

CONSULTATION WITH
NATIONAL LAND COMMISSION
(NLC)

[ANNEXURES 4]

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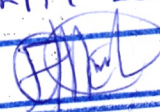
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REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
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 THE NATIONAL ASSEMBLY PAPERS LAID		Ardhi House 1 st Ngong Avenue P.O. BOX 30450-00100 Nairobi, KENYA
DATE: 23 JUN 2020		DAY: TUESDAY June 16, 2020
TABLED BY:	MAJORITY LEADER	
CLERK-AT THE-TABLE:		

Ref. No. MOLPP/ADM/OCS/370

Mr. Gershom Otachi Bw'omanwa
Chairperson
National Land Commission
P.O. Box 44417 - 00100
NAIROBI

Dear *Chairman,*

RE: PROPOSED AMEDMENTS TO VARIOUS REGULATIONS TO SUPPORT IMPLEMENTATION OF A NATIONAL LAND INFORMATION SYSTEM AND RELATED REGULATIONS IN LINE WITH EXISTING LAND LAWS

Reference is made to your letter Ref: NLC/CHAIR/6-20/20 dated Friday June 12, 2020 and the eight (seven physical and one virtual) consultative meetings between the Ministry and the Commission held from Friday May 29, 2020 to Wednesday June 10, 2020 (schedule of meetings attached)

The Ministry has noted the contents of the letter, the robust deliberations in the meetings and the consequent proposals for inclusion in the Proposed Draft Regulations and make comments as follows: -

- a) Proposals made with regard to Land (Allocation of Public Land) (Amendment) Regulations, 2020 have been taken into consideration with necessary modifications to align them with the existing laws.

The use of the phrase "national or county government" as proposed under item number 1, 2, 3, 6, 7, 8, 9 has been adopted under Regulations 3(3), 2(3) (b), 4, 4(b)(ii), 10 and 11 in the proposed Regulations attached herein.

The proposals under item 10, 11 and 12 on the use of the phrase "through the system" have been adopted with modification to read "electronic form" and payment made by "electronic means" in line with the Kenya Information & Communication Act, 1998.

Proposals made under item number 12 have been adopted and new forms done under the Regulations. **See the attached Regulations.**

- b) Proposals made with regard to Land (Extension and Renewal of Leases) (Amendment) Rules, 2020 have been incorporated to the extent consistent with existing land laws.

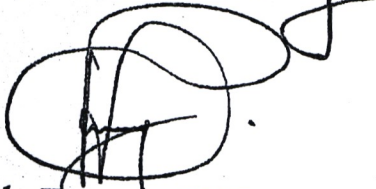
We note that your proposals are not aligned to the amendments introduced to the Land Act, 2012, vide the Statute Miscellaneous (Amendment) Law, 2018. The proposals have been taken into consideration with necessary modifications informed by the Constitution and the existing land laws. **See the attached Regulations.**

- c) Proposals under Land (Amendment) Regulations, 2020, item number 1 to 30, have been adopted to the extent consistent with the Constitution and existing land laws. **See the attached Regulations.**
- d) Proposals on the Survey (Electronic Cadastre Transactions) Regulations, 2020, item number 1 to 10 have been noted and adopted with necessary modifications in line with the Survey Act, Kenya Information & Communication Act, 1998, the Business Laws (Amendment) Act, 2020 and existing land laws. **See the attached Regulations**
- e) Proposals on the Physical and Land Use Planning (Electronic Development Control and Enforcement system) Regulations, 2020 have been noted. The proposals will be used to enrich the Regulations under the subject that are with the Attorney General for cleaning and processing. The same will be subjected to public participation in the next financial year 2020/2021.
- f) Proposals made under the Land Registration (Electronic) Regulations, 2020 have been noted and have been adopted with modification as per the attached Regulations. **See the attached Regulations.**

Thank you for your advice, support and cooperation in this process.

Yours

Sincerely



Farida Karoney, EGH
CABINET SECRETARY

Copy to: Chief Administrative Secretary

Principal Secretary

Encls.

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OUR REF: NLC/CHAIR/6-20/20

Date: 12th June, 2020

Ms. Farida Karoney
Cabinet Secretary
Ministry of Lands and Physical Planning
Ardhi House, 12th Floor-Wing A
P.O Box 30297-00100
NAIROBI

Dear *C. S. Farida Karoney,*

RE: PROPOSED AMENDMENTS TO VARIOUS REGULATIONS TO SUPPORT IMPLEMENTATION OF A NATIONAL LAND INFORMATION SYSTEM

We take cognisance that the Government has prioritised developing a National Land Information System (NLIS) as provided for under Section 6(h) of the Land Act, 2012. Under this section, the Commission is required to collaborate with your Ministry in the development and implementation of the system.

The Commission has had a chance to interact with the system and review the workflows with the guidance of the system developers. Bearing in mind the need to ensure flexibility regarding internal dynamics in respective institutions whilst ensuring the digitization process can take off within the confines of the current substantive law, the Commission has made proposals to support the implementation of the system. In view of the foregoing we recognize the fact that the Ministry has proposed amendments to various regulations that are supposed to originate from your office; namely:

1. Draft Land (Amendment) Regulations, 2020.

2. Draft Land Registration (Electronic Transactions) Regulations, 2020.
3. Draft Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020.
4. Draft Survey (Electronic Cadastre Transactions) Regulations, 2020.
5. Draft Survey (Amendment) Regulations, 2020

The Commission has audited the above listed draft regulations and proposed amendments to ensure they are in line with the Constitution, the existing statutes and the principles of land reforms. Consequently, the Commission has provided a justification for the misaligned amendments where applicable. ***(The audit report with specific recommendations is attached for your reference).***

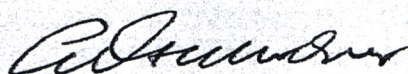
Further, to provide for electronic land transactions, the Commission has proposed amendments to the Land (Allocation of Public Land) Regulations, 2017 and the Land (Extension and Renewal of Leases) Rules, 2017 as provided for under Sections 12(11) and 13(2) of the Land Act, 2012 respectively. ***(The following proposed amendments to the principal regulations are attached for your reference):***

1. Proposed Land (Allocation of Public Land) (Amendment) Regulations, 2020.
2. Proposed Land (Extension and Renewal of Leases) (Amendment) Rules, 2020.

We note that there will certainly be need to progressively review the workflows and, if necessary, underlying regulations over time; a process the Commission will endeavour to participate actively in, to ensure the complete success of the digitization project.

We reiterate the Commission's unwavering commitment to collaborate with your Ministry towards the successful realization of a NLIS that will act as a single source of truth in the lands sector.

Yours *Sincerely,*



Gershom Otachi Bw'omanwa
CHAIRMAN



PROPOSED AMENDMENTS TO THE LAND (ALLOCATION OF PUBLIC LAND) REGULATIONS, 2017

INTRODUCTION

Section (11) of the Land Act, 2012 mandate the Commission to make regulations prescribing the criteria for allocation of land and for connected matters. Section (12) of the same Act also provides that the Commission shall make regulations prescribing the criteria for allocation of public land including prescribing the following; forms of ownership and access to land under all tenure systems; the procedure and manner of setting aside land for investments; procedures to be followed with respect to auction and disposition of land; appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and mechanisms of benefit sharing with local communities whose land have been set aside for investment.

PROPOSED AMENDMENTS

Pursuant to the powers conferred by section 12(11) of the Land Act, 2012, the Commission therefore makes the following proposals to amend the Land (Allocation of Public Land) Regulations, 2017.

1. Regulation 6(3) is amended by deleting the word 'Commission' and replacing it with words 'National or County Government or such place as such government may prescribe'.
2. Regulation 6(6) is amended by inserting after the word 'present' insert the words 'where practicable, be made through the system.'
3. Regulation 6(6) is amended by inserting after the word after the word 'allotment' insert the words 'shall, where practicable, be made through the system.'
4. Regulation 17 is amended by deleting the word 'Commission' and inserting the words 'National or County Government or such place as such government may prescribe'.
5. Regulation 26(1)(b) is amended by inserting after the word 'offices' the words 'or retrieve them electronically where practicable'.
6. Regulation 26(2)(c) is amended by inserting after the word 'payable' the words 'to the National or County Government or such place as such government may prescribe'.
7. The Regulations are amended by inserting the following new Regulation immediately after Regulation 34.
'34A. An accepted letter of allotment issuing under Regulations 27(5), 31, 32(4) and 35(1) may be prepared and processed by the Commission and forwarded to the Cabinet Secretary in the case of allocation by the National government or the County Executive Committee Member in case of allocation by the County Government and

- forwarded to the Chief Land Registrar for registration through the National Land Information System in electronic form in accordance with the conditions of the lease.'
8. Regulation 35 is amended by inserting after the word 'be' insert the words 'paid to the National or County Government, as the case may be.'
 9. The Regulations are amended by inserting the following new Regulation immediately after Regulation 36(5).
'36(6) Processes under paragraphs (1), (2), (3), (4) and (5) above may be carried through the System.'
 10. The Regulations are amended by inserting the following new Regulation immediately after Regulation 37.
'37A. Various fees prescribed under these regulations may be paid through authorized electronic means as may be advised by the receiving office from time to time.'
 11. The Regulations are amended by inserting the following new Regulation immediately after Regulation 37A.
'37AA. Various Forms prescribed under the Schedule for respective manual transactions shall be uploaded into the system and apply as if it were a manual process.'
 12. The Regulations are amended by inserting the following new Regulation immediately after Regulation 37AA.
'37AAA Processes under these regulations shall, where practicable, be made through the system in electronic form.'

THE PROPOSED AMENDMENTS TO THE LAND (EXTENSION AND RENEWAL OF LEASES) RULES, 2017)

INTRODUCTION

Section 13(2) of the Land Act mandates the Commission to make rules for the better carrying out the provisions on the Lessee's pre-emptive rights to allocation including the following: prescribing the procedures for applying for extension of leases before their expiry; 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; 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; and other covenants and conditions to be observed by the lessee.

PROPOSED AMENDMENTS

Pursuant to the powers conferred by section 13(2) of the Land Act, 2012, the Commission makes the following rules to amend the Land (Extension and Renewal of Leases) Rules, 2017.

1. Regulation 2(5) is amended by deleting the word 'Commission' and substituting thereof the words 'the national government or county governments.'
2. The Regulations are amended by inserting the following new Regulation immediately after Regulation 2(10).
'2(10) All processes under these regulations and connected to application for extension or renewal of lease made under sub-regulation (1) shall, where applicable, be made through the system.'
3. Regulation 4(3) is amended by deleting Regulation 4(3)(b).



4. Regulation 4(8)(c) is amended by after the word 'and' inserting the words 'prepare a lease that shall be registered by the Chief Land Registrar.'
5. Regulation 7 is amended by inserting a new Regulation 7(6).
'7(6) Processes under these regulations shall, where practicable, be made through the system in electronic form.'
13. The Regulations are amended by inserting the following new Regulation immediately after Regulation 7(6).
'7(7). Various Forms prescribed under the Schedule for respective manual transactions shall be uploaded into the system and apply as if it were a manual process.'

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National Land Commission's Response on the Proposed Amendments to various Regulations

A. Land (Amendment) Regulations, 2020 under Section 160 of the Land Act, 2012

Section of the existing Regulations	Section of the proposed amendment	National Land Commission's Proposal	Reference/ Justification
<p>1 New insertions into principal Regulation 2 on "interpretations" introducing new terms for electronic transaction systems.</p>	<p>2.The Land Regulations, 2017, hereinafter referred to as the "principal Regulations" is amended in Regulation 2 by inserting the following new definition in their proper alphabetical sequence— (a) "electronic" has the same meaning assigned under the Kenya Information and Communication Act; (b) "electronic form" has the same meaning assigned under the Kenya Information and Communication Act;</p>	<p>The interpretations are okay. However, all new regulation provisions should indicate "Cabinet Secretary in collaboration with the Commission" to be in compliance with section 6 (h) of Art, e.g. "The Ministry, Commission and, any other public agency may, through the system and under these regulations— (a) Circulate, forward, send, execute and process documents (b) Communicate or notify (c) Do any act as may be required. etc.</p>	<p>Section 6(h) of the Land Act provides for collaboration between the CS and the Commission in the development and implementation of NLLS. Director Land Administration is not an office recognized by any statute.</p>

		<p>(c) "register" includes electronic form; and</p> <p>(d) "system" means the National Land Information System developed under Section 6(h) of the Land Act.</p> <p>(e) "Electronic Appeals Committee" means an appeals committee appointed by the Cabinet secretary under regulation 21F.</p> <p>(f) "user" means a person who has created an online electronic account for access or submission of information by electronic means in the system, and may include a property owner or a professional.</p> <p>(3) The Cabinet Secretary through the Director Land Administration; the County Government; Director General Physical and Land Use Planning; Director Land Valuation; Director of Survey; and, any other public agency may through the system</p>		
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			and under these regulations—		
			(a) Circulate, forward, send, execute and process documents (b) Communicate or notify (c) Do any act as may be required		
2	3. The Commission shall keep and maintain a data base of all public land.	3. The Commission shall keep and maintain a data base of all public land including in electronically form.		The proposed amendment is okay. However, we propose to amend this regulation as follows: The Commission shall create, maintain and update a database of all public land including in electronic form.	
3	4.(1) Pursuant to section 15(3) the Act, Commission shall keep and maintain an inventory of land based natural resources.	4.(1) Pursuant to section 15(3) the Act, Commission shall keep and maintain an inventory of land based natural resources including in electronic form.		The proposed amendment is okay. However, we propose to amend this regulation as follows: Pursuant to section 15(3) the Act, Commission shall create, maintain and update an inventory of land based natural resources including in an electronic form.	Land Act 15(3) which states that 'Upon coming into force of this Act, the Commission shall undertake an inventory of all land based natural resources'.
4	4(2) The inventory shall be available for inspection by members of public.	4(2) The inventory shall be available for inspection by members of public		The proposed amendment is Ok.	Provides for electronic transactions

