which shall consist of five members appointed by the Cabinet Secretary by notice in the Gazette (2) The Committee shall comprise— (a) an advocate of at least ten years standing, who shall be the chairperson; (b) two registered valuers with atleast ten years' experience in statutory valuation in a public body; (c) one licensed surveyor of at least ten years' standing; and (d) one person with extensive knowledge and experience in the inform sector representing the public.		The Land Act No. 6 of 2012 (Revised 2019) establishes the Land Acquisition Tribunal in Section 133A. The Commission proposes that the Tribunal be retained to avoid the likelihood of '<i>conflict of interests</i>'. All tribunals should be under the Judiciary as proposed by the Tribunals Bill that is at an advanced stage of enactment arising from a Court decision by Justice Mativo. The National Land Policy 2009, proposed a tribunal to hear appeals from Commission decisions. The function contemplated for the Committee is the same as the functions of the tribunal.

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			(2) The Cabinet Secretary shall deploy such staff as may be necessary to provide secretariat services to the Committee. (3) The Committee may co-opt an expert to advise it on any matter before it and shall regulate its own procedure. (4) The chairperson of the Committee shall serve for a term of four years and shall be eligible for re-appointment for one further term of four years. (5) A member of the Committee shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years. (6) The Chairperson and members of the Committee shall serve on a part-time basis. (7) The members of the Committee shall be paid such allowances or other remuneration as the Cabinet Secretary may, on the Salaries and Commission, determine. 133B. (1) The Committee shall hear and determine appeals from the decision of the Cabinet Secretary in matters relating to the compulsory land acquisition process.		

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			(1) A person dissatisfied with the decision of the Cabinet secretary shall, within thirty days, apply to the Committee in the prescribed manner. (2) The Committee shall hear and determine the application made under subsection (1) within ninety days of the filing of an application. (3) Despite subsection (3) the Committee may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, appear just and expedient (4) If, on an application to the Committee, the sum which in the opinion of the Committee ought to have awarded as compensation is greater than the sum which the Cabinet secretary did award, the Committee may direct that the Cabinet secretary pay interest on the rate, (5) Despite the provisions of sections 127, 128 and 148(5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way, shall in the first instance, be referred to the Committee. (6) Subject to this Act, the Committee shall have the power to confirm, vary or quash the decision of the Cabinet secretary.		

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			(7) The Committee may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23(2) and 47(3) of the Constitution, using the framework set out under the Fair Administrative Action Act, 2015 or any other law. Appeals 133C. (1) A party to an application to the Committee who is dissatisfied with the decision of the Committee may appeal to the Environment and Land Court on the grounds that – (a) the decision of the committee was contrary to law or to some usage having the force of law; (b) the Committee failed to determine some material issue of law or usage having the force of law; or (c) there was a substantial error or defect in the procedure provided by or under this Act which has occasioned or produced an error or defect in the decision of the case. (2) An appeal from the decision of the Committee may be made on a question of law.		

LAND ACT NO. 6 OF 2012					
#	CLAUSE	SECTION OF THE BILL	AMENDMENT AS PER THE BILL	NLC RESPONSE	JUSTIFICATION
			<i>Limitation of liability 133D.</i> A members of the Committee shall not be personally liable for any act, omission or default done or committed in good faith in the course of exercising the powers conferred by this Act.		

MEMORANDUM OF OBJECTS AND REASONS

Statement on whether the Bill affects County Governments

The Bill affects county governments as it alters the process of counties acquiring land through compulsory acquisition. The Commission enhances checks and balances at the National and County governments. County governments are distinct and not subservient to the National Government.

Statement on the financial implications of the Bill

The Bill shall occasion additional expenditure of public funds as there is need to finance the institutions Committees established under the bill.

**A. ADVISORY ON ADMINISTRATION AND MANAGEMENT OF PUBLIC LAND IN
LINE WITH ARTICLES 62 AND 67 OF THE CONSTITUTION**

BACKGROUND

Sessional Paper No. 3 of 2009, National Land Policy defines Land Administration as the process of determining, recording and disseminating information about ownership, value and use of land.

"Draft Glossary for UN-FIG Declaration", FIG (1999) defines Land administration as the processes of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies

Public Land

Public Land is land which is not private or community land that is held by the national or the county government in trust for the people. It is administered and managed by National Land Commission on behalf of the two levels of Government

According to **Article 67 (1) of Constitution of Kenya, 2010**; public land can be classified into four broad categories:

- a. Land that is unalienated government land, land that is transferred to the State by way of sale, reversion or surrender, land in respect of which no individual or community ownership can be established by any legal process, and lastly, land in respect of which no heir can be identified by any legal process (Article 62(1)(a),(c),(d)&(e).
- b. Land that is lawfully held, used or occupied by any state organ except any such land that is occupied by the State organ as lessee under a private lease (Article 62 (2) (b)).
- c. All minerals and mineral oils as defined as defined by law, government forests other than forests to which Article 63 (2) (d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas, all roads and thoroughfares provided for by an Act of Parliament, all rivers, lakes and other water bodies as defined by an Act of Parliament, the territorial sea, the exclusive economic zone and the sea bed, the continental shelf and all land between the high and low water marks (Article 62 (f) to (m).
- d. Any other land declared to be public land by an Act of Parliament— in force at the effective date; or enacted after the effective date.

However, there is a slight distinction between land held in trust by the county and that by the national government. Land under category (a) and (b) above, is vested in the county government, and is held in trust for the people resident in that county and shall be administered by the National Land Commission (Article 62 (2) (a) and (b). Land under category (c) is vested in and is held by the national government in trust for the people of Kenya and shall be administered by the National Land Commission.

Mandates of the National Land Commission

Article 67 (2) of the constitution of Kenya 2010, mandates the commission to administer public land on behalf of both the National and the county government. The National Land Commission shall;

- (a) manage public land on behalf of the national and county governments;
- (b) recommend a national land policy to the national government;
- (c) advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- (d) conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- (e) initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- (f) encourage the application of traditional dispute resolution mechanisms in land conflicts;
- (g) assess tax on land and premiums on immovable property in any area designated by law; and
- (h) monitor and have oversight responsibilities over land use planning throughout the country

Allocation & Management of public land

Allocation

Allocation of public land is simply the process of converting public land to private land. The National Land Commission (NLC) is mandated to oversee the allocation of plots and preparation of the lease documents on behalf of the National or County Government

The process of land allocation starts at the county. The county plans and undertakes survey as is required under Section 12 (12) of the Land Act, 2012. The county, through the County Executive Committee Member -in charge of Lands forwards the approved and authenticated survey plan/FR or an amended Registry Index Map (by the Director of Survey) together with a formal request to the commission with the identified beneficiary of the land. The request clearly states to whom the land should be allocated to. The National Land Commission verifies that the land does not fall in the categories of land under article 62 (c), subject the plot to valuation to determine annual rent and stand premium payable. A letter of allotment is later issued upon issuance of a notice of intention to allocate in line with Section 14 of Land Act, 2012.

The Supreme Court of Kenya, vide *Petition Number 5 (E006) of 2022*, pronounced itself on the validity of the letters of allotment. The court re-affirmed the position of letters of allotment as being mere letters of offer and not proof of ownership. The allottee who has received an offer should therefore accept the offer through writing and fulfill terms and conditions set out in the letter of offer for the allotment to be valid. The Court further stated that even where the conditions in the letter of allotment have been fulfilled, the allottee should acquire a title to the land through registration under the relevant laws. Further the court noted that its only after a lease is prepared and registered by the Chief Land Registrar, that the allottee can be able to pass rights and interests in the land to a third party. The court went further and clarified that, in such instances, where the

conditions in the letter of allotment were not fulfilled nor titles/certificate of lease processed, the properties in question remain public land.

The Land is considered to have been converted to private land upon execution of the lease document.

Land Management

Land management refers to the process of managing the use and development of land resources in a sustainable manner. According to Section 8 (1) of the Land Act, 2012, on management of public land, the commission shall:

a. shall identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey

b. shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and

c. shall share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or

d. may require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

Renewal of Lease

Renewal of lease refers to grant of a new lease on the same parcel of land upon the expiry of a previous lease. It is important to note that the Land Act does not make reference to renewal of lease but reallocation. However, the land (general) regulation 2017 introduced the term renewal. A reallocation of public land is for a maximum of 99 years. The terms for the renewal are the same but the stand premium and annual rent may vary depending on the variation at the point of renewal. However, for reallocation, the terms may change in totality.

Where the lease term has expired without prior notice to the lessee by the commission as required by Section 13 of Land Act, 2012, the Commission the lessee to apply for renewal of lease. On expiry of lease, the land reverts back to public land and becomes a subject of reallocation to the immediate leaseholder or as the County Government may advise.

According to section 12 (6), At the expiry, termination or extinction of a lease granted to a non-citizen, reversion of interests or rights in and over the land shall vest in the national or county government as the case may be, and it is administered and managed by the National Land Commission.