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5	NEW	including in electronic form.	
6	8.(1) The Commission shall require the public institutions vested with the control, care and management of public to submit an inventory in electronic form of all land under their control and actual occupation. (7) Submission of the inventory under sub-regulation (1) and notifications under sub-regulations (4) and (5) may be issued through the system in electronic form.	Regulation 8 of the principal Regulations is amended— (a) in sub- Regulation (1) by inserting the word "in electronic form" appearing after the word "inventory"; (b) by inserting the following new sub-Regulation immediately after sub-Regulation (6) — (7). Any submission under these Regulation to the inventory and the issuing of notices under sub-regulation (4) and (5) may be made in electronic form.	The proposed amendment is Ok. Provides for electronic transactions
7	9.(1) Applications for temporary occupation licence shall be submitted	9.(1) Applications for temporary occupation licence shall be submitted to the national or relevant	The proposed amendment is Ok. Provides for electronic transactions

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8	to the national or relevant county government	9.(2) Upon receipt of the application, the national or relevant county government shall process the application and forward their recommendation to the Commission for grant of licence to the successful applicant in Form LA 19 set out in the Third Schedule.	county government in electronic form.	9.(2) Upon receipt of the application, the national or relevant county government shall process the application whereupon the county government shall forward its recommendation to the cabinet secretary for grant of licence to the successful applicant in Form LA 19 set out in the Third Schedule.	-Retain the original regulation but add "in electronic form" after the word "Third Schedule".	<p>The Cabinet Secretary has no powers to allocate land -Article 62 (1) (m) list alienated land as public land managed by the Commission. -Article 62 (2), -Section 20 of the Land Act provides that:</p> <p>(1) The Commission may grant a person a licence to use alienated public land for a period not exceeding five years subject to planning principles as it may prescribe.</p> <p>(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 license.</p> <p>(3) The fee payable under a license under this section, the period and the agreements and conditions of the licence, shall be prescribed by the Commission.</p> <p>(4) The licensee may, with the consent of the Commission, transfer the benefit of a licence under this</p>
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					section, and the transfer and the consent thereto shall be endorsed on the licence.
9	9(3) The applications for consent to transfer temporary licences shall be made to the Commission in Form LA 20 set out in the Third Schedule.	9 (3) The applications for consent to transfer temporary licences shall be made to the Cabinet Secretary in Form LA 20 set out in the Third Schedule.	-Retain the original regulation.	Article 67(2)(a)	Land Act 20. (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.
10	9(4) The fees payable under any licence shall be paid to the Commission which shall remit such funds into the Consolidated Fund account in the case where the national government is the licensor; and, to the County Revenue Fund account where the county government is the licensor.	9(4) The fees payable under any licence shall be paid to the Cabinet Secretary where the national government is the licensor; and, to the County Revenue Fund account where the county government is the licensor.	9(4) The fees payable under any licence shall be paid to the national government where the national government is the licensor; and, to the County Revenue Fund account where the county government is the licensor.		Land Act 20. (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.
11	NEW	9(5) Applications under sub-regulations (1) and (3), processing and forwarding under sub-regulation (2) and payment of fees under sub-regulation (4) may be made through the system in electronic form	The proposed amendment is Ok.	Provides for electronic transactions	

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12	NEW	10(3) the notice under sub-regulation (1) may be made in through the system in electronic form."	The proposed amendment is Ok.	Provides for electronic transactions
13	<p>11 (1) The Commission shall issue land rent demand notes to the lessees in accordance with the terms of a lease.</p> <p>(2) Land rent shall be paid into a bank account designated by the Commission.</p> <p>(3) Where the national government is the head lessor, the Commission shall remit such funds into the Consolidated Fund account and where the county government is the head lessor, the Commission shall remit such funds into the respective County Revenue Fund account by the fifth day the following month.</p>	<p>11(1) The Cabinet Secretary shall issue land rent demand notes to the lessees in accordance with the terms of a lease.</p> <p>(2) Land rent shall be payable to the cabinet secretary where the head lessor is the national government and into the County Revenue Fund account where the county is the head lessor.</p>	<p>Section 11(1) should be retained as it is.</p> <p>Section 11(2) is amended as follows:</p> <p>(2) Land rent shall be payable to the national government where the head lessor is the national government and into the County Revenue Fund account where the county is the head lessor.</p>	<p>Article 67 (2) (g) The Commission to assess tax on land and premiums on immovable property in any area designated by law;</p> <p>Land Act (28). Rents and other payments</p> <p>(1) The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the national or county government, as the case may be, and shall be paid by the lessee or licensee at the office of the respective government or at such place as such government may prescribe.</p> <p>(2) The annual rent reserved under any lease or licence shall be payable in advance on the first day of January in each year of the term.</p> <p>(3) The records of the payments made under subsection (2) shall be</p>

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				submitted to the Commission by the respective government.
14	13.(1) An application for consent to transfer, sublease or charge land shall be submitted to the Commission in Form LA 26 set out in the Third Schedule.	13.(1) An application for consent to transfer, sublease or charge land shall be submitted to the cabinet secretary in Form LA 26 set out in the Third Schedule.	-Maintain the original regulation.	-amendment should not be done since authority to manage public land is bestowed in the Commission. -The Cabinet Secretary should not receive applications on behalf of the County Governments who are also lessors
15	13(2) An application under (1) above shall be accompanied by a rent clearance certificate issued under regulation 12.	Deleted	The proposed amendment is Ok.	The Business Laws (Amendment) Act, 2020
16	13(3) The Commission shall conduct a site inspection to confirm any matter in relation to the land. 13 (4) The Commission shall— (a) give the consent in Form LA 27 set out in the Third Schedule; or	13 (3) The cabinet secretary shall conduct a site inspection to confirm any matter in relation to the land. 13 (4) The cabinet secretary shall— (a) give the consent in Form LA 27 set out in the Third Schedule; or	-Retain the original regulation. -The lessors (the respective government) are free to conduct site inspection in respect to their mandate through an additional sub-regulation.	Section 87 of the Land Act: If a charge contains a condition, express or implied that charge prohibits the chargor from, transferring, assigning, leasing, or in the case of a lease, subleasing the land, without the consent of the chargee, no transfer, assignment, lease or sublease shall be registered until the written consent of the chargee has been

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17	NEW		13(7) processes under sub-regulations (1), (4), (5) and (6) may be made through the system in electronic form	The proposed amendment is okay. However, it should be clear in the regulations how the Commission and the Ministry will be integrating	produced to the Registrar.
18	14.(1) The Commission shall within five years from the commencement of these regulations undertake the conversions of all freehold titles and leases held by non-citizens that exceed ninety nine years.	14.(1) The cabinet secretary shall within five years from the commencement of these regulations undertake the conversions of all freehold titles and leases held by non-citizens that exceed ninety nine years.	-Retain the original regulation. By virtue of the constitution (Article 65) all leases beyond 99 years become null and void and land reverted to the government as public land. -The government can only lease it again through the Commission as the manager. -Since the government is converting freehold to non-citizens into leaseholds then it is justified by the Commission.	-Article 65 on land holding by non-citizens, Land Act, sec. 9 (commission to maintain a register on converted public land & conversion criteria for freehold land).	
19	(2) The Commission shall require the Chief Land Registrar to cause an entry to be made on all registers of land owned by non-citizens whose term was reduced to ninety-nine years with effect from 27th August	14.(2) The cabinet secretary shall require the Chief Land Registrar to cause an entry to be made on all registers of land owned by non-citizens whose term was reduced to ninety-nine years with effect from 27th August	-Retain the original regulation.	By virtue of the constitution (Article 65) all leases beyond 99 years become null and void and land reverted to the government as public land. -The government can only lease it again through the Commission as the manager. -Since the government is converting freehold to non-citizens into leaseholds then it is justified by the Commission.	

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20	(3) The Commission shall, in Form LA 28 set out in the Third Schedule or through a notice published in the Gazette and in at least two newspapers with nationwide circulation, notify non-citizens who possess freehold titles or leasehold titles that exceed ninety-nine years—	14.(3) The cabinet secretary shall, in Form LA 28 set out in the Third Schedule or through a notice published in the Gazette and in at least two newspapers with nationwide circulation, notify non-citizens who possess freehold titles or leasehold titles that exceed ninety-nine years—	-Retain the original regulation.	By virtue of the constitution (Article 65) all leases beyond 99 years become null and void and land reverted to the government as public land. -The government can only lease it again through the Commission as the manager. -Since the government is converting freehold to non-citizens into leaseholds then it	
21	NEW	14.(4) processes under sub-regulation (1) and (3) may be made through the system in electronic form.	The proposed amendment is Ok.		
22	15.(1) The Commission shall cause the land to be re-surveyed, geo referenced and cadastral map and plan produced by the authority responsible for survey.	15.(1) The cabinet secretary shall cause the land to be re-surveyed, geo referenced and cadastral map and plan produced by the authority responsible for survey.	-Retain the original regulation.	By virtue of the constitution (Article 65) all leases beyond 99 years become null and void and land reverted to the government as public land. -The government can only lease it again through the Commission as the manager. -Since the government is converting freehold to non-citizens into leaseholds then it	

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23	<p>15.(3) Upon receipt of the original title document and cadastral map and plan from the authority responsible for survey, the Commission shall prepare a lease for a term of ninety-nine years in the name of the registered proprietor.</p>	<p>15.(3) Upon receipt of the original title document and cadastral map and plan from the authority responsible for survey, the cabinet secretary shall prepare a lease for a term of ninety-nine years in the name of the registered proprietor.</p>	<p>-Retain the original regulation.</p>	<p>is justified by the Commission. By virtue of the constitution (Article 65) all leases beyond 99 years become null and void and land reverted to the government as public land. -The government can only lease it again through the Commission as the manager. -Since the government is converting freehold to non-citizens into leaseholds then it is justified by the Commission.</p>
24	<p>15(4) The Commission shall forward the original title document, the lease and the cadastral map and plan to the Chief Land Registrar for registration.</p>	<p>15(4) The cabinet secretary shall forward the original title document, the lease and the cadastral map and plan to the Chief Land Registrar for registration.</p>	<p>- Retain the original regulation.</p>	<p>By virtue of the constitution (Article 65) all leases beyond 99 years become null and void and land reverted to the government as public land. -The government can only lease it again through the Commission as the manager. -Since the government is converting freehold to non-citizens into leaseholds then it is justified by the Commission.</p>
25	<p>NEW</p>	<p>(d)(e) processes under sub-regulations (1), (2), (3) and (4) may be made through the system in electronic form</p>	<p>The proposed amendment okay Numbering should be corrected</p>	<p>Provides for electronic transactions</p>

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26	NEW	<p>Regulation 16 of the principal Regulations is amended by inserting the following new sub-Regulation immediately after sub-Regulation (7).</p> <p>(i) inserting the following new sub-Regulation (1A) immediately after sub-regulation (1) as follows;</p> <p>(1A.) An application under sub-regulation (1) shall be submitted, processed and approved in electronic form.</p> <p>(ii) inserting the following new sub-Regulation (3A) immediately after sub-regulation (3) as follows;</p> <p>3A. An application under sub-regulation (2) and (3) to seek representations and approval may be made in electronic form.</p> <p>(iii) inserting the following new sub-Regulation (4A)</p>	<p>The proposed amendment is okay</p>	<p>Provides for electronic transactions</p>
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27	<p>17.(1) Application for subdivision, amalgamation, partition and reparation of leasehold land shall be submitted to the county government</p> <p>(2) The county government shall before granting approval for subdivision, amalgamation, partition and reparation seek representations from the following—</p> <p>(a) the officer representing the national Director of Surveys at the county;</p> <p>(b) the officer representing the national Director of Physical Planning at the county;</p> <p>(c) the land administration officer of the Commission</p>	<p>immediately after sub-regulation (4) as follows; 4A. Any notification made to an applicant as provided for under sub-Regulation (4) may be made in electronic form.</p>	<p>The Commission is mandated to manage public land under Article 67(2)(c) of the Constitution.</p> <p>- Retain the original regulation 17 (2) (c) as it is.</p>	<p>Reg. 2c, of the original regulation.</p>
	<p>15. Regulation 17 of the principal Regulations is amended by -</p> <p>(i) inserting the following new sub-Regulation (1A) immediately after sub-regulation (1) as follows;</p> <p>(1A.) An application under sub-regulation (1) shall be submitted to the county government in electronic form.</p> <p>(ii) Deleting the words “Commission and of” appearing after the word “the” and after the word “national” at sub-regulation 2(c)</p> <p>(iii) inserting the following new sub-Regulation (2A)</p>			

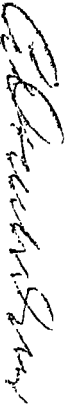
<p>and of national government at the county; (d) the Land Control Board, where applicable; and (e) any other relevant authority. (3) Upon receipt of the representations sought under paragraph (2), the county government may within thirty days— (a) approve the application ; or (b) refuse to approve the application. (4) Where the approval is not granted, the county government shall notify the applicant of its decision, in writing, within thirty days, stating the reasons for refusal. (5) The county government shall forward an approval granted under paragraph (3) to the Cabinet Secretary who shall—</p>	<p>immediately after sub-regulation (2) as follows; (2A) circulation of applications to seek representations under paragraph (2) may be made in electronic form (iv) inserting the following new sub-Regulation (4A) immediately after sub-regulation (4) as follows; (4A) notification of the decision under paragraph (4) may be done in electronic form (v) deleting the words “and forward the letters together with the cadastral map and plan to commission” appearing after the word “letters” at sub-regulation (5)(c) (vi) inserting the following new paragraph (d) immediately after sub-regulation (5) (c) as follows; (d) prepare the subsequent lease(s) and forward them to the Chief Land Registrar for registration</p>	<p>It is the commission as the manager of the public land to prepare lease.</p> <p>Reg. 6A is okay so long as the amendments in Reg. 5 and 6 above are implemented.</p>	<p>-Regulation 17 (5) should be amended by deleting the word CS and inserting the word Commission. Under maintain Reg. 5 (c), do not replace the Commission. Maintain original Regulation 17 (6), the Commission to prepare subsequent Leases.</p>
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		<p>in Form LA 29 set out in the Third Schedule (vii) deleting sub-regulation (6)</p> <p>(viii) inserting the following new sub-Regulation (6A) immediately after sub-regulation (6) as follows; 6A. Any leases prepared under sub regulation (5) and approvals under sub-Regulation (6) shall be made in electronic form.</p>		
<p>28. 18.(1) Application for change or extension of user on freehold land shall be submitted to the relevant county government. (2) Upon receipt of the application, the county government shall ascertain the viability of the application and shall seek representations of the relevant authorities including— (a) the officer representing the national Director of</p>		<p>16. Regulation 18 of the principal Regulations is amended by</p> <p>(i) inserting the following new sub-Regulation (1A) immediately after sub-regulation (1) as follows; (1A.) An application under sub-regulation (1) shall be submitted to the county government in electronic form. (ii) inserting the following new sub-Regulation (2A)</p>	<p>The proposed amendment is Ok.</p>	<p>Provides for electronic transactions</p>

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<p>Surveys at the county;</p> <p>(b) the officer representing the national Director of Physical Planning at the county;</p> <p>(c) the land administration officer of the national government at the county;</p> <p>(d) the Land Control Board, where applicable; and</p> <p>(e) any other relevant authority.</p> <p>(3) Upon receipt of the representations sought under paragraph (2), the county government may within thirty days—</p> <p>(a) approve the application ; or</p> <p>(b) refuse to approve the application.</p> <p>(4) Where the development permission from the county government is not granted, the county government shall notify the applicant of its decision, in writing, within thirty</p>	<p>immediately after sub-regulation (2) as follows;</p> <p>2A. An application under sub-regulation (2) to seek representations may be made in electronic form.</p> <p>(iii) Inserting the following new sub-Regulation (7) immediately after sub-Regulation (6).</p> <p>(7) The processing of applications under sub-Regulation (4) (5) and (6) for purposes of change or extension of user on freehold land may be made electronically.</p>		
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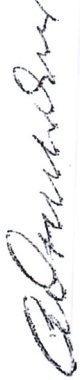
	<p>days, and shall specify the grounds for refusal.</p> <p>(5) Where the development permission is granted, the county government shall forward to the Cabinet Secretary for processing.</p> <p>(6) The Cabinet Secretary shall cause an endorsement to be prepared in Form LA 30 set out in the Third Schedule which shall be forwarded to the Chief Land Registrar for noting in the register and the original certificate of title.</p>			
29.	<p>19.(1) Application for change or extension of user on leasehold land shall be submitted to the to the relevant county government.</p> <p>(2) Upon receipt of the application, the county Government shall ascertain the viability of the application</p>	<p>Regulation 19 of the principal Regulations is amended by—</p> <p>(i) inserting the following new sub-Regulation (1A) immediately after sub-regulation (1) as follows;</p> <p>(1A.) An application under sub-regulation (1) shall be submitted to the</p>	<p>Retain Regulation 19 (2) (c), as it is</p>	<p>As above</p>

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<p>and may seek representations from the relevant authorities including—</p> <p>(a) the officer representing the national Director of Surveys at the county;</p> <p>(b) the officer representing the national Director of Physical Planning at the county;</p> <p>(c) the land administration officer of the Commission and of national government at the county;</p> <p>(d) the Land Control Board, where applicable; and</p> <p>(e) any other relevant authority.</p> <p>(3) Upon receipt of the representations sought under paragraph (2), the county government may within thirty days—</p> <p>(a) approve the application; or</p> <p>(b) refuse to approve the application.</p>	<p>county government in electronic form.</p> <p>(ii) Deleting the words “Commission and of” appearing after the word “the” and after the word “national” at sub-regulation 2(c)</p> <p>(iii) inserting the following new sub-Regulation (2A) immediately after sub-regulation (2) as follows; (2A) circulation of applications to seek representations under paragraph (2) may be made in electronic form.</p> <p>(iv) inserting the following new sub-Regulation (4A) immediately after sub-regulation (4) as follows; 4A. Any notification to an applicant as provided for under sub-Regulation (4) may be made in electronic form.</p> <p>(v) Inserting the following new paragraph</p>	<p>-Regulation 19 (5) should be amended by deleting the word CS and inserting the word Commission.</p> <p>Maintain sub-Reg. 6 & 7 on forwarding the approvals and</p>
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Elizabeth M. M.

30.	<p>(4) Where the development permission from the County Government is not granted, the County Government shall notify the applicant of its decision, in writing in writing, within thirty days stating the reasons for refusal.</p> <p>(5) The county government shall forward the approval to the to the Cabinet Secretary who shall—</p>	<p>(5)(c) immediately after paragraph (5(b)) as follows</p> <p>(5)(c) prepare lease and forward it to the Chief Land Registrar for registration in Form LA 29 set out in the Third Schedule.</p> <p>(vi) deleting sub-Regulation (6) and (7)</p> <p>(vii) inserting the following new sub-regulation (7A) after sub-regulation (7) as follows</p> <p>(7A) Forwarding of approval to the cabinet secretary under paragraph (5) may be made in electronic form.</p> <p>20 (2) Where the county government has approved building plans or any other development on leasehold land, it shall communicate the said approval to the Cabinet Secretary for purposes of noting that the conditions of the lease have been met.</p>		<p>preparation of the news leases.</p> <p>Delete Cabinet Secretary and insert Commission</p>
	<p>20.(1) Application for building plans on leasehold land shall be submitted to the relevant county government.</p> <p>(2) Where the county government has approved building</p>		<p>-Retain the original regulation.</p>	<p>Article 67(2)(a) provides that the Commission shall manage public land on behalf of the national and county governments;</p>




<p>plans or any other development on leasehold land, it shall communicate the said approval to the Cabinet Secretary and the Commission for purposes of noting that the conditions of the lease have been met.</p>			
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B. Survey (Electronic Cadastre Transactions) Registration, 2020 under Section 45 of the Survey Act, CAP 299

Regulation No.	Proposed Regulation	Commission Proposal	Justification of Position
2	Definition "Authorized User" – Any one authorized to carry out survey and submit under the principal Act	Should be expanded to include surveyors of the Commission	Commission Consumes survey products and should be allowed to access survey data
18	On sealing the cadastral map the Director shares with Director Land Administration and the Commission	Require an express provision describing the manner and form of access that the Commission & County Governments will access to the System through Include County Governments in the notification – devolved function The maps are used in the execution of other mandates other than the ones provide. Don't prescribe the purpose of the maps	Commission & County Government are partners with the Ministry not just a stakeholder and has functions that support the Ministry Survey has some components that were declared devolved under the Constitution.
19	Submission of data to Chief Land Registrar	Add a new part (Part X) to define the manner and form through which the Director will share cadastral maps on public land created by surveys Should be removed	The LRA Section 17 requires the Director to share cadastral maps on public land to the NL
SR6	(ii) date of calibration of chain		The chain is no longer used. It should be reworked to cater for new survey techniques and instrumentation



Second Schedule	The NLC has been pointed out as a partner but has not been granted commensurate roles in the system	Have the CS and Chairman have shared overall roles of administering the system	The system is collaboratively built by the Ministry and NLC and should reflect this across the entire terms and conditions of use
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C. Physical and land use Planning (Electronic Development Control and Enforcement system) Regulations, 2020

Existing Regulations	Proposed Electronic Regulations	Commission Proposal	Justification of Position
<p>No regulations have been made for this law. Reference is made to the principal law</p>	<p>Sec 2 Interpretation i. "licensed professional" means a Physical Planner, Architect, Engineer, Landscape Architect or Urban Designer; ii. "relevant Professional Registration Board" has the meaning assigned to Physical Planners Registration Act, Architects and Quantity Surveyors Act and Engineers Registration Act;</p>	<p>We propose Physical/land use planner The board that registers physical/land use planners</p>	<p>The new law has widened the scope from what was in the original Physical planning act to embrace Physical and land use planning The Physical Planners registration board is a board instituted under the repealed Physical Planning act. the regulations should adhere to the new law with anticipation that the process of repealing the Registration act should commence soon.</p>
<p>“”</p>	<p>Sec. 4(1 (1) The Director-General shall maintain in the system, an electronic database for the – (i) approved physical and land use plans in accordance to provisions of the First and Second Schedules of the Act; (ii) development control instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals;</p>	<p>This module should have a segment for NLC The NLC will maintain in the system monitoring frameworks and oversight parameters as provided for in section 9(c) of the principal act</p>	<p>1. Section 9 of the principal act reinforces the monitoring and oversight role of the commission. 2. section 33 of the principal act requires approved physical and land use plans to be submitted to Director general and NLC 3. section 35 of the principal act provides that progress reports on implementation of various categories of plans shall be submitted to NLC and the Cabinet secretary. Development control is an element of plan implementation 1. The commission has a crucial role in monitoring all aspects in the planning</p>

<p>4(2) "authorised user" means a person who has created an online electronic account for access or submission of information for purposes of physical and land use planning;</p>	<p>The system should grant NLC access and user rights</p>	<p>and implementation process under (section 9) of the principal act. Without access to this database the commission cannot effectively undertake its responsibility in section9(b) of the principal act</p>
<p>Section 12 (2) electronic appeals committee Provides for one member of the committee from the commission</p>	<p>Include three (3) representatives from the commission instead of one (1)</p>	<p>i. The Commission has a constitutional responsibility to monitor and have oversight over land use planning throughout the country it is not confined to public land in land use planning. ii. if the commission has only one member in the committee, yet it should provide a member to serve in the secretariat, then this will not be sufficient representation.</p>
<p>Sec.14(3) (3) All applications for development permission shall be accompanied by supporting documents including – (i) Title Deed, Certificate of Lease or any legal ownership documents and a current search; (ii) Written consent in accordance to section 58(4) of the Act; (iii) Geo-referenced Cadastral map, sectional plans or other filed plans; (iv) Scheme plans/building plans in accordance to submission</p>	<p>-The regulations could provide for ESIA certificate as one of the documents to be submitted. This should be done in advance to reduce unnecessary red tape - consent from land control board be one of the attachments for applications requiring the.</p>	<p>Third schedule of the principal act 4. Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment. 3. If any development application requires subdivision or change of user of any agricultural land, the county government shall require the applicant to obtain consent from the relevant Board</p>

Edwin M. Mwangi

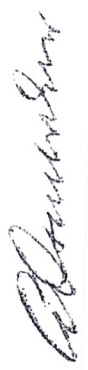
	<p>guidelines, approved standards and specifications. (v) Public Notification (where applicable) in accordance to section 58(7)(8); (vi) Planning Brief (where applicable) Sec 18 ii) appoint members of the committee who shall include – a. Chief Officer in charge of Physical and Land Use Planning or a designated representative who shall be the chairperson; b. City or municipal director of physical and land use planning or designated representative;</p>		<p>This has been causing unnecessary delays in the development permission process</p>
	<p>Sec 19(1). The Cabinet Secretary shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69(4) of the Act;</p>	<p>1. Provide a segment for NLC to be in the technical committee that reviews applications prescribed as projects of strategic national importance. (this may require that the regulations for the principal act details this)</p> <p>2. the decision to approve or disapprove to be communicated by the CS and NLC to receive this decision</p>	<p>Development applications include subdivision and change of user of agriculture land. Regulation 16(2)(c) of regulations to the land act 2017</p> <p>-The attorney general in the advisory advised that NLC should be involved throughout the process to avoid raising issues when a matter has been concluded. -The NLC is required to prepare status reports on implementation of plans and development control sec. 9(b) The Commission will need this information to update its inventory of public land</p>

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	<p>Sec.20(1) A consultant who receives approval decision with conformance conditions shall –</p> <p>(i) Appoint qualified and authorised user as sub-consultant and share the conformance conditions to be fulfilled;</p> <p>(ii) Instruct the sub-consultant to prepare secondary applications for the purpose of –</p>	<p>This section needs to be clear on who appoints the sub consultants. Can the registered owner also receive a copy of the approval so that they can recruit an appropriate consultant for the next stage of implementation</p>	<p>There is need to safeguard developers from unscrupulous consultants who may hold them at ransom.</p>
	<p>Sec. 22 issuance of development permission</p>	<p>The regulations should clarify to whom the decision will be communicated to. We propose that this decision be communicated to the applicant (consultant) with a copy to the registered owner or developer. As well, Copy of development permission granted should be communicated to NLC</p>	<p>This safeguards the developer or registered owner from consultants who may become uncooperative along the way.</p> <p>The NLC is required to prepare status reports on implementation of plans and development control sec. 9(b)</p>
	<p>Sec.24(2) The registered owner of a property carrying out the development shall not proceed with the development unless issued with a copy of the inspection report and interim certificate authorizing progress.</p>	<p>Commit the inspecting officer to file their inspection report within 24 hours (strict timelines)</p>	<p>This will safeguard the developer from undue delays</p>