Article 62. (c) Land is transferred back to the state land by sale, reversion or surrender. At the end of the term of lease, land becomes public land and hence it is reallocated back to the same owner or as identified by the County by the National Land Commission following the renewal of lease process. Before processing the renewal of lease, the commission shall seek development application approval and approval from CECM-lands.

If any recommending authority is of the view that the lease should not be renewed, such authority will give reasons to the Commission within thirty (30) days. Any applicant who is aggrieved by the decision not to renew their lease can appeal to the independent appeals committee established by the Commission. The appeal or the application for renewal will not be accepted where the land is required for public use or where the lessee has not complied with the terms and conditions of the existing lease.

Extension of Leases

Extension of lease refers to prolonging the duration of the lease from the original given time and is done during the subsistence of the lease. It is important to note that the cumulative term must be for a maximum of 99 years. In this case, the government is the lessor while the landowner is the lessee. A lessee can apply for extension at any time before expiry of a lease. The application is made to the National Land Commission through the office of the Commission in the respective County by submitting Form LA 22. The terms for the extension of lease are the same but the stand premium and annual rent may vary depending on the variation at the point of extension.

According to Section 13 (1) a and b of the Land Act, within five (5) years before the expiry of the leasehold, the Commission shall notify the lessee by registered mail that the lease is about to expire in accordance with section 13 of the Land Act, 2012.

The notice shall indicate the date of expiry and inform the lessee of the lessee's pre-emptive rights to apply for extension of the lease under section 13 of the Land Act, 2012 and to whom to make the application

In the instance that the lessee does not respond within one year, the commission shall publish the notification on two (2) newspapers of countrywide circulation and where to make the application.

If the lessee does not respond to both notifications above, the Commission shall advise them on the need to apply for extension before the expiration of the term and the consequences of not doing so which may include forfeiture of the pre-emptive right over the land and the automatic reversion to the National or County Government.

The county government, through the CECM-Lands, issues a notification of approval once it receives advisory/recommendation from the National Land Commission.

As provided by Section 13 a-d, the commission after consulting the County Government will either extend the lease or reallocate the land.

Supreme Court Advisory Opinion Reference No.2 on the role of NLC with to processing of Leases

In buttressing the mandate of the National Land Commission with regard to processing of leases, the Supreme Court in Advisory Opinion Reference No. 2, **In the Matter of the National Land Commission [2015] eKLR**, held as follows:

241] It is clear that the responsibility of the NLC to issue licences, 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 licence, to the respective Governments.

[1292] Now as regards the NLC Act, it was established to, *inter alia*, provide for the management and administration of public land. The roles of the NLC, according to the NLC Act, are in tandem with its roles in the Land Act. These include: allocation of land; disposing of public land; leasing and effecting change of user. These roles are the preparatory steps towards registering a title. Neither of the two statutes gives the NLC the function of registration of title, in express terms.

[310] Falling within that broad opinion are more limited sub-sets—an important one being this: *The NLC has a mandate in respect of various processes leading to the registration of land, but neither the Constitution nor statute law confers upon it the power to register titles in land. The task of registering land title lies with the National Government, and the Ministry has the authority to issue land title on behalf of the said Government.*

[311] That the Ministry of Land is the special entity with authority to register and issue land title, in this Court's opinion, bears restating. Land title, by its singularity as the mark of entitlement to landed property, is the ultimate expression of a vital property right, quite apart from being the very reference-point in numerous financial and business transactions-national and international. On that account, the sole national repository to issue, and to guarantee the validity and integrity of title, is the central State machinery, as a player on the international plane, acting through the Executive organ.

The Court of Appeal in the case of *Abdulkadir A Khalif v Principal Secretary Ministry of Lands & Physical Planning & 4 others; National Land Commission & another (Interested Parties)* [2020] eKLR emphasised as follows on the critical role of the Supreme Court Advisory Opinion on establishing the relationship between the NLC and Ministry of Lands to ensure efficacious delivery of services to the public.

Justice Lenaola (as he then was) in *Karsan Velji Velani v National Land Commission* [2015] eKLR affirmed that

“Section 13 of the Land Act also confers the Respondent with the responsibility of extending any lease of public land on behalf of the National and County Government. It is clear to my mind therefore that since the Constitution and the Statute confer the responsibility of allocating public land, renewal and extension of leases of public land on the Respondent, it is therefore specifically the body that has the mandate to determine the issue of extension of the Petitioner's lease.”

Advisory Opinion of the Office of the Attorney General with regard to NLC's role on processing of leases over public land

On the 29th November, 2022, the Solicitor General issued an advisory opinion addressed to the Principal Secretary, State Department for Housing and Urban Development in relation to Mukuru Housing Project. In the said opinion, the Solicitor General reiterated that in accordance with the Law, the National Land Commission has the sole mandate to prepare and execute leases relating

to public land. Therefore, the Ministry should liaise with the National Land Commission to have the leases prepared.

This advisory opinion has not been reviewed to date.

Report of the Special Committee on the Implementation of the Supreme Court Advisory Opinion on the respective roles of the National Land Commission and the Ministry of Land, Housing and Urban Development

With regard to leases, the Committee referred to paragraphs 228 and 237 of the Supreme Court Advisory Opinion and Section 13 of the Land Act. The Committee thus found that the mandate of renewal and extension of leases, and development of rules of procedure for renewal or extension of leases including terms and conditions of the lease and the format of lease to be used lies with the National Land Commission.

As per paragraph 227 of the Supreme Court Advisory Opinion, section 18 of the NLC Act provides for the establishment and functions of County Land Management Boards. The Boards has functions with regard to the processing of land allocation; change and extension of user; conducting subdivision; and renewal of lease- give indications as to the essence of the phrase, "administering and managing public land". The functions undertaken by the Board are ordinarily, the preparatory steps towards acquisition of ownership to land, which culminates in registration and issuance of title by the National Government. It can thus be inferred, that the purpose of the Board is to effect the devolution of land-administration to the counties.

Per paragraph 237 of the Supreme Court Advisory Opinion the court noted that in accordance with Section 13 empowers the NLC to renew and extend leases. It is also empowered to make rules on the procedure to be followed, and factors to be considered in the extension of leases, in the following terms:

(1) 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...

"(2) The Commission may make rules for the better carrying out of the provisions of this Section, and without prejudice to the generality of the foregoing, the rules may provide for the following-

- (a) prescribing the procedures for applying for extension of leases before their expiry;
- (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;
- (c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land;
- (d) other covenants and conditions to be observed by the lessee.

Grant of leases and licenses

In accordance with paragraphs 239, 240 and 241 of the Supreme Court Advisory Opinion, the Committee established that the function of granting leases and licenses is a shared function but the overall responsibility rests with the NLC. Particularly, NLC is mandated to:

- i. Grant leases and licences generally,
- ii. Set out terms of the lease and licence
- iii. Prescribe the form of grant of lease or licence
- iv. Collect rent rates and other royalties and account
- v. Issue rent clearance certificates, and
- vi. Issue consent to lease

Further, with regard to leasing, the Committee found that in terms of sections 20, 23(2) and 28 of the Land Act, NLC has the responsibility of issuing leases over public land and also to prepare the form of the lease.

In conclusion, it is evident that as per Article 67(2)(a) and (g) management of public land should be undertaken by the Commission on behalf of the National and county governments. Under this mandate the Commission assess enhanced land rent, as provided in the Constitution and the Land Act, 2012 that leads to extension of interest on that land, rights of use and control and term. In this it is fair that the same organization that assessed the rent, created the conditions of use and interest on the land to again look at the extension of the same by either doing variations of the conditions and also create new guidelines on the same. In view of the above the Commission reiterates that the preparation of leases for or on extension of lease be vested in the Commission as provided in the Land act, 2012 which is also supported by Section 43 and 44 of the Land registration Act, 2012 that provides for an instrument that is registrable concerning any land transaction conferring interest.

B. ADVISORY ON COMPULSORY LAND ACQUISITION IN LINE WITH THE CONSTITUTION AND THE PART VIII OF THE LAND ACT 2012

BACKGROUND

Compulsory Land acquisition

The Supreme Court of Kenya, on its Advisory Opinion Reference No. 2 of 2014 noted that Section 107 (1) of the Land Act No. 6 of 2012 provides that when the National or County Government seeks to compulsorily acquire public land, it is to submit a request for acquisition to the National Land Commission, to acquire the land on its behalf. According to the advisory, this procedure underlines the interdependence between the National Land Commission and the Government; hence the primacy of the principle of co-operation between the two State organs. The referenced section of Land Act 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.”

Additionally, it highlighted that Section 110(1) 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. 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.

In conclusion it underlined that the foregoing provisions entrust the NLC with the responsibility of protecting and overseeing the public's rights and interest, under the Constitution. However, the NLC's mandate in that regard is not held single-handed and is not unqualified: provision is made for approval from the National Assembly; and the consent of the National Government, or relevant County Government. This provides a check-and-balance, to ensure that the NLC operates within the prescribed limits.