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<p>Sec. 66 of the principal act. A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building, or in respect of any premises or land, for which development permission has not been granted by the relevant county executive committee member</p>	<p>This is not addressed in the regulations</p>	<p>Can the system have an interface with licensing authorities for quick confirmation</p>	<p>This will further the government agenda of enhancing the ease of doing business</p>
<p>Third schedule Terms and conditions of use 3(v) The Cabinet Secretary reserves the right to suspend the system in whole or in part in the circumstances where a significant breach of security has occurred or that a security system has failed that compromises or that could compromise the integrity or security of the system's databases or service until such security breach or failure has been rectified. For checks and balances, there should be consultation with the Commission, since the regulations have been developed consultatively as in item 1(i) of this schedule 8 (ii) The Ministry reserves the right to change and adjust these terms and conditions without any further reasons as long as it is necessary due to legal adjustments or technical progress it may be useful that the Commission also participates in the decision to change or adjust the conditions</p>			



D. Land Registration (Electronic Transactions) Regulations, 2020 under section 110 of Land Registration Act, 2012

Existing Regulations	Proposed Electronic Regulations	Commission Proposal	Justification of Position
<p>These are new regulations</p>	<p>Sec 2 - Interpretation</p> <p>"user" means a person capable of accessing services under these regulations by electronic means and through the system, and may include a property owner or a professional on the instructions of a property owner.</p> <p>"authorized staff" means an officer assigned administrative rights by the administrator (in this case the chief registrar) to undertake specific functions aimed at receiving, processing and approving applications and transactions;</p> <p>"authorized user" means a person who has been granted permission to access, query on any information or submit any documents in relation to any transaction under these Regulations;</p>	<p>The National Land Commission and the County Governments should be an authorized user and administrator as defined in the regulations</p>	<p>This is because of Article 67(2)(a) mandates the Commission to manage public land on behalf of the national and county governments and (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya.</p>

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	<p>Section 13 – Appeals against the decision to terminate a user’s access</p> <p>(1) The Cabinet Secretary in consultation with the National Land Commission shall appoint an Electronic Appeals Standing Committee to hear appeals against the termination of user’s account.</p> <p>(2) The membership of the Electronic Appeals Standing Committee shall comprise of:</p> <p>1 (a) Three representatives from the Ministry; (b) One representative from National Land Commission; (c) One representative from Council of Governors.</p>	<p>The National Land Commission and the County Governments membership in the Electronic Appeals Standing Committee should be the same as the Ministry of Lands (3 members each).</p>	<p>There are 47 County Governments and there is need to ensure equitable representation to ensure the functions of the Counties are adequately taken into account.</p>
<p>No regulations have been made for this law. Reference is made to the principal law</p>	<p>Section 17 - Payment of Stamp duty</p> <p>The authorised user shall pay stamp duty through KRA’s payment platform.</p>	<p>The Commission should assess the stamp duty as provided in Article 67(2)(g) of the Constitution and then it shall be collected by KRA.</p> <p>Stamp Duty Act should be amended to align it with the Constitution.</p>	<p>Article 67(2)(g) mandate the Commission to assess tax on land and premiums on immovable property in any area designated by law.</p>
	<p>Section 21 - Lodging of Physical Documents Proposed regulation: An</p>	<p>There is need to provide for verification of the documents to be lodged</p>	<p>This is to avoid abuse of the system.</p>

	<p>Authorized user shall when required manually present documents that cannot be lodged electronically which the Registrar requires the production of the original.</p> <p>Regulation 27 – Manual transactions Proposed</p> <p>regulation: Where a transaction cannot be carried out using the electronic registration system, the person seeking to carry out the transaction shall carry out the transaction through such other means as the Chief Land Registrar may determine.</p>	<p>physically to prevent abuse of the system.</p>	<p>There is need to provide for checks to prevent abuse of the system.</p> <p>This is to avoid abuse of the system.</p>
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Edna Harris



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

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Nairobi, KENYA

Ref. No. MOLPP/ADM/CSO/1/354

June 4, 2020

Mr. Gershom Otachi Bw'omanwa
The Chairman
National Land Commission
P.O. Box 44417 - 00100
NAIROBI

Dear

Chairman

RE: NATIONAL LAND INFORMATION MANAGEMENT SYSTEM (NLIMS)

The above subject matter and your letter Ref: NLC/CHAIR 06-20/01 of June 3, 2020 requesting a meeting to interact with the system refer.

We welcome these engagements aimed at a collaborative approach to development of the NLIMS. However, we regret that the proposed date is too soon to marshal materials for the meeting.

We therefore propose that the meeting be rescheduled to Tuesday June 9, 2020 at the 8th Floor Boardroom, Ardhi House at 10 am.

Meanwhile, please nominate two (2) officers to participate in data cleaning as agreed in our meeting of Wednesday June 3, 2020.

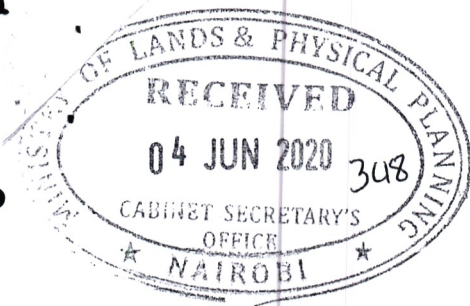
Lastly, I wish to confirm my availability for consultations on the proposed regulations to operationalise NLIMS on Monday June 8, 2020 at 8am in the same venue as above.

Your positive response will be highly appreciated.

Yours

Sincerely


Farida Karoney, EGH
CABINET SECRETARY



URGENT

OFFICE OF THE CHAIRMAN

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When replying please quote

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NAIROBI

Ref: NLC/CHAIR 06-20/01

3rd June, 2020

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

Dear *C.S. Farida Karoney,*

NATIONAL LAND INFORMATION MANAGEMENT SYSTEM (NLIMS)

I refer to your letter Ref: MOLPP/ADM/CSO/1/349 dated 2nd June, 2020 on NLIMS and the demonstration of the system to the Chairman and Commissioners earlier today (3rd June, 2020).

As provided under section 6(h) of the Land Act, No.6 2012 the development and implementation of NLIMS should be coordinated by the Cabinet Secretary Ministry of Lands and Physical Planning in collaboration with the National Land Commission.

As proposed in the meeting, the Commission will need a whole day interaction with the system to fully appreciate it and pave way for meaningful collaboration in its development. We suggest Friday 5th June, 2020 for this interaction. To enable us fully interact and appreciate the system, we will require a copy of all the workflows.

Yours *Sincerely,*

Gershom Otachi Bw'Omanwa
CHAIRMAN

URGENT



OFFICE OF THE CHAIRMAN

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NAIROBI

Ref: NLC/CHAIR 05-20/09

18th May, 2020

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

Dear *CS Farida Karoney,*

RE: TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO FACILITATE ELECTRONIC REGISTRATION AND OTHER LAND TRANSACTIONS IN LINE WITH EXISTING LAWS

I refer to previous correspondence on this matter Ref. No. MOLPP/ADM/CSO/1/328 dated 12th May, 2020.

The Commission has now carried out a preliminary review of the proposed Land Transactions (Electronic) Regulations, 2020 and other proposed regulations.

Having read and reviewed the said Regulations, the Commission has identified a number of issues and has categorized the proposed regulations into four broad clusters for purposes of commentary, as informed by the Constitution of Kenya and other existing legislation.

The first category relates to the Land Registration (Electronic Transactions) Regulations, 2020.

Section 110 of the Land Registration Act, 2012 mandates the Cabinet Secretary to make regulations, rules or prescribe on any matters required under the Act, and expressly requires the Cabinet Secretary to take into account the advice of the Commission after which the regulations or rules shall be tabled before Parliament for approval.

The Commission is aware of the convoluted history of the attempts to ensure concurrence around these regulations. We note that Parliament rejected the draft presented at the conclusion of the work of the first task force you had set up. We further note that, significantly, one of the reasons for the said rejection was "consultation with the National Land Commission was not adequately demonstrated", this, despite the fact of inclusion of certain members of staff of NLC in the task force. Whereas some two members of staff were incorporated in your second task force though without prior request and concurrence by the Commission regarding the process or the choice the Commission, nevertheless, without prejudice to its right to raise this issue in other fora if absolutely necessary, prefers not to focus on this procedural defect at this stage. The objective is to ensure the key regulations under Section 110 are not unnecessarily delayed any further.

We note that the mandate of the task force set up this year is the same as that set up in 2018, to wit; formulate regulations to facilitate Electronic land transactions, registration, conveyancing and other related activities. Whereas the Commission has not seen its report and recommendations, to the extent that the second task force has formulated regulations under Section 110 of the Act, it can be presumed, in our view, to have acted under its broad mandate. To that end, the Commission reiterates that the two staff members who were picked by yourself to the task force could not and did not understand its mandate to extend any further.

The Commission therefore wishes to categorically state that it supports the process to come up with the Land Registration (Electronic Transactions) Regulations, 2020 to facilitate electronic land transactions that will enhance ease of doing business and will, therefore, make its specific proposals to improve them and ensure they are aligned to the relevant statutes and the Constitution.

The second category relates to the (Extension and Renewal of Leases) (Amendment) Rules, 2020 and The Land (Allocation of Public Land) (Amendments) Regulations, 2020. The Commission notes that Article 67 (2) (a) of the Constitution of Kenya gives the Commission the mandate to manage public land on behalf of the National and County Governments. Section 12 (11) of the Land Act gives the Commission powers to make regulations prescribing the criteria for allocation of public land and any other connected matters. For this reason, the formulation or any amendment to Land (allocation of public land) Regulation 2017 ought to be initiated by the Commission.

On extension and renewal of Leases, Section 13 of the Land Act provides guidelines for the Renewal and Extension of leases on land. Specifically, Section 13 (2) Land Act gives the Commission powers to make rules for the better carrying out of the provisions of this section.

The task force has not only exceeded its mandate in proposing the various amendments but has proposed amendments that go into the core of the respective mandates of the Commission and the Cabinet secretary, content that relates to substantive law rather than addressing matters relating to registration.

For these reasons, the formulation or any amendment to the laws in this category, if any, shall be initiated by the Commission.

The third category pertains to the Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020; the Survey (Electronic Cadastre Transactions) Regulations, 2020 and Land (Amendment) Regulations, 2020.

The Commission observes that whereas the mandate to formulate regulations under the various statutes is vested in the Cabinet Secretary, the Commission did not understand the task force's mandate as extending to formulating substantive regulations under the said Statutes.

With respect to these regulations, the Commission in light of Section 90 of the Physical and Land Use Planning Act, 2019; Section 45 of the Survey Act and Section 160 (1) recommends that:

- i. The Survey Act (CAP 299) should be reviewed in order to align with the constitution and distribute functions among the different actors and to take into consideration the current technological advancements.
- ii. The principal regulations to operationalize the Physical and Land Use Planning Act be developed and completed in a participatory manner to provide an anchor for the electronic transactions.
- iii. The proposed amendments to the Land Regulations, 2017 be based on the provisions of the Land Act 2012 as amended in 2016, 2018 and 2019. Further, in case of conflicts on the provisions of the Act, the Act should be reviewed and amended before the amendment of the Regulations.

With regard to this category, the Commission advises that the processes relating to formulation of the regulations be started independently.

The fourth category relates to Regulations to be formulated by other actors outside the sector, such as the Stamp Duty (Amendment) Regulations, 2020. The Commission recommends that these may be processed subject to adequate collaboration and concurrence with the respective agencies and institution such as Cabinet Secretary responsible for The National Treasury. However, it is the opinion of the Commission that the Stamp Duty Act be amended to align with the current constitutional dispensation.

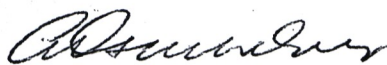
The Commission notes that the taskforce was specifically appointed to recommend amendments to regulations subject to the existing laws in order to facilitate implementation of electronic land transactions. The Commission similarly notes that the Taskforce proposed substantive legislative amendments that went beyond their mandate; and the regulations as they currently stand are procedurally flawed while in some instances exceed the provisions of the parent statutes. The resultant effect of these is that the Taskforce has created legal hurdles and conflicts that may unnecessarily delay the operationalization of the National Land Information System.

It is the considered view of the Commission that it is not entirely necessary to proceed through a laborious exercise of attempting to amend a wide range of regulations or create new ones for purposes of electronic registration, considering that there hardly any provisions in the Laws relating to land expressly providing for manual format. Besides, it might be a lot more convenient to propose, through a miscellaneous amendment bill, an omnibus provision to open up all Laws that deal with land transactions by way of a new provision to the effect that **all applications** under the various land-related statutes are to be made in Electronic or manual form, as may be prescribed by the Registrar. Such a provision would be inserted in the Land Act, Survey Act, Physical and Land Use Planning Act, Environmental Management and Coordination Act, Sectional property Act, National Land Commission Act, County Government Act, Valuation Act and Rating Act, Stamp duty Act, Land Registration Act and any relevant laws.

The Commission's view is that focus on regulations under Section 110 of the Land Registration Act, 2012 would be the prudent way to proceed.

The Commission reiterates its support for the process and assures you that it will play its rightful role and supports participation of all stakeholders so that together we realize an efficient and effective transition towards an electronic platform for land administration and management. In this regard, we look forward to further engagement to fast-track the implementation of the electronic platform among other land reform initiatives.

Yours *Sincerely,*



GERSHOM OTACHI
CHAIRMAN



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

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Nairobi, KENYA

Ref. No. MOLPP/ADM/SCO/1/339

May 21, 2020

Mr. Gershom Otachi Bw'omanwa
The Chairperson
National Land Commission
P.O. Box 44417 - 00100
NAIROBI

Dear

Chairman,

**RE: FORMULATION OF REGULATIONS TO FACILITATE ELECTRONIC
LAND TRANSACTIONS IN LINE WITH EXISTING LAND LAWS**

Reference is made to the above subject and your letter Ref: NLC/CHAIR 05-20/09 dated Monday May 18, 2020.

The Government is in the process of developing a National Land Information Management System (NLIMS) whose overall objective is to fully automate/ digitise land transactions/processes that will put in place end to end processes to integrate several workflows linking Physical Planning, Survey, Land Administration, Valuation, Registration and other key stakeholders including the National Land Commission relevant to processes of land administration and management in Kenya.

The Ministry has noted the four broad issues addressed in your letter under reference regarding:

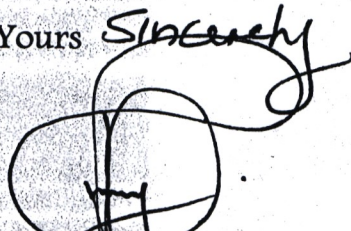
- a) The powers of the Cabinet Secretary to make regulations under Section 110 of the Land Registration Act, 2012
- b) Your support of the Proposed Land Registration (Electronic Transactions) Regulations, 2020 and further proposals by the Commission in paragraph eight(8)

- c) Concerns raised on the proposed Regulations made under the Land Act, 2012 on extension and renewal of leases, and allocation of public land in line with related Constitutional provisions and the attendant legislation in paragraph nine (9) and ten (10)
- d) Comments raised on electronic Regulations made under the Physical and Land Use Planning Act, 2019, Survey Act (Cap 299) and the Land (Amendment) Regulations, 2020 under the Land Act, 2012 in paragraphs thirteen (13), 14, 15 and 16
- e) Comments raised with regards to proposed Regulations under the Stamp Duty Act and consultation with the National Treasury in paragraph 17
- f) Comments raised with regards to amendments to existing legislations to include related matters in electronic format in paragraph 19, 20 and 21

From the foregoing, the Ministry proposes a virtual (zoom) meeting with the Taskforce that developed the proposed regulations on Friday May 22, 2020 at 10.00 am to discuss the concerns raised and map a way forward, whilst taking cognisance of the timelines that have been given to the Ministry by the Government.

Thank you for your continued support and cooperation.

Yours

Sincerely


Farida Karbney, EGH
CABINET SECRETARY

Copy to: Chief Administrative Secretary
Principal Secretary



OFFICE OF THE CHAIRMAN

Website: www.landcommission.go.ke
Telephone: 020 2945000
When replying please quote
Email: infor@landcommission.go.ke

ACK Garden Annex Building
1st Ngong Avenue
Off Ngong Road
P.O. Box 44417
NAIROBI

Ref: **NLC/CHAIR 05-20/09**

18th May, 2020

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

Dear *CS Farida Karoney,*

RE: TASKFORCE ON FORMULATION OF RELATED REGULATIONS TO FACILITATE ELECTRONIC REGISTRATION AND OTHER LAND TRANSACTIONS IN LINE WITH EXISTING LAWS

I refer to previous correspondence on this matter Ref. No. MOLPP/ADM/CSO/1/328 dated 12th May, 2020.

The Commission has now carried out a preliminary review of the proposed Land Transactions (Electronic) Regulations, 2020 and other proposed regulations.

Having read and reviewed the said Regulations, the Commission has identified a number of issues and has categorized the proposed regulations into four broad clusters for purposes of commentary, as informed by the Constitution of Kenya and other existing legislation.

The first category relates to the Land Registration (Electronic Transactions) Regulations, 2020.

Section 110 of the Land Registration Act, 2012 mandates the Cabinet Secretary to make regulations, rules or prescribe on any matters required under the Act, and expressly requires the Cabinet Secretary to take into account the advice of the Commission after which the regulations or rules shall be tabled before Parliament for approval.

The Commission is aware of the convoluted history of the attempts to ensure concurrence around these regulations. We note that Parliament rejected the draft presented at the conclusion of the work of the first task force you had set up. We further note that, significantly, one of the reasons for the said rejection was "consultation with the National Land Commission was not adequately demonstrated", this, despite the fact of inclusion of certain members of staff of NLC in the task force. Whereas some two members of staff were incorporated in your second task force though without prior request and concurrence by the Commission regarding the process or the choice the Commission, nevertheless, without prejudice to its right to raise this issue in other fora if absolutely necessary, prefers not to focus on this procedural defect at this stage. The objective is to ensure the key regulations under Section 110 are not unnecessarily delayed any further.

We note that the mandate of the task force set up this year is the same as that set up in 2018, to wit; formulate regulations to facilitate Electronic land transactions, registration, conveyancing and other related activities. Whereas the Commission has not seen its report and recommendations, to the extent that the second task force has formulated regulations under Section 110 of the Act, it can be presumed, in our view, to have acted under its broad mandate. To that end, the Commission reiterates that the two staff members who were picked by yourself to the task force could not and did not understand its mandate to extend any further.

The Commission therefore wishes to categorically state that it supports the process to come up with the Land Registration (Electronic Transactions) Regulations, 2020 to facilitate electronic land transactions that will enhance ease of doing business and will, therefore, make its specific proposals to improve them and ensure they are aligned to the relevant statutes and the Constitution.

The second category relates to the (Extension and Renewal of Leases) (Amendment) Rules, 2020 and The Land (Allocation of Public Land) (Amendments) Regulations, 2020. The Commission notes that Article 67 (2) (a) of the Constitution of Kenya gives the Commission the mandate to manage public land on behalf of the National and County Governments. Section 12 (11) of the Land Act gives the Commission powers to make regulations prescribing the criteria for allocation of public land and any other connected matters. For this reason, the formulation or any amendment to Land (allocation of public land) Regulation 2017 ought to be initiated by the Commission.

On extension and renewal of Leases, Section 13 of the Land Act provides guidelines for the Renewal and Extension of leases on land. Specifically, Section 13 (2) Land Act gives the Commission powers to make rules for the better carrying out of the provisions of this section.

The task force has not only exceeded its mandate in proposing the various amendments but has proposed amendments that go into the core of the respective mandates of the Commission and the Cabinet secretary, content that relates to substantive law rather than addressing matters relating to registration.

For these reasons, the formulation or any amendment to the laws in this category, if any, shall be initiated by the Commission.

The third category pertains to the Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020; the Survey (Electronic Cadastre Transactions) Regulations, 2020 and Land (Amendment) Regulations, 2020.

The Commission observes that whereas the mandate to formulate regulations under the various statutes is vested in the Cabinet Secretary, the Commission did not understand the task force's mandate as extending to formulating substantive regulations under the said Statutes.

With respect to these regulations, the Commission in light of Section 90 of the Physical and Land Use Planning Act, 2019; Section 45 of the Survey Act and Section 160 (1) recommends that:

- i. The Survey Act (CAP 299) should be reviewed in order to align with the constitution and distribute functions among the different actors and to take into consideration the current technological advancements.
- ii. The principal regulations to operationalize the Physical and Land Use Planning Act be developed and completed in a participatory manner to provide an anchor for the electronic transactions.
- iii. The proposed amendments to the Land Regulations, 2017 be based on the provisions of the Land Act 2012 as amended in 2016, 2018 and 2019. Further, in case of conflicts on the provisions of the Act, the Act should be reviewed and amended before the amendment of the Regulations.

With regard to this category, the Commission advises that the processes relating to formulation of the regulations be started independently.

The fourth category relates to Regulations to be formulated by other actors outside the sector, such as the Stamp Duty (Amendment) Regulations, 2020. The Commission recommends that these may be processed subject to adequate collaboration and concurrence with the respective agencies and institution such as Cabinet Secretary responsible for The National Treasury. However, it is the opinion of the Commission that the Stamp Duty Act be amended to align with the current constitutional dispensation.

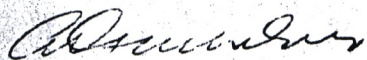
The Commission notes that the taskforce was specifically appointed to recommend amendments to regulations subject to the existing laws in order to facilitate implementation of electronic land transactions. The Commission similarly notes that the Taskforce proposed substantive legislative amendments that went beyond their mandate; and the regulations as they currently stand are procedurally flawed while in some instances exceed the provisions of the parent statutes. The resultant effect of these is that the Taskforce has created legal hurdles and conflicts that may unnecessarily delay the operationalization of the National Land Information System.

It is the considered view of the Commission that it is not entirely necessary to proceed through a laborious exercise of attempting to amend a wide range of regulations or create new ones for purposes of electronic registration, considering that there hardly any provisions in the Laws relating to land expressly providing for manual format. Besides, it might be a lot more convenient to propose, through a miscellaneous amendment bill, an omnibus provision to open up all Laws that deal with land transactions by way of a new provision to the effect that **all applications** under the various land-related statutes are to be made in Electronic or manual form, as may be prescribed by the Registrar. Such a provision would be inserted in the Land Act, Survey Act, Physical and Land Use Planning Act, Environmental Management and Coordination Act, Sectional property Act, National Land Commission Act, County Government Act, Valuation Act and Rating Act, Stamp duty Act, Land Registration Act and any relevant laws.

The Commission's view is that focus on regulations under Section 110 of the Land Registration Act, 2012 would be the prudent way to proceed.

The Commission reiterates its support for the process and assures you that it will play its rightful role and supports participation of all stakeholders so that together we realize an efficient and effective transition towards an electronic platform for land administration and management. In this regard, we look forward to further engagement to fast-track the implementation of the electronic platform among other land reform initiatives.

Yours *Sincerely,*



GERSHOM OTACHI
CHAIRMAN



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

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Nairobi, KENYA

Ref. No. MOLPP/TFELTR/REGS/01

May 12, 2020

Mr. Gershom Otachi Bw'omanwa
Chairman
National Land Commission
P. O. Box 44417-00100
NAIROBI

Dear *Chairman,*

**RE: DRAFT REGULATIONS TO ENABLE ELECTRONIC LAND TRANSACTIONS,
REGISTRATION AND CONVEYANCING**

Reference is made to the subject matter and our letter Ref. No. MOLPP/ADM/CSO/1(317) of May 4, 2020 forwarding various draft regulations prepared by the taskforce on Electronic to enable electronic land transactions, registration and conveyancing (enclosed for reference).

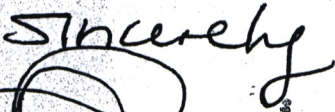
Further to the said letter, we forward two (2) more draft regulations prepared by the taskforce for your review as follows:

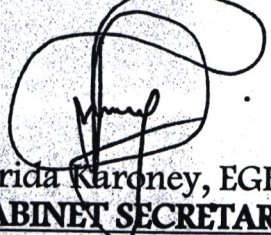
1. The Survey (Amendment) Regulations, 2020
2. The Stamp Duty (Amendment) Regulations, 2020

The Ministry through the taskforce wishes to engage the Commission on the draft regulations on May 15, 2020.

We propose a virtual meeting (Zoom) starting at 10.00 a.m. Please confirm your availability to the undersigned office on cslandskenya@gmail.com or 020 2717362 on the proposed date to enable us plan accordingly.

Thank you for your continued support and cooperation.

Yours 



Farida Karoney, EGH
CABINET SECRETARY

Copy: Chief Administrative Secretary
Principal Secretary

Encl



OFFICE OF THE CHAIRMAN

Website: www.landcommission.go.ke
Telephone: 020 2945000
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ACK Garden Annex Building
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P.O. Box 44417
NAIROBI

Ref: NLC/CHAIR 05-20/08

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



8th May, 2020

Dear *C. S. Farida Karoney*

PUBLIC NOTICE:
NOTIFICATION OF REGULATORY IMPACT STATEMENT ON PROPOSED LAND TRANSACTIONS (ELECTRONIC) REGULATIONS, 2020

I have learnt with dismay of the publication on page 24 of today's (8/7/2020) Daily Nation newspaper of a notice purported to be endorsed by National Land Commission.

By way of background, the first formal communication to me on this matter, annexing seven draft regulations, was your letter Ref: No. MOLLP/ADM/CSO/1/317 dated 4th May, 2020 received on the afternoon of 5th May, 2020. Hardly 24 hours later, a notice had been forwarded to the media for publication. A preliminary look at the proposed regulations show they are patently inconsistent with statute or plainly unconstitutional. Besides some of the proposed regulations purport to have been drafted by or in consultation with the National Land Commission. For example, the Land (Extension and Renewal of Leases) (Amendment) Rules 2020 indicate they are done by National Land Commission under section 13(2) of the Land Act, 2012. The National Land Commission has neither contemplated nor resolved to propose any regulations or originated any such idea. As such the public notice published in the newspapers today is misleading.

The Task force that formulated the proposed regulations was not set up jointly or in consultation so as to derive any mandate to propose regulations on the Commission's behalf or by yourself and National Land Commission. We note that the Task Force you set up was, according to the notice, required to complete it's work within 6 weeks from 13th March, 2020. The report from your Task force (that has clearly gone well beyond its mandate as indicated) which purportedly came up with the radical unconstitutional proposals underlying the draft regulations, is yet to be shared with us.