The above advice from the Supreme Court of Kenya (SCOK) serves to validate and underscore the alignment of the provisions within the Land Act pertaining to Compulsory Land Acquisition with the constitution of Kenya. The Court emphasized that these provisions not only conform to constitutional principles but also foster cooperation while diligently upholding a structured system of checks and balances.

Historical Context of the Compulsory Land Acquisition in Kenya

Prior to the Constitution of 2010, land acquisition in Kenya was primarily governed by the Land Acquisition Act and the Trust Land Act. The Land Acquisition Act empowered the Commissioner of Lands to acquire land for public purposes through compulsory acquisition, with compensation to affected individuals.

However, the land acquisition process faced issues such as irregular acquisitions, overlapping roles, lack of transparency, and subjective compensation assessments. The National Land Policy of 2009 recognized these challenges and proposed reforms, including aligning the law on compulsory acquisition with new land ownership categories, harmonizing institutional frameworks, establishing transparent criteria and procedures, empowering the National Land Commission, and conferring pre-emptive rights to landowners.

After the promulgation the Constitution of 2010, it explicitly protected the right to property and land rights, ensuring fair compensation for compulsory acquisition and safeguarding against forced evictions. The Constitution established the National Land Commission to oversee land management, identify historical land injustices, and provide remedies for affected communities. Additionally, the Constitution protected community land rights, emphasizing collective ownership and fair compensation in case of acquisition.

The establishment of the National Land Commission (NLC) in Kenya as proposed in the National Land Policy of 2009, aimed to achieve efficient, equitable, and sustainable land administration and management. The NLC's independence and accountability were emphasized in both the National

Land Policy and the Constitution. The NLC Act of 2012 further solidified its autonomy, requiring it to be accountable to Parliament for its operations and mandating ministerial policy directions to be laid before Parliament in writing.

The Land Act of 2012 mandates NLC to undertake compulsory acquisition on behalf of the government. The national or county government decides where the acquisition will take place, while the NLC determines the compensation amount based on a land value index developed by the Cabinet Secretary in charge of Land. The compensation funds are from the acquiring authority, which deposits them with the NLC before the acquisition.

To ensure fairness and transparency, the NLC conducts an inquiry and receives written claims from interested parties to determine who is to be paid compensation. To uphold checks and balances, the Land Acquisition Tribunal, by the Judicial Service Commission hears, and determines appeals from the NLC's decisions on compulsory land acquisition matters.

The determination of compensation has been significantly improved in the current framework. The Land Act establishes clear criteria for valuing different types of land, utilizing a standardized land value index developed in consultation with county governments. This ensures fairness and consistency in land valuation, addressing past issues of subjective decisions and inconsistency in compensation.

Checks and balances have been strengthened in the current legal framework. The past Acquisition Compensation Tribunal, appointed by the Minister, lacked impartiality. The current Land Acquisition Tribunal, appointed by the Cabinet Secretary in charge of Land, is independent and operates in a quasi-judicial manner. It has the power to confirm, vary, or quash decisions of the Commission.

EFFECTS OF THE PROPOSED AMENDMENTS

The Bill proposes transfer of the following functions from the Commission on compulsory land acquisition to the Ministry of Lands, Public Works, Housing and Urban Development:

1. Evaluation of Public Interest during Initiation of compulsory land acquisition projects
2. Publication of Gazette Notices of Intention to Acquire
3. Inspection of properties to be acquired
4. Oversight on determination of legal and financial claims by Project Affected Persons
5. Assessment of Value
6. Issuance of Awards

In view of the Bill's proposals, the Commission raises the following issues:

1. Advisory of the Supreme Court

The Supreme Court of Kenya, on its Advisory Opinion Reference No. 2 of 2014 noted that Section 107 (1) of the Land Act No. 6 of 2012 (which provides that when the National or County Government seeks to compulsorily acquire public land, it is to submit a request for acquisition to

the National Land Commission, to acquire the land on its behalf) aligns to the constitution. According to the advisory, this procedure underlines the interdependence between the National Land Commission and the Government; hence the primacy of the principle of co-operation between the two State organs. Amendment of the section to confer this mandate to the Ministry of Lands negates the advisory of the court.

2. Clawing back of the gains made through land reforms.

In the past, the role of compulsory land acquisition was bestowed on Commissioner of Lands (COL) who operated under the Presidency. However, the land acquisition process faced issues such as

- Irregular acquisitions.
- Lack of independence.
- Overlapping roles.
- Lack of transparency, and
- Subjective compensation assessments.

The National Land Policy of 2009 recognized these challenges and proposed reforms, including aligning the law on compulsory land acquisition with new land ownership categories, harmonizing institutional frameworks, establishing the National Land Commission (NLC), and conferring pre-emptive rights to original landowners.

The NLC's independence and accountability were emphasized in both the National Land Policy 2009 and the Constitution (2010), in particular under Article 249. The National Land Commission Act of 2012 further solidified its autonomy, requiring it to be accountable to Parliament for its operations and mandating ministerial policy directions to be laid before Parliament in writing.

Whereas there have been instances of alleged fraud in the compulsory land acquisition process in the first term of the Commission, the loopholes resulting in such instances have been sealed through changes in policy and legislation over the past four years including: -

- The adoption of Legal Notice No. 283 on The Land (Assessment of Just Compensation) Rules, 2017.
- Further, the Land Law Amendment Act 2019, and
- The Land Value Index Act 2019 enhanced the statutory requirements to guarantee a credible process which secures public interest.

The necessary checks and balances have further been instituted within the Commission and the Commission is and has been open to oversight bodies including: -

- Ethics and Anti-Corruption Commission (EACC).
- Directorate of Criminal Investigations (DCI),
- Office of the Auditor General (OAG)
- As well as to regulators of professional conduct such as:

First, Article 67(2)(a) of the Constitution 2010 mandates the National Land Commission to manage public land on behalf of the National and County Governments. Compulsory land acquisition involves conversion of Land from either Community or Private Land to Public Land on behalf of the National or County Governments. In line with this constitutional mandate, it is

4. Constitutionalism & Rule of Law

The Commission acts as a referee as it neither decides where the compensation for compulsory acquisition is going to happen nor does it have compensation funds for anticipated acquisitions. Instead, its role is to ensure a fair and transparent process by setting criteria and guidelines for acquiring authorities during the process. The decision to acquire specific land for public purposes lies with the national or county government, through the respective Cabinet Secretary or County Executive Committee Member. This separation of power ensures that the Commission remains an independent body, free from undue influence or conflicts of interest.

The proposed amendments therefore create a significant '*conflict of interest*' in comparison to the current provisions where the National Government determines which land to acquire and allocates the necessary funds for the purchase while the Commission independently assesses a fair compensation based on market value principles and the provisions of the law.

Essentially, the National government will be determining the land to acquire, setting the Award, and then paying compulsorily. Additionally, the National government as the acquiring entity will be responsible for hearing and settling disputes that arise from the same assessment of value through the Land Acquisition Committee.

- a) Identifies the land to be acquired.
- b) Makes guidelines on acquisition process.
- c) Preparing the land index.
- d) Determines the value of the land.
- e) Take leads in appeals and determines appeals, and
- f) Makes payment for it.

This implies that the Presidency, through the Cabinet Secretary in charge of Land: -

"Whenever the national or county government is satisfied that it may be necessary to acquire some particular land, the Cabinet Secretary or County Executive Committee Member shall submit a request for acquisition of land to the Cabinet Secretary to acquire the land compulsorily."

The bill proposes changes to Section 107(1) of the Land Act No. 6 of 2012 to read: -

3. Conflict of interest

- The Institution of Surveyors of Kenya (ISK), and
- Valuers Registration Board (VRB).

our view that the National Land Commission, as the manager and administrator of the converted land, should play a central role in the conversion process.

Secondly, the proposed amendment of Section 107(3&4) of the Land Act No. 6 of 2012 offends the principle of separation of functions since it leaves the discretion on whether to accept or reject any land acquisition to the Cabinet Secretary in charge of Land who is an appointee of the President, limiting objectivity due to apparent political influence or interference.

Article 249 of the Constitution Mandates Commissions and the Independent Offices to protect the sovereignty of the people, secure the observance by all State organs of democratic values and principles; and promote constitutionalism. The article further gives independence to the Commissions and the holders of independent offices, to the extent that they are subject only to the Constitution and the law, and not subject to direction or control by any person or authority. The Commission, being such a body, is better placed to safeguard, and advocate for the public's interests in the compulsory acquisition process.

Further, the Supreme Court of Kenya on its Advisory Opinion Reference No. 2 of 2014 noted that the current provision of the Land Act on compulsory land acquisition uphold the spirit of the constitution of Kenya. The Court highlighted that these provisions conform to constitutional principles and promote cooperation while diligently upholding a structured system of checks and balances.

5. Land Value Index and Land Acquisition Tribunal

Similar undertaking to transfer compulsory land acquisition functions from the Commission to the Ministry of Lands took place in the year FY 2018/19. As a result of deliberations by the stakeholders, the Land Value (Amendment) Act 2019 was enacted. The act mandated the Ministry through the Cabinet Secretary in charge of Land with the following:

- a) Establishing a land value index developed for the purposes of compensation. The index was to be developed six months after commencement of the Act.
- b) Establishing the Land Acquisition Tribunal - The tribunal was mandated with hearing and determining appeals from Commission decisions relating to compulsory land acquisition. The tribunal was given power to confirm, vary or quash the Commission's decisions.

These 2019 amendments empowered the Ministry of Lands with significant responsibilities aimed at introducing checks, balances, and oversight into the compulsory acquisition process. However, it is important to highlight that the Land Value Index is yet to be finalized.

The Land Acquisition Tribunal has recently been operationalized to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land as provided under Sec 133 of the Land Act. The proposal to replace the Tribunal with a Land Acquisition Committee comprising members appointed by the Cabinet Secretary in charge of Land will defeat the course of justice.

The Cabinet Secretary in charge of Land would make a positive contribution to the existing process by finalizing the land value index and providing essential safeguards as stipulated in the Land Value (Amendment) Act of 2019.

Additionally, the Ministry has the following roles:

- i. Valuation for stamp duty.
- ii. Valuation assessment of rent for extension of use and rent apportionment on land subdivision.
- iii. Valuation for government leasing of both residential and office space.
- iv. Valuation of property for purchase by Government e.g. purchase of premises abroad.
- v. Valuation for Administration of the estate of Public Trustee.
- vi. Valuation for rating.
- vii. Asset valuation for various organizations.
- viii. Recovery of government contribution in view of rates from the allottees.
- ix. Management of technical/professional boards (VRB & EARB).
- x. Preparation of the land value index.
- xi. Advisory Valuation to Public Bodies.

Given that the Ministry has not been able to finalize the land value index since the enactment of the Land Value (Amendment Act) in the year 2019, its ability to deploy adequate personnel with capacity and skill to deliver compulsory land acquisition for strategic government projects should be appraised realistically.

6. Audit and Scrutiny

The Commission, though independent works with the office of the Auditor General and is under the watch of constitutional bodies such as the Parliament, EACC and DCL. At the inception of the Commission there were institutional challenges that have been addressed adequately including reamping of the Valuation Directorate from 4 to 23 Valuers. Notably, the Commission has not had any allegations of fraud brought against it since the constitution of the current Commissioners in November 2019.

The Commission has internal fully-fledged investigations, audit and risk evaluation departments for auditing and ensuring checks and balances in the process of compulsory acquisition. Further, completed valuation reports are tabled before the Land Valuation & Taxation Committee for adoption and then forwarded to the Commission Plenary for review before adoption of the values, issuance of awards and subsequent payments.

7. Regulation of Valuation Professional Practice

The Commission valuers, just like other employees in the public service are hired competitively. The Valuers are professionals who hold degrees in the field of Real Estate/Land Economics from accredited Universities. The Project Lead Valuers are registered, licenced, gazetted and are regulated by the Valuers Registration Board (VRB) established under the Valuers Act Cap. 532. The Valuers are also Full Members of the Institution of Surveyors of Kenya (ISK) which is a body

mandated to regulate professional ethics and conduct of its members in carrying out valuation and other professional services across the country.

Operations and undertakings of Valuers are guided by the Constitution and enabling statutes and regulations, not limited to, the Land Act No. 6 of 2012, Valuers Act Cap 532, Kenya Valuation Standards 2021 and the International Valuation Standards 2020.

The proposed amendments therefore do not aim at competence on the part of either the Commission's valuers or the Ministry's valuers. Valuers, being professionals, adhere to similar standards of professionalism and operational procedures.

8. Staff Redundancy and Lack of Career Progression

The Valuers at the Commission mainly undertake the task of Valuation for Compulsory Land Acquisition. As such, if the subject section of the law is passed, there is likely to be redundancy and lack of career progression on the part of National Land Commission Valuers. This is contrary to the government agenda of creating employment and job opportunities for its citizens.

RECOMMENDED STATUTE AMENDMENTS

LAND VALUE INDEX

Section 107A on criteria for assessing value for compulsorily acquired freehold land notes that: -

- (1) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate.
- (2) The land value index under subsection (1) shall be developed within six months of the commencement of this Act.
- (3) For purposes of this Part, "land value index" means an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.

Recommendation: Considering that land values are not static, a timeline for validity of the land index should be provided and also way forward if no valid land index is available. For instance, use of recent sales data provided and certified by the relevant registry.

INQUIRY AS TO COMPENSATION

Section 112 on inquiry as to compensation notes that: -

- (5) For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission of documents of title to the land.

It is worth noting that the Commission in determining the bona fide interest-holder relies on information held by other agencies. For instance, the Commission can only confirm land

ownership through conducting title or green card searches. It can only confirm interest in a particular company through conducting searches through registrar of companies. Despite the powers to administer oaths and affirmations and to compel the production and delivery to documents of title to the land, the Commission cannot on its own determine the bona fide interest-holder.

Recommendation: Provide a provision for provision of official title searches by the relevant land registrar and registrar of companies upon request by the Commission. Any other information deemed necessary should also be provided in the aim of ensuring comprehensive due diligence.

SERVICE OF NOTICES

Section 131 (1) on service of notices notes that: -

A notice which may be given under this Part may be served on a person: -

- a) by delivering it to the person personally.
- b) by sending it by registered post to the person's last known address.
- c) if the whereabouts of the person or the address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land.
- d) if the person is a body corporate, society or other association of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land; or
- e) the Commission may in addition to serving notice by paragraphs (c) and (d), place an advertisement in two newspapers with a national circulation.

Recommended: Provision for use of electronic means in services of notices such email and online messaging should be added.

CONCLUSION

The following is an excerpt of the Supreme Court of Kenya Advisory Opinion Reference No. 2 of 2014: -

The highlight of the Kenyan land-resource regime, under the Constitution and the statutory framework in place, is the governing principle of checks-and-balances, which regulates in particular, the relationship between the NLC and the Central Government through its relevant Ministry. Check-and-balances, which alongside the safeguards for fundamental rights, are the special feature of the Constitution of Kenya, 2010, are required to be maintained, and accorded effect, by all State organs, as they discharge their respective mandates.

It emerges from the foregoing account that the NLC's mandate, which is required to function in a collaborative and consultative constitutional and legal setting, belongs squarely to the mechanism of checks-and-balances, rather than that of an isolated fourth arm of government, entrusted with tasks unrelated to those falling under the dockets of other State organs. Indeed, the neat paradigm of a fourth arm of government appears not to be in the contemplation of the Constitution of Kenya, 2010 which specifies [Article 1(3)] that the people's sovereign power devolves to just three vital State organs: The Executive; the Legislature; and the Judiciary and independent tribunals.

The Constitution's mandate falls to the three State organs, in an operational context of check-and-balances: and the various Commissions act as oversight and watchdog mechanisms. Hence, each of the functions of the NLC and the Ministry stands to be checked by the one or the other, in order to avoid abuse of power in matters relating to land. The unchanging theme throughout the Constitution, is that the relationship between these two bodies is inter-dependent and based upon co-operation; it is not an agency relationship. As the Ministry conducts its functions, the NLC acts as a watchdog, to ensure compliance with the Constitution, and with legislation. Likewise, the NLC as an oversight body, maintains its functional, financial, and operational independence, while still being overseen and checked by the public, by other independent offices, and by the three arms of government.

The conditioning medium within which these functions have to be conducted, is constituted by the national values and principles outlined in Article 10 of the Constitution: in particular, the rule of law; participation of the people; equity; inclusiveness; human rights; non-discrimination; good governance; integrity; transparency and accountability. It is to be noted that, the very essence of checks-and-balances touches on the principles of public participation, inclusiveness, integrity, accountability, and transparency; and the performance of the constitutional and statutory functions is to be in line with values of integrity, transparency, good governance, and accountability.

Laws play a crucial role in shaping the future and enhancing the governance of society. The establishment of the National Land Commission was a pivotal step towards addressing longstanding issues in land administration and fostering constitutional principles. Despite encountering challenges in the past, the Commission has undertaken significant strides in rectifying these issues through the implementation of internal policies and the formulation and adoption of pertinent laws and regulations.

One noteworthy example is the enactment of Legal Notice No. 283 on the Land (Assessment of Just Compensation) Rules in 2017, which has contributed to a more equitable and transparent compensation process. Additionally, the Land Laws Amendment Act of 2019 have played pivotal roles in further refining the legal framework surrounding land matters. These legislative measures collectively demonstrate a commitment to improving the efficiency and fairness of land-related processes.