For instance, the proposed Land (Extension and Renewal of Leases) (Amendment) Rules 2020 preposterously purport to create a whole new legal regime that is clearly inconsistent with Land Act No.6 of 2012 on renewal of leases. It is difficult to conceive of the link between the substantive law on renewal of leases and the process of conversion of the procedure of registration from manual to electronic. In any event, only parliament can amend the substantive law in accordance with the Constitution.

We therefore wish to make it clear that the National Land Commission dissociates itself from the said advert as crafted and strongly protests the improper use of its name in the said advertisement.

I reiterate that National Land Commission fully supports the development and implementation of the electronic registration system that enhances transparency and ease of conducting business at the land registry. To this end the Commission welcomes, in a proper consultative manner, a mechanism to review and propose new regulations as provided in existing statutes. However, an advert that creates a false impression that the National Land Commission (which has a statutory and constitutional mandate to propose regulations) has proposed amendments to regulations when it has not even considered the matter, is plainly wrong.

We look forward to you remedying the egregious procedural flaws that may have the unfortunate consequence of delaying the much anticipated implementation of the electronic system at the Lands Registry.

Thank you for your continued support and cooperation.

Yours *Sincerely,*



Gershom Otachi Bw'Omanwa
CHAIRMAN



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

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Web: www.ardhi.go.ke
When replying please quote:

Ardhi House
1st Ngong Avenue
P.O. BOX 30450-00100
Nairobi, KENYA

Ref. No. MOLPP/ADM/CSO/1/317

May 4, 2020

Mr. Gershom Otachi Bw'omanwa
The Chairman
National Land Commission
P.O. Box 44417 – 00100
NAIROBI

Dear *Chairman,*

RE: REGULATIONS ON ELECTRONIC LAND TRANSACTIONS

The above matter refers.

As you may be aware, the Ministry constituted a taskforce to develop regulations that would facilitate electronic transactions under the land laws.

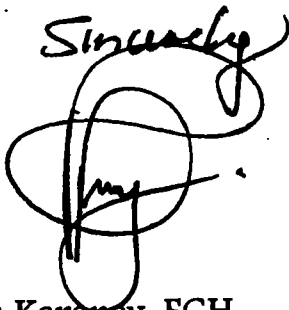
Accordingly, the taskforce has submitted drafts of the intended legislative instruments for review.

Enclosed for your review and commentary are;

- I. Land (Amendment) Regulations, 2020
- II. Land (Extension and Renewal of Leases) (Amendment) Rules, 2020
- III. Land (Allocation of Public Land) (Amendment) Regulations, 2020
- IV. Land Registration (Electronic Transactions) Regulations, 2020
- V. Survey (Electronic Cadastre) Regulations, 2020
- VI. Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020
- VII. Stamp Duty (Valuations) Regulations, 2020

Thank you for your continued cooperation and support.

Yours *Sincerely*

A handwritten signature in black ink, appearing to be 'Farida Karoney', written in a cursive style. The signature is positioned below the word 'Sincerely' and above the typed name.

Farida Karoney, EGH
CABINET SECRETARY



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
- Office of the Cabinet Secretary

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Nairobi, KENYA

Ref. No. MOLPP/ADM/CSO/1/317

May 4, 2020

Mr. Gershom Otachi Bw'omanwa
The Chairman
National Land Commission
P.O. Box 44417 – 00100
NAIROBI

Dear *Chairman,*

RE: REGULATIONS ON ELECTRONIC LAND TRANSACTIONS

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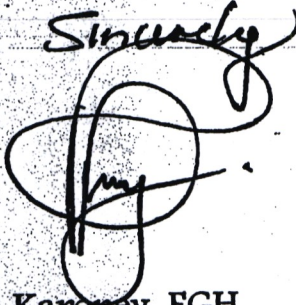
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- V. Survey (Electronic Cadastre) Regulations, 2020
- VI. Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020
- VII. Stamp Duty (Valuations) Regulations, 2020

Thank you for your continued cooperation and support.

Yours

Sincerely


Farida Karoney, EGH
CABINET SECRETARY

SCHEDULE OF MEETINGS

S/No	Date	In attendance
1.	29/5/2020	Cabinet Secretary and Commissioners
2.	30/5/2020	Joint Secretariat
3.	1/6/2020	Joint Secretariat
4	3/6/2020	Cabinet Secretary and Commissioners
5.	5/6/2020	Joint Secretariat (virtual)
6.	8/6/2020	Cabinet Secretary and Commissioners
7.	9/6/2020	Chief Administrative Secretary and Commissioners
8.	10/6/2020	Chief Administrative Secretary and Commissioners



REPUBLIC OF KENYA

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Ref. No. MOLPP/ADM/OCS/370

June 16, 2020

Mr. Gershom Otachi Bw'omanwa
Chairperson
National Land Commission
P.O. Box 44417 – 00100
NAIROBI

Dear

Chairman.

RE: PROPOSED AMEDMENTS TO VARIOUS REGULATIONS TO SUPPORT IMPLEMENTATION OF A NATIONAL LAND INFORMATION SYSTEM AND RELATED REGULATIONS IN LINE WITH EXISTING LAND LAWS

Reference is made to your letter Ref: NLC/CHAIR/6-20/20 dated Friday June 12, 2020 and the eight (seven physical and one virtual) consultative meetings between the Ministry and the Commission held from Friday May 29, 2020 to Wednesday June 10, 2020 (schedule of meetings attached)

The Ministry has noted the contents of the letter, the robust deliberations in the meetings and the consequent proposals for inclusion in the Proposed Draft Regulations and make comments as follows: -

- a) Proposals made with regard to Land (Allocation of Public Land) (Amendment) Regulations, 2020 have been taken into consideration with necessary modifications to align them with the existing laws.

The use of the phrase “national or county government” as proposed under item number 1, 2, 3, 6, 7, 8, 9 has been adopted under Regulations 3(3), 2(3) (b), 4, 4(b)(ii), 10 and 11 in the proposed Regulations attached herein.

The proposals under item 10, 11 and 12 on the use of the phrase “through the system” have been adopted with modification to read “electronic form” and payment made by “electronic means” in line with the Kenya Information & Communication Act, 1998.

Proposals made under item number 12 have been adopted and new forms done under the Regulations. **See the attached Regulations.**

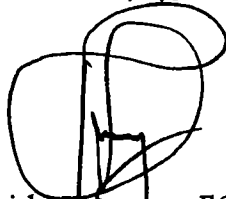
- b) Proposals made with regard to Land (Extension and Renewal of Leases) (Amendment) Rules, 2020 have been incorporated to the extent consistent with existing land laws.

We note that your proposals are not aligned to the amendments introduced to the Land Act, 2012, vide the Statute Miscellaneous (Amendment) Law, 2018. The proposals have been taken into consideration with necessary modifications informed by the Constitution and the existing land laws. **See the attached Regulations.**

- c) Proposals under Land (Amendment) Regulations, 2020, item number 1 to 30, have been adopted to the extent consistent with the Constitution and existing land laws. **See the attached Regulations.**
- d) Proposals on the Survey (Electronic Cadastre Transactions) Regulations, 2020, item number 1 to 10 have been noted and adopted with necessary modifications in line with the Survey Act, Kenya Information & Communication Act, 1998, the Business Laws (Amendment) Act, 2020 and existing land laws. **See the attached Regulations**
- e) Proposals on the Physical and Land Use Planning (Electronic Development Control and Enforcement system) Regulations, 2020 have been noted. The proposals will be used to enrich the Regulations under the subject that are with the Attorney General for cleaning and processing. The same will be subjected to public participation in the next financial year 2020/2021.
- f) Proposals made under the Land Registration (Electronic) Regulations, 2020 have been noted and have been adopted with modification as per the attached Regulations. **See the attached Regulations.**

Thank you for your advice, support and cooperation in this process.

Yours *Sincerely*



Farida Karouey, EGH
CABINET SECRETARY

Copy to: Chief Administrative Secretary

Principal Secretary

Encls.



REPORT OF THE WORKING GROUP TO REVIEW REGULATIONS FOR IMPLEMENTATION OF AN ELECTRONIC PLATFORM FOR LAND TRANSACTIONS.

Introduction

Pursuant to a meeting between the Chairman National Land Commission and the Cabinet Secretary Ministry of Lands and Physical Planning(MOLPP) on 29th May 2020 it was agreed a joint working group be established to explore options and a way forward regarding the draft regulations that had been prepared by the Ministry of Lands and Physical Planning. Subsequently the Chairman of NLC appointed a seven member team to engage with the team appointed by the Cabinet Secretary (MOLPP)

The Commission had raised concerns on how the regulations were prepared and to unlock the stalemate several proposals were put forth for consideration by the Cabinet Secretary Ministry of Land and the Chairperson National Land Commission.

The joint working group met on 30th May 2020 to unbundle the options as proposed and come up with proposals on what regulations can be adopted to enable the launch of the electronic platform by His Excellency the president system on the 1st of July 2020 and thereafter constructively review regulations to implement the National Land Information System (NLIS) pursuant to section 6(h) of the Land Act. The system will require to be operationalized by regulations and the meeting explored how best to anchor the system in law. The available options for consideration are proceeding with the regulations under Section 110 of the Land Registration Act, development of regulations under section 6(h) of the Land act or amending the land laws and laws affecting the system through an omnibus.

1. Draft Regulations under Section 110 of the Land Registration Act

Section 110 of the Land Registration Act empowers the Cabinet Secretary Ministry of Land to make regulations prescribing anything which maybe prescribed under the Land Registration Act. Regulations that maybe prescribed include;

- a) Forms to be used in connection with the Act
- b) The manner and form of registries of land, the procedures to be followed by the registries and hour they are to be open for business
- c) Procedure for the transfer of land from one category to another
- d) Particulars and format to be contained in a register or other document required to be kept under this Act; and
- e) Any other matter for the better carrying out the provisions of the Act.

Notably, regulations under Section 110 only affect registration functions under the Land Registration Act and they would not be sufficient to fully anchor the end to end system as currently developed by the Ministry of Lands. In the meeting held with the Working Group from the Ministry of Lands on 29th May 2020, the team from Ministry of Land acknowledged the shortcomings of the regulations developed under Section 110 of the Land Registration Act and proposed to have regulations developed under section 6(h) of the Land Act.

The system as developed and anchored under Section 110 of the LRA is simply an electronic land registration system to be solely administered and controlled by the Chief Land Registrar. The implication is that the system leaves out other key stakeholders in the sector including the NLC and county governments and other departments within MOLPP such as Survey and Physical Planning.

The National Land Commission is only a user like any other outside person interacting with the system. Section 110 in our view is not sufficient to address an end to end system and if the system is to be launched under Section 110 of LRA the Working Group proposes;

1. That MOLPP restricts itself to an electronic registration system and it is not legally tenable to venture into creating an end to end system because NLIS is anchored under Section 6(h) of the Land Act.
2. Audit the electronic system and draft regulations under Section 110 of the Land Registration Act and propose what will be included or exempt from the regulations bearing in mind the mandate of the National Land Commission and other key stake holders.
3. Given the short time available, the working group can also explore whether the Ministry of Lands would consider phasing the operationalization of the NLIS by starting with the electronic registration under Section 110 of the Land Registration Act.

The purpose of the regulations are simply to facilitate the establishment of an end to end system. The regulation are to elaborate on how the electronic platform will function. Therefore we cannot effectively talk about the regulations without talking about the system. Our concern as the Commission is what rights does the Commission have in the system and to what extent can execute our functions and access the system especially when our functions and mandate have been moved into the system. The regulations only recognize the Chief Land Registrar as the administrator and the National Land Commission is simply a user.

The Chief Land Registrar has power to suspend and terminate users from the system and to restrict access of users to the system. There are functions and workflows of the National

Land Commission already in the system and the National Land Commission cannot simply be designated as a user in the regulations.

2. Preparations of Regulations under Section 160 and Section 6(h) of the Land Act

The legal foundation for the National Land Information system is section 6(h) of the Land Act which mandates the Cabinet Secretary to co-ordinate the development and implementation of a National Land Information system (NLIS) in collaboration with the Commission. The mandate to develop a NLIS was initially a function of the National Land Commission under section 5(2)(c) of the National Land Commission Act before the said section was repealed and the mandate designated a joint function of the National Land Commission and the Cabinet Secretary Ministry of Lands through an amendment and subsequent introduction of section 6(h) of the Land Act. The Commission had developed a Land Information system in collaboration with the Ministry of Land before the repeal of section 5(2) of National Land Commission Act. The system as developed by the NLC had a Land Administration component, Valuation and Taxation component and Adjudication and Settlement component.

A Land Information Management system is ideally supposed to be a platform or infrastructure where all functions in land sector are done through an all encompassing system that is developed around specific functions and mandates of various persons, bodies and agencies in the land sector. A proper and legal LIMS would have various components in it such as planning, allocation, adjudication, settlement, survey which are all coordinated to work together and all leading to registration which is the last stage. LIMS is about conversion of paper to digital form to a database which will then constitute the digital data. The paper records are then moved to an archive to be used only for reference. It also further involves digitizing processes and activities in land transactions that take place in a daily basis.

The Ministry of land have embarked on the process of developing what is presumably a Land Information System from the tail end by digitizing the registries first instead of starting with Part Development Plans from where any allocation of public land starts or even for instance the Registry Index Maps for private land. LIMS envisages all the plans, maps, survey records, correspondence files and registers would all be converted to a digital form and that the mandate holders for instance National Land Commission as regards public land would input their records into this system and the County government wherein the survey and planning function vests would also input their records and data into this synchronized and coordinated system before Ministry of Land can input data on registration to enhance verifiability and accuracy of the system.