In order to advance constitutionalism and align with the land reform aspirations of the Kenyan people, it is imperative for the Parliament to uphold the current separation of functions between the National Land Commission and the Cabinet Secretary in charge of Land. The House should also consider the proposed amendments by the NLC in order to improve the current dispensation.

By doing so, it will actively support and contribute to the realization of the comprehensive land reforms that are crucial for the sustainable development and prosperity of our country.

APPENDUM TO OUR SUBMISSIONS

KEY SUCCESSSES

The Commission's key achievements in relation to delivering land for National Development projects in line with Vision 2030 agenda and Bottom Up Economic Agenda (BETA):

- i. Sampled major projects undertaken are listed below. For the sampled projects, acceptance of the valuation assessed by the Commission is over 85%. Smaller projects have an average acceptance rate of 95%.

1. Mombasa Port Area and Road Development Project (MPARD).
2. Mombasa- Mariakani Highway.
3. Chebilat-Ikongge-Chabera Road Project.
4. Kibwezi Mutomo Kitui Kabati Migwani Road Project.
5. Nairobi Expressway.
6. Lamu Port South Sudan Ethiopia Transport Corridor (LAPSET).
7. Garsen Witu Lamu Road.
8. Ruiru II Dam (Phase I - Dam Footprint area).
9. Kenol-Sagana- Marua Highway.
10. Northern By-pass.
11. Western By-pass.
12. Mombasa Southern By-pass.
13. Lower Nzola Irrigation Project.
14. Horn of Africa Gateway Development Project (HoAGDP).
15. James Gichuru Rironi Road.
16. Mwaché Dam Phase I, among others.

- ii. Enhancement of internal policies and processes since 2019 with marked reduction in complaints/queries relating to assessment of value and payments.
- iii. Cooperation and collaboration with National Government Administration Officers (NGAO) for public sensitization, dispute resolution aiding faster delivery of projects.
- iv. Collaboration and coordination with acquiring authorities, financiers, consultants and NGAO on grievance redress resulting in fast tracking of payments and availing land for development.
- v. Collaboration with acquiring authorities to prioritize acquisition based on project needs and sites required for construction given funding constraints.
- vi. Collaboration with Ministry of Lands to enhance capacity for fast delivery of projects.
- vii. Enhanced public sensitization and Inquiries resulting in better acceptability of projects, ease in undertaking field activities and determination of bona fide project affected persons.
- viii. The implementation of a policy on separation of functions of valuation and payments to implement findings of the Office of the Auditor General and various courts' decisions.

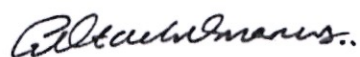
KEY CHALLENGES

The Commission has faced the following key challenges in majority of compulsory land acquisition projects:

- i. Missing land records e.g. correspondence files, and land registry records e.g. green cards and official title searches.
- ii. Double allocations of land by the Commissioner of Lands.
- iii. Overlapping boundaries (disconnect between ground occupation and RIMs).
- iv. Un-Surveyed and unregistered community land.
- v. Delayed remittance of funds by acquiring authorities.
- vi. Court cases.
- vii. Succession matters.
- viii. Ownership disputes.
- ix. Missing survey documents e.g. deed plans and survey plan.
- x. Over expectations of compensation funds by project affected persons.

REFERENCES:

1. The Constitution 2010.
2. The Land Act No. 6 of 2012 (Revised 2019).
3. The National Land Commission Act No. 5 of 2012.
4. The Supreme Court of Kenya Advisory Opinion Reference No. 2 of 2014
5. The National Land Policy 2009.
6. The Land Value Amendment Act, No. 19 of 2019.
7. Legal Notice No. 283 on The Land (Assessment of Just Compensation) Rules, 2017.



Gershom Otachi Bw'Omanwa, EBS

Chairman

DDC
8
23/12/23

21st December 2023

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P.O. Box 41842 - 00100,
Nairobi.

Dear Mr. Njoroge,

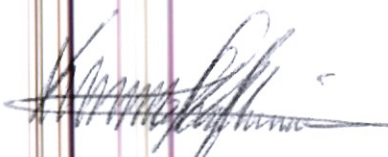
RE: SUBMISSION OF MEMORANDA ON LAND LAWS (AMENDMENT) (No. 2) BILL (NATIONAL ASSEMBLY BILL No. 76 of 2023)

Reference is made to the notice published by the Clerk of National Assembly on 9th December 2023 inviting members of the public to submit memoranda on the above Bill.

The Land Development and Governance Institute (LDGI), hereby submit a memorandum with detailed views and recommendations.

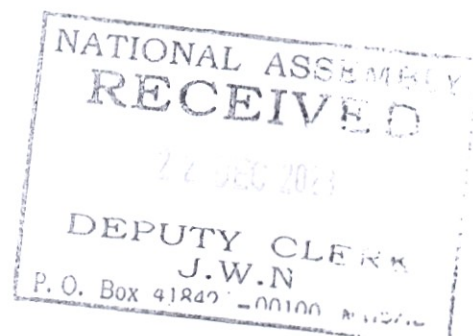
We will be pleased to engage in further consultation with the National Assembly as the Bill continues to be developed. For any clarifications you may contact M/S Lucy Mwangi at info@ldgi.org or the undersigned at makathimo@ldgi.org

Yours Sincerely,



Dr. Mwenda Makathimo
Executive Director

27 DEC 2023





Empowering Society

REVIEW OF THE LAND LAWS (AMENDMENT) (No. 2) BILL, 2023

By

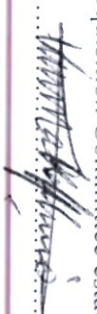
LAND DEVELOPMENT AND GOVERNANCE INSTITUTE (LDGI)

21st DECEMBER 2023

Empowering Society

Summary of findings and recommendations:

1. The amendment to the sectional properties Act, 2020 supports harmonization of property registration instruments with National Land Policy objectives.
2. Some proposed amendments are not included in the memorandum of objects and reasons.
3. The introduction of Special Land Control Boards creates room for corrupt dealings.
4. The Bill needs to specify the qualifications of County land control appeals board.
5. The County Governments have been excluded from appointing members to the appeals board despite the functions of agriculture and land use planning being devolved.
6. The Bill vests immense powers on the Cabinet Secretary on matters land acquisition which will lead to conflict of interest in discharge of functions, since the Cabinet Secretary is an official of the acquiring body (National Government).
7. The Bill removes the powers of an independent body (National Land Commission) from matters land acquisition, allocation of public land and vests them on the Cabinet Secretary (a political appointee).
8. The Bill also give the Cabinet Secretary powers to issues leases over all public land, determine rent payable, value all land for rent purposes which risks abuse of power.
9. The Bill introduces land levy (taxation) on freehold which is discriminatory as it does not apply to other categories of land. It is against article 201 (b) (i) of the constitution of Kenya 2010.
10. The Bill removes the National Land Commission from the process of preparing a land value index and valuation for compulsory land acquisition and vests it on the Cabinet Secretary.
11. There is need for separation of power between the acquiring body, the body carrying out valuation, and the paying agent, for proper accountability, and justice in compulsory land acquisition.
12. The Bill opens compulsory acquisition to political manipulation/interference.
13. Land Acquisition Committee established by the Bill lacks independence since its selection is unilateral by the Cabinet Secretary.

Signed:  Dated: 21/12/2023

Detailed Review of the Land Laws (Amendment) (No. 2) Bill, 2023

Section	Provision	Commentary	Recommendation
S 2 - 16	Amendments to Registration of documents Act Cap 285	These amendments support the harmonization of registration of property conveyancing instruments. This promotes accountability and aligns registration of land and property with Land Policy objectives.	The provision should upheld
S. 18 - 20	Amendment to the Land Control Act Cap 302	Amends section 3, 4 and 5 (1)	The provisions should upheld
S. 21	Amendment to the Land Control Act Cap 302	The section 6(3) of Land Control Act cap 302 that is proposed for amendment not included in the memorandum of objects and reasons.	The provision should upheld
S. 22	Amendment to the Land Control Act Cap 302	The section 9(1)(c) of land control Act proposed for deletion is not included in the memorandum of objects and reasons.	This should be rectified. The provision should upheld
S. 23	Amendment to the Land Control Act Cap 302	The heading of part VI of Cap 302 proposed for deletion is not included in the memorandum of objects and reasons.	This should be rectified. The provision should upheld

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S. 24	Amendment to the Land Control Act Cap 302	Section 10 of Cap 302 proposed for deletion and replacement is not included in the memorandum of objects and reasons.	This should be rectified. The provision should upheld
S. 25	Amendment to the Land Control Act Cap 302	Proposes amendment to section 11 of the Land Control Act Cap 302 to substitute the provincial Land Control Appeals Board with the County Land Control Appeals Board. This amendment aligns the Act with the Control structure of Government as provided for under the Constitution of Kenya 2010.	The provision should upheld
S. 26 - 28	Amendments to the Land Control Act Cap 302	Amendment to section 12 (3), 13 (1) and 14 of the Land Control Act	The provisions should upheld
S. 29 (b)	Amendment to the Land Control Act Cap 302	- Proposes a special land control board meeting outside of the scheduled normal land control board meetings as may be necessary from time to time. - This provides an avenue for transacting board business in a manner that is not predictable and gives room for excluding some members from effective participation in the business of the board due to lack of predictability. - It also opens up room for transactions without public participation and giving of notice to affected members of public/ holders of interest in land.	The provision should be deleted altogether
S. 30 - 33	Amendments to the Land Control Act Cap 302	Amends section 23, 24, 25 (1) and repeals section 27 of the Land Control Act Cap 302	The provisions should upheld

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S. 34	Amendment of the First Schedule to the Land Control Act Cap 302	- Section 34 (a) (i) proposes new section (c) in the first schedule. The new section provides for two persons nominated by the County Executive Committee Member for the time being responsible for lands in the County where the board has jurisdiction. (b) the new paragraph 2 provides for not less than two and not more than five persons appointed by the cabinet Secretary to the appeals board, despite the Cabinet Secretary appointing two public officers. There is no provision for the County Government to appoint any representatives despite the County Land Control appeals board being at the County level. - The qualifications for the appointees of the Cabinet Secretary are not stated. There should be a provision for the County Government (County Executive Committee Member or Governor) to appoint representatives in this board given that the matters under this board relate to agriculture and land use planning which are devolved functions.	These nominees of the County Executive Committee Member should have their qualifications specified. They should have qualifications in physical planning, Surveying, Land economics, Land administration, or Agriculture.
S. 35	Repeal of the Second Schedule to Land Control Act Cap 302	Amends Land Control Act by deleting the Second Schedule	The provision should be upheld
S. 36 - 43	Amendments to the Land Registration Act, 2012	Amends section 2, 7 (4), 8 (1), 9 (2), 54, 56, 59 and 79 of the Land Registration Act, 2012	The provisions should be upheld

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S. 44	Amendments to the Land Act, 2012	The amendment is okay except for the term “Committee” which means Land Acquisition Committee established under section 133A. This committee is unnecessary. It will take over the duties of the National Land Commission an independent constitutional commission	The provision should be deleted
S. 45(c)	Amendments to the Land Act, 2012	The section takes powers of allocation of public land from the National Land Commission and gives them to the Cabinet Secretary(a political appointee) The Cabinet Secretary is given powers to make rules and regulations relating to allocation of land and extension of leases. This presents a potential ground for abuse of powers and a conflict of interest in the discharge of this function by Cabinet Secretary.	This proposal/ section should be deleted
S. 46	Repeal and replacement of S. 20 of Land Act, 2012	This amendment is okay. It ensures concurrence between the National Government , County Government and the National Land Commission	The provision should be upheld
S. 47 (b)	Amendment to the Land Act, 2012	The new proposed section 23 (b) gives the Cabinet Secretary power to issue leases over all public land. This introduces the risks of public land grab.	This section should be deleted. The provision in the land Act should be left as is currently

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S. 48	Amendment to the Land Act, 2012	The proposed new section 28 (A) (2) makes the Cabinet Secretary the sole determiner of the rent payable over leases whether given by National Government or County Government. This takes over the power of lease administration for land allocated by County Governments	This proposal should be deleted altogether
S. 49	Amendment to the Land Act, 2012	- Proposed S. 28 B, the Cabinet Secretary is given the power to value all land for rental purposes whether emanating from land allocated by County Government or National Government. This provision centralizes to the role of land administration and is against the principle of devolution. - Section 30 of the Land Act, 2012 is amended in the marginal note by deleting the word "Commission" and substituting therefor the words" national government or county government	This section should be deleted The provision should be upheld
S. 50	Amendment to the Land Act, 2012	- The section introduces a new section 54A that provides for an annual land levy on freehold land equivalent to land rent charged on comparable leasehold land or property of the same size. This levy is a tax by National Government on freehold land only. It is discriminatory because it is not applied on all categories and interests on land. The holders of freehold land pay all other taxes (including rates, stamp duty, capital gains tax, income tax, rental income tax, VAT) just like all holders of leasehold interests. - Holders of leasehold interest pay land rent to the Government because the Government is the owner of such land and they	This provision is unjustified and unconstitutional and should be deleted/ removed from the Bill.

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		• are tenants (lessees). They therefore pay for holding and using such land for the period of the lease. • The holders of freehold land are absolute owners in perpetuity and therefore cannot be charged rent for their own land. They are not tenants (lessee of Government). The levy cannot therefore be equated to rent. • Most holders of freehold land have got it from inheritance, adjudication or purchase whereas the origination of leaseholds is allotment by Government. The provision goes against Article 201 (b) (i) of the Constitution of Kenya which requires the burden of taxation to be shared fairly. • Repeals S. 107 of the Land Act by removing the function of compulsory land acquisition from the National Land Commission and placing it under the Cabinet Secretary. This introduces a serious claw back on land reforms made after the adoption of National Land Policy (Sessional Paper No. 3 of 2009) and the Constitution of Kenya 2010. It takes over functions from an independent constitutional commission and gives them to a politically appointed Cabinet Secretary without any requirement for compliance in land management. It also introduces lack of accountability because the Cabinet Secretary makes the rules, represents the acquiring body	
S. 52	Amendment to the Land Act, 2012		The provision should be deleted

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		(public body) mostly National Government; Surveys; Values; awards compensation, resolves disputes and makes payment. This is a recipe for bad land governance.	
S. 53	Amendment to the Land Act, 2012	Amends section 107A, allows the Cabinet Secretary to develop piecemeal land value index for some counties. It removes the National Land Commission from the process of preparing a land value index and valuation for compulsory land acquisition and places it under the Cabinet Secretary. This is another claw back on land reforms. It places technical professional valuation work under a political appointee. This creates room for political manipulation in the valuation processes.	The section should be deleted/ removed from the Bill
S. 54	Amendment to the Land Act, 2012	The amendment is an attack on National Land Commission mandate	The section should be deleted
S. 55	Amendment to the Land Act, 2012	The amendment is an attack on National Land Commission mandate	The section should be deleted
S. 56	Amendment to the Land Act, 2012	The provision takes the function of the Commission to the Cabinet Secretary despite the conflict arising from the fact that the Cabinet Secretary represents the National Government which mostly is the acquiring body/public body The Cabinet Secretary is acquiring, assessing damage and determining compensation to be paid. This sets stage for	Delete the provision

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		procuring injustices on the proprietor of land being acquired.	
S. 57 - 77	Amendments to the Land Act, 2012	These sections take over all the roles currently played by the National Land Commission and place them under the Cabinet Secretary. The effect is that the Cabinet Secretary (a political appointment) takes over all functions of land acquisition from an independent constitutional body. The proposed amendments makes the payments for compensation spread over public bodies, makes tracking and accountability difficult and exposes members of public to exploitation.	Delete the provisions. They are claw backs on land reforms
S. 78	Amendment to the Land Act, 2012 The Land Acquisition Committee	- The section establishes the Land Acquisition Committee comprising all appointees by the Cabinet Secretary without participation of any other stakeholder or vetting by Parliament. - The function of the committee is to hear appeals against the decisions of the Cabinet Secretary who is the appointing authority. - This committee as established lacks independence and cannot perform the duties assigned impartially. <i>How can they make decisions against their sole appointing authority.</i> The provision creates room for unjust and arbitrary acquisition of property without prompt and just compensation. It risks procurement of injustice in the land acquisition	The provision should be deleted

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S. 79	Amendment to the Community Land Act, 2016	Amends section 2 of the Community Land Act, 2016	The provision should be upheld
S. 80	Amendment to the Community Land Act, 2016	The gazetting of new dates of completion is okay but registration should be done under the current law not previous law. This creates room for actions contrary to the current statutes and the Constitution of Kenya 2010	The provision should be upheld
S. 81 - 82	Amendments to Sectional Properties Act, 2020	Amends section 2 and inserts a new section 5A to the sectional properties Act, 2020	The provision should be upheld
S. 83	Amendment to Sectional Properties Act, 2020	The provision for review of previously registered leases within a period of 2 years creates uncertainty in the security of tenure of the leases. The provision does not indicate who is to review the long term leases and the criteria for review	The provision should be deleted
S. 84 - 86	Amendments to Sectional Properties Act, 2020	Inserts a new section 17A, amends section 52 and insertion of Schedule to the Sectional Properties Act, 2020	The provision should be upheld

Ref: TBA

1ST FEBRUARY 2024

OFFICE OF THE CLERK
THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDINGS
NAIROBI

ATTENTION: HON. NYAMOKO, CHAIRPERSON, LANDS COMMITTEE

DEAR SIR,

RE: SUBMISSION OF MEMORANDA IN REGARD TO THE LAND LAWS (AMENDMENT) (NO. 2) BILL, 2023.