The Ministry of Land has already developed regulations under Section 110 of the Land Registration Act and the regulations have been challenged for being developed without the input of the National land Commission and for not being capable of anchoring an end to end system in law since the regulations under section 110 only address electronic registration.

There is very limited time to the launch of the system by the His Excellency the President and the immediate working group concerns were;

1. Whether it is practical or even possible to have regulations under section 6(h) in less than fifteen days.
2. Whether public participation can be done in the limited period as per the requirements of the law
3. Whether regulations can lawfully be developed under section 6(h)
4. Whether regulations under section 6(h) require public participation.
5. What is the most expedient way of implementing the system in the short term

Indeed the team has less than thirty days to develop regulations and engage all stakeholders through public participation and the period may not be enough. The suggestions proposed thus were to audit the existing draft regulations under Section 110 of LRA and see what can be changed to accommodate the mandate of the National Land Commission.

Notably however, the National Land Commission has not been involved in the development of the system and neither has there been any engagement with the software developers to understand how the system will work. This was identified as a priority area lest the National Land Commission blindly endorses the operationalization of a system whose functioning it unaware of.

3. Omnibus

The proposal here is to amend all the laws affecting the end to end system with a view of ensuring that the system is fully anchored in law. Members felt that the limited time available would not be sufficient to address any shortcomings in the laws and such review of the land laws and any other law affecting the system could only be done post 1st July 2020 after the launch of the NLIS.

The National Land Policy is being reviewed to inform law reform in the land sector and this will be the basis of the omnibus. Further as the law currently stands it does not stop electronic transactions and there is no immediate need for an overhaul of the law if the sole intention is simply to anchor an end to end system.

4. Way forward

1. Regulations are necessary to anchor the system in law and the first step is to review the existing legal framework to establish if there really is a need to develop any

regulations to anchor the end to end system and if yes what are the regulations to address.

2. Secondly the Commission audits the existing draft regulations and improve on them with a bias to ensuring that the National Land Commission has access and control of the system where its functions are affected by the system. The audit should also seek to make the draft regulations facilitative to the electronic system.
3. There is need to audit the draft regulations and all existing laws to see if there is anything in the regulations that would hinder the National Land Commission from having its functions and processes in the NLIS.
4. Address issues of general user access and control of the system.
5. Regulations before the office of the Attorney General on Physical Planning be availed for discussion by the Commission as a critical stakeholder since the Commission had no input in the preparation of the said regulations.
6. The proposed Regulations be restricted to operationalization of the electronic platform only and any consequential amendments to the substantive law be done later.

Conclusion

The team proposed for a hybrid system that is developed under section 110 of the Land Registration Act and Section 6(h) of the Land Act.

2ND REPORT OF THE WORKING GROUP TO REVIEW REGULATIONS FOR IMPLEMENTATION OF AN ELECTRONIC PLATFORM FOR LAND TRANSACTIONS.

INTRODUCTION

Further to the meeting between the Cabinet Secretary for Lands and Physical Planning and the Chairman, National Land Commission with respect to operationalizing electronic land transactions, it was resolved that a joint technical team be constituted to look at the options that are available with a view to advise the principals on the best way to move the process forward. This came as a response to an earlier advisory from the Chairman expressing reservations on the manner in which the process of effecting the electronic land transactions was being conducted. The advisory highlighted areas that the Commission noted were flawed particularly that the taskforce constituted by the Cabinet secretary had gone beyond the scope of its assignment by proposing regulations that the Commission should originate without concurrence. In some instances, the draft regulations have proposed amendments that are contrary to the Constitution and principal Acts. The advisory also gave direction on how the process could move forward.

The joint working team has so far held two meetings to explore the options available to enable the process proceed in conformity with the constitution and the rule of law. In the process of adjudicating this, the team from the Commission looked at the existing laws to determine if the laws and regulations existing can support the conversion of land transaction to electronic and it was clear that the laws as they exist with minor adjustments to provide for "electronic" whenever "documents" or "applications" are mentioned. This can enable the conversion without necessitating serious amendments to existing law. Having also received a demonstration of the system, it was clear that what is required are the workflows as per the existing laws and therefore it may not be absolutely necessary to make massive changes to the existing laws.

This advisory therefore is given within the understanding of Article 249 of the Constitution of Kenya that grants power and authority to the Commission in exercising its mandate to protect the sovereignty of the people, to promote constitutionalism and to ensure that those who work with them observe national values and principles which include the rule of law.

LEGAL POSITION ON PREPARATION OF REGULATIONS

Section 24(2) of the Statutory Instruments Act provides that a statutory instrument shall not be inconsistent with the provisions of the enabling legislation or of any act and the statutory instrument shall be void of that inconsistency. The draft Land (Extension and Renewal of Leases Amendment) Rules, 2020, Land (allocation of public land) (amendments regulations) 2020; and the Land (Amendment) Regulations 2020 are inconsistent with the Parent Statutes to the extent that they purport to amend the Land Act under Sections 12 and 13. The Regulations purport to vest functions and mandate of the National Land Commission on the Cabinet Secretary MOLPP and they are void for purposes of the said inconsistency since sections 12 and 13 of the Land Act have not been amended to vest such functions on the Cabinet secretary MOLPP. The regulations therefore usurp the Constitutional powers of Parliament to make and amend laws under Article

94 of the Constitution and they are unconstitutional to that extent. The position of the Commission is that in developing the draft regulations, the provisions of section 12 and 13 of the Land Act ought to be interpreted and implemented as they are and not as they ought to be.

Article 2(4) of the Constitution provides that any law that is inconsistent with the constitution is void to the extent of the inconsistency. Article 67 of the Constitution establishes the National Land Commission with a primary mandate to administer and manage public land. The draft regulations purport to vest specific functions of the National Land Commission on the Cabinet secretary in management and administration of public land and they are unconstitutional to that that extent.

Section 2 of the Interpretation and General Provisions Act defines a "regulation making body" as "any authorized authority by an Act of parliament to make statutory instruments". Statutory instruments is defined in section 2 of the said Act to include regulations. Section 12(11), Section 12(12) and Section 13(2) of the Land Act designate the National Land Commission as the Regulation Making Authority for purposes of those statutory provisions. The statutory Instrument Act makes no provision for the delegation of regulation making power and it is clear that statutory instruments can only be made by the Regulation Making body identified in the Act of Parliament. More strongly, NLC is an independent Constitutional Commission and attempts by MOLPP to unlawfully make regulations on its behalf offend the provisions of Article 249 that declare the Constitutional Commission not subject to the direction and control of any person or authority.

The draft Land (Extension and Renewal of Leases Amendment) Rules, 2020, Land (Allocation of Public Land) (Amendments Regulations) 2020; and the Land (Amendment) Regulations 2020 are therefore inconsistent with the Parent Act under Section 12(11), Section 12(12) and Section 13(2) of the Land Act to the extent that they have not been formulated by the National Land Commission which is the body mandated by the parent Act to formulate the regulations.

The draft Regulations offends the principle of public participation as set out under Article 10 of the Constitution. Public Participation is defined under Section 2 of the Statutory Instruments Act to mean "involvement by the regulation making authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to". The National Land Commission is a critical stakeholder in the land sector and the regulations as drafted directly affect the mandate of the National Land Commission. The National Land Commission has not been involved in the process of developing the draft regulations.

Similarly, the advice of the National Land Commission has not been sought and given as required by the provisions of Section 110 of the Land Registration Act and neither has the National Land Commission been involved in the development of the National Land Information Management System or the subsequent regulations as required by the provisions of Section 6(h) of the Land Act.

Inconsistencies between the system as developed and the draft regulations. The workflows in the system are not consistent with the law and the regulations are not consistent with the law or the workflows.

REGULATIONS TO BE ORIGINATED BY THE NATIONAL LAND COMMISSION:

As stated in the Commission's earlier correspondence to the CS, there are regulations that ought to have been originated by the Commission. These Regulations include the following:

1. The Land (Allocation of Public Land) Amendment Regulations 2020.
2. The Land (Extension and Renewal of Leases) (Amendment) Rules, 2020.
3. The Land (Amendment) Regulations, 2020 (where applicable).

Based on our audit findings, the above regulations were identified as the set of regulatory frameworks that raises fundamental questions of non-compliance with the law with regard to the originating authority. They also represent instances where the taskforce overstepped its mandate by purporting to alter sections of existing legislations.

Allocation of Public Land is an aspect of management of public land which is a mandate bestowed to the Commission under Article 67 (2) of the Constitution. Section 12 (12) of the Land Act, 2012 is very clear that the Commission should make regulations prescribing criteria for allocation of public land.

Originating regulations governing **Extension and Renewal of Leases** is also a prerogative of the Commission. Equally, the extension of lease is the function of the Commission either 'before or after expiry' of the term. Section 13 (2) of the Land Act, 2012 gives the Commission powers to make rules for the better carrying out of the provisions of the law.

In formulating **The Land (Amendment) Regulations** the CS exercised powers conferred under section 160 of the Land Act, 2012. The section of the law provides that the Commission or the Cabinet Secretary, where applicable, make regulations prescribing anything which may be prescribed under the Act and generally for the better carrying into effect the purposes and provisions of the Act. This provides for an all-encompassing provision of general powers to both the Commission and the CS to make rules and regulations pertaining to their respective functions.

In this instance the Commission has not formulated regulations to guide its operations, for example on issuance of license for temporary occupation of un-alienated public land, keeping and maintaining data base of all public land and an inventory of land based natural resources, conversion of tenures and other functions related to its constitutional and legal mandates.

The NLC technical working group, therefore, is of the view that the originating of the above regulations is flawed and do not meet the constitutional and legal threshold. The upshot of the foregoing is that the Commission should:

- 1) Originate the above three sets of regulations to guide and operationalize the electronic land transactions platform in accordance with Commission's specific mandate in management and administration of public land as provided in the existing laws.

Identify necessary consequential amendments in existing laws to facilitate seamless and efficient operations in the land sector.

COMMENTS ON SPECIFIC REGULATIONS

DRAFT THE LAND REGISTRATION (ELECTRONIC TRANSACTIONS) REGULATIONS, 2020

Introduction

Section 110 (2) of the Land Registration Act provides that:

“In making the regulations, rules or prescribing any matters required under this Act, the Cabinet Secretary shall take into account the advice of the Commission as required under the Constitution and such regulations or rules shall be tabled before Parliament for approval.”

As noted above the commission's input is imperative as noted from the use of the word “shall”. The preamble to the draft regulations read:

“In exercise of the powers conferred by section 110 of the Land Registration Act, 2012 the Cabinet Secretary for Lands and Physical Planning in consultation with the National Land Commission makes the following regulations.”

The functions of the commission in land registration are drawn from the Constitution of Kenya and various statutes. As will be seen from the table below it is important to provide for or map out the land registration processes that flow from the commission's constitutional and statutory functions.

Against this backdrop the commission has audited the draft regulations and makes the following proposals for inclusion.

TABLE

ITEM	COMMISSION'S ROLE	DRAFT REGULATIONS	PROPOSAL
1	S.6 LRA-MOLLP in consultation with NLC and county governments to declare registration units	Not provided for	Need to provide for and map the business processes

2	S.17(3) LRA-NLC shall be a depository of all cadastral maps relating to public land.	Not provided for	Need to provide for the business processes as the cadastral maps on public land will be amended from time to time.
3	Article 67 (2)(c)-NLC has a duty to advise the National Government on a comprehensive program for registration of title throughout Kenya.	Not provided for	Need to map the business processes.
4	S.14 NLC Act (lapse)-NLC has the powers to cancel illegal titles	Not provided for	Need to map the business processes because there is pending work (see S.26 & 23(3) of CAP 2-on what happens when the law lapse).Parliament may also extend the timeframe for Section 14.
5	Part VIII of the Land Act and the Land Value (Amendment) Act,2019 gives NLC the function of compulsory acquisition.	Not provided	Need to map the business processes as registration of acquired private land (vesting)will debit the public land account as well as affect the cadastral maps on public land.
6	Article 67 (2) (e) of the Constitution grants NLC the duty to investigate historical and present land injustices	Not provided	Need to map the processes as NLC can recommend the cancelling of certificates of title or lease that have been

			acquired illegally.
7	Authorized staff of the commission	Clause 2 defines "authorized staff" to mean an officer given administrative rights by the Chief Land Registrar.	We propose the inclusion of NLC personnel given the critical role they play on land registration as outlined above.

Positive Take Aways

It is worth noting that the draft regulations have also very positive provisions that we should support such as:

- a) Clause 13 gives NLC and MOLPP power to jointly establish the Electronic Appeals Standing Committee to hear appeals by aggrieved parties under the regulations.
- b) Clause 22 & 27 proposes backups of manual records where the system fails or where staff needs to make reference to primary manual documents.
- c) Clause 25 provides for electronic certificates of title or lease. This is impressive given the myriad cases of forged physical certificates of lease and title and attendant consequences.

DRAFT SURVEY (ELECTRONIC CADASTRE TRANSACTIONS) REGISTRATION, 2020

In accordance with section 8(a) of the Land Act 2012, the Commission is mandated to 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. It is therefore necessary that the Commission be notified when maps are amended so that the public land database will be updated.