We refer to the Land Laws (Amendment) Bill (the Bill) that is currently under consideration by the National Assembly and before your committee.

We are pleased to hereby present our memorandum outlining our comments and suggestions on the Bill before the Committee.

INTRODUCTION

The Bill contains numerous proposals but this memorandum shall restrict comments to the section that deals with establishment of the Land Acquisition Committee under the proposed new Section 133A. Under this clause, the Bill proposes to replace the existing Land Acquisition Tribunal with the Land Acquisition Committee with essentially the same mandate but a different composition.

This proposal makes a useful proposal in regard to expanding the membership of this adjudicatory body to take into account important stakeholders in the process of compulsory land acquisition, that is valuers and surveyors. We hereby make some suggestions to strengthen the proposals. We are also supportive of deploying this adjudicatory body within the Ministry of Lands as it will ensure that the body is facilitated with the technical expertise and staff to discharge its mandate.

We make further comments as follows:

1. ADJUDICATION OVER ISSUES ARISING FROM COMPULSORY ACQUISITION

The Constitution of Kenya under Article 40 (3) (b) (ii) gives power to Parliament to enact legislation that allows a person who has an interest in property that the State seeks to compulsorily acquire to have access to a **Court of Law**. This provision, therefore, envisages that whoever feels aggrieved by the outcome or process of compulsory acquisition can have such a grievance adjudicated upon by a court of law.

According to Article 162 of the Constitution of Kenya, the System of Courts shall comprise of The Supreme Court, Court of Appeal, The High Court (and Courts of equal status), and subordinate courts established under Article 169 of the Constitution. Under Article 169, subordinate courts are enumerated as: Magistrates courts, Kadhis' courts, Court martial, and

any other local tribunal as shall be established through an Act of Parliament. The import of these provisions of the Constitution is, therefore, that a person aggrieved by an act of the State in regard to compulsory acquisition shall have recourse to a court of law as provided by an Act of Parliament. The Land Act, which is subject of amendment herein, establishes the Land Acquisition Tribunal. That is a court of law as per the Constitutional definition. However, the proposed Land Acquisition Committee falls short of this definition and will not stand the constitutional test. **To remedy this, we propose that a provision be included to designate the Land Acquisition Committee as a subordinate Court pursuant to Article 169 of the Constitution of Kenya. Parliament has powers to establish subordinate courts.**

Furthermore, Article 23(2) of the Constitution provides that Parliament shall enact legislation conferring jurisdiction upon **subordinate courts** to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. This jurisdiction cannot be exercised by a committee as envisaged under the new Section 133B (7) as this committee is not a subordinate court unless it is so designated as proposed above. The same goes for Article 47(3) of the Constitution which makes reference to a court or an independent impartial tribunal.

2. APPOINTMENT OF CHAIRPERSON AND MEMBERS

The question of establishment of tribunals and appointment of tribunal members has been a subject of litigation before the High Court where the question before court was whether the executive should be involved in appointing tribunal members. In the case of *Okoiti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR) (Constitutional and Human Rights) (11 March 2021) (Judgment)* the High Court **stated as follows:**

76. There is no doubt that most of the disputes handled by the local tribunals involve the executive. As such, the executive has an obvious advantage given that it is the one responsible with the appointment and removal of the Members. In such circumstances, the executive ought not to be the appointing authority. Instead, that duty ought to be undertaken by an independent entity. As said, justice should not only be done, but should also be seen to be done.

77. It is worth-noting that such a state of affairs where the Executive overreaches and takes over the mandate of the Judiciary infringes on the independence of the Judiciary.

...

81... it is clear that the appointment and removal of members of the local tribunals falling under article 169(1)(d) of the Constitution by the Executive contravenes the principle of separation of power and is contrary to article 50(1) of the Constitution. That state of affairs also infringes on the independence of the Judiciary.

We hereby propose, that in order to retain independence as a court of law, the manner of appointment needs to be as it is currently where the Judicial Service Commission appoints the Chairperson while the Cabinet Secretary appoints members. This will ensure that the Tribunal

or Committee is not challenged on the basis of lack of independence and possibly for violation of the principal of separation of powers.

Besides, the tribunal currently has only two members so the Cabinet Secretary can still appoint more members. We believe that a hybrid appointment system where the JSC appoints the Chairperson and the CS appoints members ensures balance and also would take account of other professionals like valuers and surveyors who would be part of the tribunal.

3. QUORUM

In addition to the above comments on the appointments, we support the increase of membership in the proposed amendments. **We also suggest an inclusion of a clause on quorum for the law to set the quorum at three members as long as the Chairperson is present.** This would ensure expeditious disposal of matters.

4. TRANSITION

We also note that the proposed amendment does not address the question of transition. At the moment, the Land Acquisition Tribunal is in operation and is hearing and determining disputes related to compulsory acquisition. We currently have a portfolio of about 18 active cases and more are being filed almost weekly. It would be good for continuity and institutional memory for the proposed law to provide for a manner of handling the current cases before the tribunal, were its composition or designation to change. We hereby propose that, for a smooth transition, the law should deem all the cases pending before the Tribunal as duly filed and the current members of the Tribunal to transition to the new adjudicatory body until expiry of their terms. We hereby propose the inclusion of the following provisions on transition:

- (a) The Land Acquisition Committee established under Section 133A shall be the successor to the Land Acquisition Tribunal established by Section 133A of the Land Act (now amended) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Land Acquisition Tribunal existing at the commencement of this Act shall be automatically and fully transferred to the Land Acquisition Committee and any reference to the Land Acquisition Tribunal in any contract or document shall, for all purposes, be deemed to be a reference to the Land Acquisition Committee established under section 133A.
Preservation of judgements and rulings
- (b) The judgements, rulings or orders made by the Land Acquisition Tribunal established by Section 133A of the Land Act (now amended) are preserved.
- (c) The persons who at the commencement of this Act are the Chairperson and members of the Land Acquisition Tribunal shall become the Chairperson and members of the Land Acquisition Committee respectively, as the case may be, for the remainder of their tenure in accordance with their appointment under the amended Act.
- (d) For greater certainty and subject to paragraph (c), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Land Acquisition Committee as the case may be, as if they were appointed under section 133A.

We thank you for the opportunity to present these comments and suggestions and look forward to engage more with the committee, should need arise.

Respectfully submitted,

DR. NABIL M. ORINA
CHAIRPERSON,
LAND ACQUISITION TRIBUNAL
(ON BEHALF OF THE LAND ACQUISITION TRIBUNAL)

MEMORANDA ON THE PROPOSED AMMENDMENT
OF SECTION 107 OF LAND ACT NO. 6 OF 2012 BY
THE LAND LAWS (AMENDMENT) (No. 2) BILL, 2023

SUBMITTED TO

CLERK OF THE NATIONAL ASSEMBLY

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DECEMBER, 2023

NATIONAL
ASSEMBLY
RECEIVED
02 JAN 2024
CLERK'S OFFICE
P O Box 41842, NAIROBI

Page 2

Mr. Joshua Ondari
Pls facilitate Consideration
Folklore, SCA.
08/01/24

PREAMBLE

The National Land Commission is a Constitutional Commission established under article 67 of the Constitution of Kenya 2010. Article 249 of the constitution outlines the objects of Commissions and Independent offices as to protect the sovereignty of the people, secure the observance by all State organs of democratic values and principles and to promote constitutionalism.

One of the key mandates of the National Land Commission is to Manage and Administer public land on behalf of the National and County Governments, a mandate outlined under article 67 2(a) and 62 (2&3) of the Constitutional of Kenya.

•In line with this mandate, I hereby expresses the following reservations against the proposed amendment section 107 of the Land Act No. 6 of 2012 by the proposed Bill which majorly recommends transfer of valuation for compulsory acquisition function from the Commission to the Ministry of Lands, Public Works, Housing and Urban Development.

RESERVATIONS AGAINST THE FOLLOWING AMENDMENTS PROPOSED IN THE LAND LAWS (AMENDMENT) BILL 2023

CLAUSE 107,	CLAUSE 113,	CLAUSE 124,	CLAUSE 130,
CLAUSE 108,	CLAUSE 120,	CLAUSE 126	CLAUSE 131,
CLAUSE 110,	CLAUSE 121,	CLAUSE 127	CLAUSE 133,
CLAUSE 111,	CLAUSE 122,	CLAUSE 129	CLAUSE 112,
CLAUSE 112			

I propose that the referenced sections of the bill be deleted and retained as they were in the existing Land Act No. 6 of 2012 for the following reasons; -

1. Clawing back of the gains made through land reforms

Relocating the function of Valuation for compulsory acquisition to the executive under the Ministry of lands, constitutes a regression that undermines the substantial progress achieved through land reforms.

The National Land Policy of 2009 recognized challenges arising from the previous land acquisition processes under the presidency ranging from lack of checks and balances, irregular acquisitions, political interference and proposed reforms, including aligning the law on compulsory land acquisition with new land ownership categories, harmonizing institutional frameworks, establishing transparent criteria and procedures and empowering the National Land Commission.

The NLC's independence and accountability were emphasized in both the National Land Policy of 2009 and the Constitution, in particular under article 249 of the Constitution 2010. The NLC Act of 2012 further solidified its autonomy, requiring it to be accountable to Parliament for its operations and mandating ministerial policy directions to be laid before Parliament in writing.

The necessary checks and balances have been instituted within the Commission is oversights by bodies including Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI), Office of the Auditor General (OAG) as well as regulators of professional conduct such as the Institution of Surveyors of Kenya (ISK) and Valuers Registration Board (VRB).

The Commission therefore is best placed to carry out the process of compulsory Land Acquisition.

2. Contravention of the Constitution

Article 67(2)(a) of the constitution 2010 mandates the National Land Commission to Manage public land on behalf of the National and County Governments. Compulsory land acquisition involves conversion of Land from either Community or Private Land to Public Land on behalf of the National or County Governments. In line with this constitutional mandate, the National Land Commission, as the custodian and administrator of the converted land, should play a central role in the conversion process.

Assigning the executive the responsibility of undertaking the Compulsory Land Acquisition process, directly contradicts the provisions of the Constitution of Kenya 2010.

3. Conflict of interest

The bill proposes changes to Section 107(1) of the Land Act No. 6 of 2012 to read "whenever the national or county government is satisfied that it may be necessary to acquire some particular land, the Cabinet Secretary or County Executive Committee Member shall submit a request for acquisition of land to the Cabinet Secretary to acquire the land compulsorily. '.

From the above, it is evident that the executive, through the Cabinet secretary or County Executive Committee member identifies the land to be acquired. It will therefore not be reasonable for the same executive, through the Ministry, to determine the value of the land being acquired as this will amount to conflict of interest.

In simpler terms, it's not fair for the buyer (executive), to be the one deciding what land to buy, setting the purchase price, and then paying compulsorily. Additionally, the same buyer happens to be responsible for hearing and settling disputes that arise from the same purchase through the Land Acquisition Tribunal.

We firmly believe that this setup creates a significant conflict of interest. Therefore, we propose that the suggested amendment be struck off. Instead, the executive can decide which land to acquire and allocate the necessary funds for the purchase. Meanwhile, the Commission can

independently determine the fair price through independently undertaking the valuation to ensure there's a system of checks and balances, maintain integrity, and uphold the principles of good governance.

4. Valuation Profession

Valuers are professionals who hold degrees in the field of Real Estate/Land Economics from accredited Universities. The Project Lead Valuers are registered, licenced, gazetted and are regulated by the Valuers Registration Board (VRB) established under the Valuers Act Cap. 532. Valuers are also Full Members of the Institution of Surveyors of Kenya (ISK) and are guided by the laws of the country not limited to, the Land Act No. 6 of 2012, Valuers Act Cap 532, Kenya Valuation Standards 2021 and the International Valuation Standards 2020.

Reassignment of the valuation responsibilities from the Commission to the Ministry of Lands lacks a clear basis, as all valuers profess the same skill and competence.

5. Protection of Public Interest

The bill proposes amendment of Section 107(3&4) of the Land Act No. 6 of 2012 to empower the cabinet secretary to accept or reject any land acquisition request from either the National or County Government. The question arises, who will safeguard the public interest in a possible scenario where the current or future government either intentionally or otherwise plans to acquire land irregularly. In a hypothetical case, the cabinet secretary is likely to oblige to the executive orders while the investigative agencies, who are also under the executive may turn a blind eye to such approvals to the detriment of the public.

Article 249 of the Constitution shields the public against such occurrences by outlining the objects of the commissions and the independent offices; as to protect the sovereignty of the people, secure the observance by all State organs of democratic values and principles; and promote constitutionalism. The article further gives independence to the commissions and the holders of independent offices, to the extent that they are subject only to the Constitution and the law; and not subject to direction or control by any person or authority.

The National Land Commission, being an independent body that subscribes to article 249 of the constitution, is better placed to safeguard and advocate for the public's interests in the compulsory acquisition process.

6. Protection and Support of Independent Commissions

Laws are made for posterity and not to fit specific circumstances. As such, the National Land Commission, being a check constitutional institution should enjoy protection, support and backing by the state in its quest to fulfil its roles to protect the sovereignty of the people, secure the

observance by state organs of democratic values and principles, and to promote constitutionalism in line with Article 249 (1) of the Constitution.

Article 259 (1) (a-d) of the Constitution promotes the spirit of the constitution and stipulates how the constitution should be interpreted in a manner that promotes its purposes, good governance, values and its principles.

In our view therefore, the government should protect, support and enhance service delivery of Independent Commissions as opposed to taking away their functions.

7. Contravention of the separation of powers between County Governments and National Government

Article 67(2)(a) of the Constitution 2010 mandates the National Land Commission to Manage public land on behalf of the National and County Governments. Further, article 187(1) of the constitution prescribes transfer of functions and powers between levels of government.

The question arises, what is the rationale in the bill proposed changes to Section 107(1) that the National Government is to value properties on behalf of the County Government yet the two levels of government are autonomous?

In my view, since the County Executive Committee members for Lands do not report to the Cabinet Secretary ministry of lands, the valuation for Compulsory Land Acquisition should be undertaken by the Commission on behalf of both levels of government, as a neutral constitutional body.

8. Land Value Index and Land Acquisition Tribunal

A similar undertaking to transfer compulsory land acquisition function from the Commission to the Ministry of Lands took place in the year 2018/19. As a result of deliberations by the stakeholders, the Land Value (Amendment) Act 2019 was enacted. The act mandated the Ministry through the Cabinet Secretary of Lands with the following.

- a) Establishing a land value index developed for the purposes of compensation. The index was to be developed six months after commencement of the Act.
- b) Establishing the Land Acquisition Tribunal - The tribunal was mandated with hearing and determining appeals from Commission decisions relating to compulsory land acquisition. The tribunal was given power to confirm, vary or quash the Commission's decision.

These 2019 amendments empowered the Ministry with significant responsibilities aimed at introducing checks, balances, and oversight into the compulsory acquisition process. However, it is important to highlight that the land value index is yet to be finalized while the Land Acquisition Tribunal is not yet operational.

In our view, the Ministry of Lands should not be responsible for conducting the acquisition process and overseeing it. Instead, we propose that they be tasked with finalizing the land value index and providing essential safeguards as stipulated in the Land Value (Amendment) Act of 2019. It's our opinion therefore, that the proposed amendment to the law eliminates critical checks and balances in this process.

9. Political Interference of Acquisition process

It is my view that if the sections of the bill proposing to cede valuation functions to the ministry succeeds, the independence of the professional conduct and protection from political interference cannot be guaranteed since the project initiation, affected persons, assessment of value, implementation and payment will be undertaken by the executive under the ministry of lands.

In line with these observations, the proposed amendments to Part VIII of Land Act No. 2012 raises the following questions: -

1. What is the justification of transfer of the Compulsory Land Acquisition function from National Land Commission to Ministry of Lands? Is the reason so weighty as to warrant change of law?
2. Who will execute the valuation function at the Ministry of Lands if not registered and licenced valuers who are also the professionals executing the same mandate at National Land Commission?
3. Who will prevent the glaring conflict of interest in the proposed bill whereby the Presidency determines, approves, values, and provides compensation funds in compulsory land acquisition of its own projects?
4. Who will safeguard the process of Compulsory Land Acquisition from political interference if the Presidency, through the CS who is an appointee of the president oversee the entire acquisition process?
5. Wouldn't there be political interference where the County Executive Committee Member (CECM) of counties which are not politically aligned with the government of the day are required to seek approval from the Cabinet Secretary (CS) in charge of Land to undertake

a County Government project, yet the two levels of government are autonomous? Does this not contradict the spirit of devolution?

6. In the past, the role of compulsory land acquisition was bestowed on the Commissioner of Lands who operated under the Presidency. However, the land acquisition process faced issues such as irregular acquisitions, lack of independence, overlapping roles, lack of transparency, and subjective compensation assessments. The National Land Policy of 2009 recognized these challenges and proposed reforms, including establishing the National Land Commission, and conferring pre-emptive rights to original landowners.

By adopting the proposed changes to part VIII of The Land Act, 2012, which proposes reversion of compulsory land acquisition function to the Presidency, wouldn't we be clawing back these land reforms?

7. Shouldn't the government protect and enhance the functionality of constitutional Commissions as opposed to taking away their functions?
8. When or if the CS in charge of lands intends to acquire land compulsorily, will they write a request letter to themselves, approve the same, determine the value, proceed to acquire the land and issue the themselves a certificate of title?

Yours Faithfully,

J. L. Mutua