Existing Regulations	Proposed Electronic Regulations	Commission Proposal	Justification of Position
2	Definition "Authorized User" – Any one authorized to carry out survey and	Should be expanded to include surveyors of the NLC	NLC Consumes survey products and should be allowed to access survey data

		submit under the principal Act		
			Require an express provision describing the manner and form of access that the NLC & County Governments will access to the System through	NLC & County Government are partners with the Ministry not just a stakeholder and has functions that support the Ministry
		Director has quite a host of functions in the system as captured in various places in the regulations	Being a system, many of these functions should be assigned to different users	The Director should retain the overall functions as prescribed in the principal Act but the operationalization within the system context should allow a hierarchy of users
18		On sealing the cadastral map the Director shares with DLA and NLC	Include County Governments in the notification – devolved function	Survey has components that were declared devolved under the Constituion
19		Submission of data to Chief Land Registrar	Add a new part (Part X) to define the manner and form through which the Director will share cadastral maps on public land created by surveys	The LRA Section 17 requires the Director to share cadastral maps on public land to the NL
SR6		(ii) date of calibration of chain	Should be removed	The chain is no longer used. It should be reworked to cater for new survey techniques and instrumentation
Second Schedule		The NLC has been pointed out as a partner but has not been granted	Have the CS and Chairman have shared overall roles of	The system is collaboratively built by the Ministry and NLC and should reflect this

	commensurate roles in the system	administering the system	across the entire terms and conditions of use
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DRAFT PHYSICAL AND LAND USE PLANNING (ELECTRONIC DEVELOPMENT CONTROL AND ENFORCEMENT SYSTEM) REGULATIONS, 2020

1.0 Introduction

This advisory is issued on the basis of Article 249 of the Constitution of Kenya that grants power and authority to the commission in exercising its mandate to protect the sovereignty of the people, to promote constitutionalism and to ensure that those who work with them observe national values and principles. The Attorney General advisory 2016 (herein attached) states that the constitution gives the NLC the first say on all matters concerning land, policy, management, use taxation and registration of titles. Further, the commission is obligated to ensure that all state organs and state officers they deal with observe the National values and principles which include the rule of law. Further, Article 67(2)(h) of the constitution empowers the Commission to monitor and have oversight responsibilities over land use planning throughout the country.

2.0 General concerns

1. The commission notes that the Regulations to operationalize the physical and land use planning Act 2019 are not yet in place.

It is advisable that the regulations **be prepared and finalized in a participatory manner and with adequate consultation** with the Commission because it is these regulations that anchor the e-transaction.

2. The e-regulations ought to recognize planning and development control functions and responsibilities that have been assigned in other statutes like section 111 of the County

Governments Act and sections 20, 36 (emphasis section 20(1)(d) of the Urban Areas and Cities Act. These regulations have however consolidated development control responsibilities in the Director General and the County Director of Physical and Land use planning yet most development control activities occur in urban areas, and municipalities which so far have been established in Kenya.

3. it is essential to synchronize these regulations with the Draft land amendment regulations 2020 particularly clauses 14 ,15,16,17 as read together with sections 16, 17, 18,19 and 20 of the principal regulations dealing with the processing of subdivisions, amalgamation change or extension of user and building plans on both freehold and leasehold land.

3. The constitution of Kenya 2010, introduced the element of monitoring and oversight of land use planning and allocated this responsibility to NLC. The system that has been institutionalized in the e transaction regulations lock out NLC thus jeopardizing its responsibility in monitoring and overseeing the full cycle of land use planning. This goes against section 9(a-d) of the principal act. The regulations therefore should clearly embed monitoring and oversight by the commission in the system.

3. Specific concerns

Existing regulations	Proposed Electronic Regulations	Commission	Justification for the proposal

<p>“”</p>	<p>Sec. 4 (1) The Director-General shall maintain in the system, an electronic database for the –</p> <p>(i) approved physical and land use plans in accordance to provisions of the First and Second Schedules of the Act;</p> <p>(ii) development control instruments including handbooks, codes, zoning ordinances, policy statements, guidelines, circulars and manuals;</p>	<p>This module Should have a segment for NLC</p> <p>The NLC will maintain in the system monitoring frameworks and oversight parameters as provided for in section 9(c) of the principal act</p>	<p>1. Section 9 of the principal act reinforces the monitoring and oversight role of the commission.</p> <p>2.section 33 of the principal act requires approved physical and land use plans to be submitted to Director general and NLC</p> <p>3. section 35 of the principal act provides that progress reports on implementation of various categories of plans shall be submitted to NLC and the Cabinet secretary.</p> <p>Development control is an element of plan implementation</p>
	<p>Sec.14(3) (3) All</p>	<p>-The regulations</p>	

	<p>applications for development permission shall be accompanied by supporting documents including –</p> <p>(i) Title Deed, Certificate of Lease or any legal ownership documents and a current search;</p> <p>(ii) Written consent in accordance to section 58(4) of the Act;</p> <p>(iii) Geo-referenced Cadastral map, sectional plans or other filed plans;</p> <p>(iv) Scheme plans/building plans in accordance to submission</p>	<p>could provide for ESIA certificate as one of the documents to be submitted. This should be done in advance to reduce unnecessary red tape</p> <p>- consent from land control board be one of the attachments for applications involving subdivision of agriculture land and change of user .</p>	<p>Third schedule of the principal act</p> <p>4.Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment.</p> <p>3. If any development application requires subdivision or change of user of any agricultural land, the county government shall require the applicant to obtain consent from the relevant Board</p> <p>This has been causing unnecessary delays in the development permission process</p>
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	<p>guidelines, approved standards and specifications.</p> <p>(v) Public Notification (where applicable) in accordance to section 58(7)(8);</p> <p>(vi) Planning Brief (where applicable)</p>		
	<p>Sec 17 2(ii and sec.18</p>	<p>Its necessary to clarify what happens if an application relates to the jurisdiction of a municipality</p>	
	<p>Sec 18 ii) appoint members of the committee who shall include –</p> <p>a. Chief Officer in charge of Physical and Land Use Planning or</p> <p>a designated representative who shall be</p>	<p>-Include county Director of agriculture as well as those listed in section 60 of the principal act</p> <p>-Include NLC representative at the county level</p>	<p>Development applications include subdivision and change of user of agriculture land.</p> <p>Regulation 16(2)(c) of regulations to the land act 2017</p>

	<p>the chairperson;</p> <p>b. City or municipal director of physical and land use planning</p> <p>or designated representative;</p> <p>....</p>		
	<p>Sec 19(1). The Cabinet Secretary shall approve or decline applications for prescribed projects of strategic national importance in accordance with Section 69(4) of the Act;</p>	<p>1. Provide a segment for NLC to be in the technical committee that reviews applications prescribed as projects of strategic national importance.</p> <p>(this may require that the regulations for the principal act details this)</p> <p>2. the decision to approve or disapprove to be communicated</p>	<p>-The attorney general in the advisory advised that NLC should be involved throughout the process to avoid raising issues when a matter has been concluded.</p> <p>-The NLC is required to prepare status reports on implementation of plans and development control sec. 9(b)</p> <p>The Commission will need this information to update its inventory of public land</p>

		by the CS and NLC to receive this decision	
	<p>Sec.20(1) A consultant who receives approval decision with conformance conditions shall –</p> <p>(i) Appoint qualified and authorised user as sub-sub-consultant and share the conformance conditions to be fulfilled;</p> <p>(ii) Instruct the sub-consultant to prepare secondary applications for the purpose of –</p>	<p>This section needs to be clear on who appoints the sub consultants.</p> <p>Can the registered owner also receive a copy of the approval so that they can recruit an appropriate consultant for the next stage of implementation</p>	<p>There is need to safeguard developers from unscrupulous consultants who may hold them at ransom.</p>
	<p>Sec. 22 issuance of development permission</p>	<p>The regulations should clarify to whom the decision will be</p>	<p>This safeguards the developer or registered owner from consultants who may become uncooperative along the way.</p>

		<p>communicated to.</p> <p>We propose that this decision be communicated to the applicant (consultant) with a copy to the registered owner or developer. As well,</p> <p>Copy of development permission granted should be communicated to NLC</p>	<p>The NLC is required to prepare status reports on implementation of plans and development control sec. 9(b)</p>
	<p><i>Sec.24(2) The registered owner of a property carrying out the development shall not proceed with the development unless issued with a copy of the inspection report and interim certificate authorising progress.</i></p>	<p>Commit the inspecting officer to file their inspection report within 24 hours (strict timelines)</p>	<p>This will safeguard the developer from undue delays</p> <p>This is not addressed in the regulations</p>

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

Can the system have an interface with licensing authorities for quick confirmation

Third schedule

Terms and conditions of use

3(v) The Cabinet Secretary reserves the right to suspend the system in whole or in part in the circumstances where a significant breach of security has occurred or that a security system has failed that compromises or that could compromise the integrity or security of the system's databases or service until such security breach or failure has been rectified.

For checks and balances, there should be consultation and or notification of relevant actors in the sector. A case in point is the recent attempt by the Director General of Nairobi metropolitan services to suspend the e- transaction system in the city

8 (ii) The Ministry reserves the right to change and adjust these terms and conditions without any further reasons as long as it is necessary due to legal adjustments or technical progress

it may be useful that the ministry also should notify and consult the authorized users.



**ATTENDANCE LIST OF THE CONSULTATIVE MEETING BETWEEN THE MINISTRY OF LANDS AND PHYSICAL
PLANNING AND NATIONAL LAND COMMISSION**

MAY 29, 2020








S/NO	NAME	ORGANIZATION	DESIGNATION	CONTACTS	SIGNATURE
1.	Farida Karoney	MOLPP	CS	0722518689	
2.	Gerishum Otachi	NLC	Chairman	0721380533	
3.	Reginald Okumu	NLC	commissioner	172-145-6365	
4.	AZISTER MURIMI	NLC	COMMISSIONER	0722650431	
5.	Hon. S. K. Kambi	NLC	Commissioner	0722616161	
6.	TOM ABUTHA	MOLPP	DLSC	0781628332	
7.	Clarah Ketyanya	MOLPP	CLRO	0722284081	
8.	Anette Omwoyo	KLRC	PLO	0700484811	



1st Meeting.

**ATTENDANCE LIST FOR THE SECOND MEETING BETWEEN MINISTRY OF LANDS AND PHYSICAL
PLANNING AND NATIONAL LAND COMMISSION ON MAY 30, 2020 AT 8TH FLOOR BOARDROOM,
ARDHI HOUSE**

S/NO	NAME	ORGANIZATION	CONTACT	SIGNATURE
1.	James Nombi	KLRC	0725 12 8903	
2.	Julius K. KAHINDI	MOLPP	0725-77 9875	
3.	Clarah Ketyanya	MOLPP	0722 284 081	

4.	Dr. Rose Katur	NLC	0722742353	RKatur
5.	CHARLES KAGEMA	NLC	0722997748	
6.	BRIAND IKOL	NLC	07229543702	
7.	EDMOND GICHUHO	NLC	0720793772	
8.	MARY MACHARIA	NLC	07001661455	
9.	Dr. Samuel NTHUNI	NLC	0722218533	
10.	Solomon Muthira	NLC	0727552236	
11.	Annette Omayo	KLRC	0700484811	
12.	Imphosa Aelias	KOLPP	0720712	
13.				
14.				



**ATTENDANCE LIST OF THE CONSULTATIVE MEETING BETWEEN THE MINISTRY OF LANDS AND PHYSICAL
PLANNING AND NATIONAL LAND COMMISSION ON JUNE 1, 2020 AT 8TH FLOOR BOARDROOM, ARDHI
HOUSE AT 10.30 AM**

2nd Meeting.

S/NO	NAME	ORGANIZATION	DESIGNATION	CONTACTS	SIGNATURE
1.	James Nembu	KLRC	SNO	0725128903	
2.	Tom Arbuta	MoLPP	DESC	0721628302	
3.	Edmond Gichuru	NLC	DDATE	0720793712	
4.	Brian Ikol	NLC	Ag. DLAFE	0727513702	
5.	Charles Kagema	NLC	County Coordinator	0720957748	
6.	Rose Kitur	NLC	DD/LUP	0722742833	
7.	Clarah Ketyenya	MoLPP	CLRO	0722284081	
8.	JULIUS-K. KATHINSI	MoLPP	PLS	0725-779875	



MEETING BETWEEN THE MINISTRY OF LANDS AND PHYSICAL PLANNING,
NATIONAL LAND COMMISSION AND JINAM - JUNE 3, 2020

S/No	Name	Organization	E-mail	Cellphone
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	Gershon OTHACH	NLC - Chairman	andicty@gmail.com	0721380533
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	Hon. S.K. Karungu	NLC - Commissioner	Karungu@NLCUJ.com	07261567
	ALISTER MURIMU NLC	Commissioner	alistermurimu@gmail.com	072265043

3rd MEETING BETWEEN MINISTRY OF LANDS AND PHYSICAL PLANNING
AND NATIONAL LAND COMMISSION

JUNE 8, 2020, 8TH FLOOR BOARDROOM

Serial	Name	Organization	e-mail	Cell phone
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2.	Gershon Otiatchi	Chair NLC	andicty9@gmail.com	0721 380533
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4.	Hari Samuel Karungu	NLC	karungu@trivisa.co	0722 675677
5.	JAMES K. TUITOEX	NLC	jk_tuitoek@yahoo.com	0724 849662
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4TH MEETING BETWEEN THE MINISTRY OF LANDS AND PHYSICAL PLANNING
AND NATIONAL LAND COMMISSION

JUNE 9, 2020

ON NLMIS OVERVIEW TO APPRECIATE SYSTEM

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5TH MEETING BETWEEN THE MINISTRY OF LANDS AND PHYSICAL PLANNING
AND NATIONAL LAND COMMISSION

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