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THE SENATE

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COMMITTEE	lands
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TWELFTH PARLIAMENT
SECOND SESSION, 2018

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE PHYSICAL PLANNING BILL
(NATIONAL ASSEMBLY BILLS NO. 34 OF 2017)

copy
recommended for
tabling.

EP
14/09/18

Rt. Hon. Speaker
You may approve
for tabling.
07/09/18

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

September, 2018

Approved
J. M. M. M.
17/8/2018

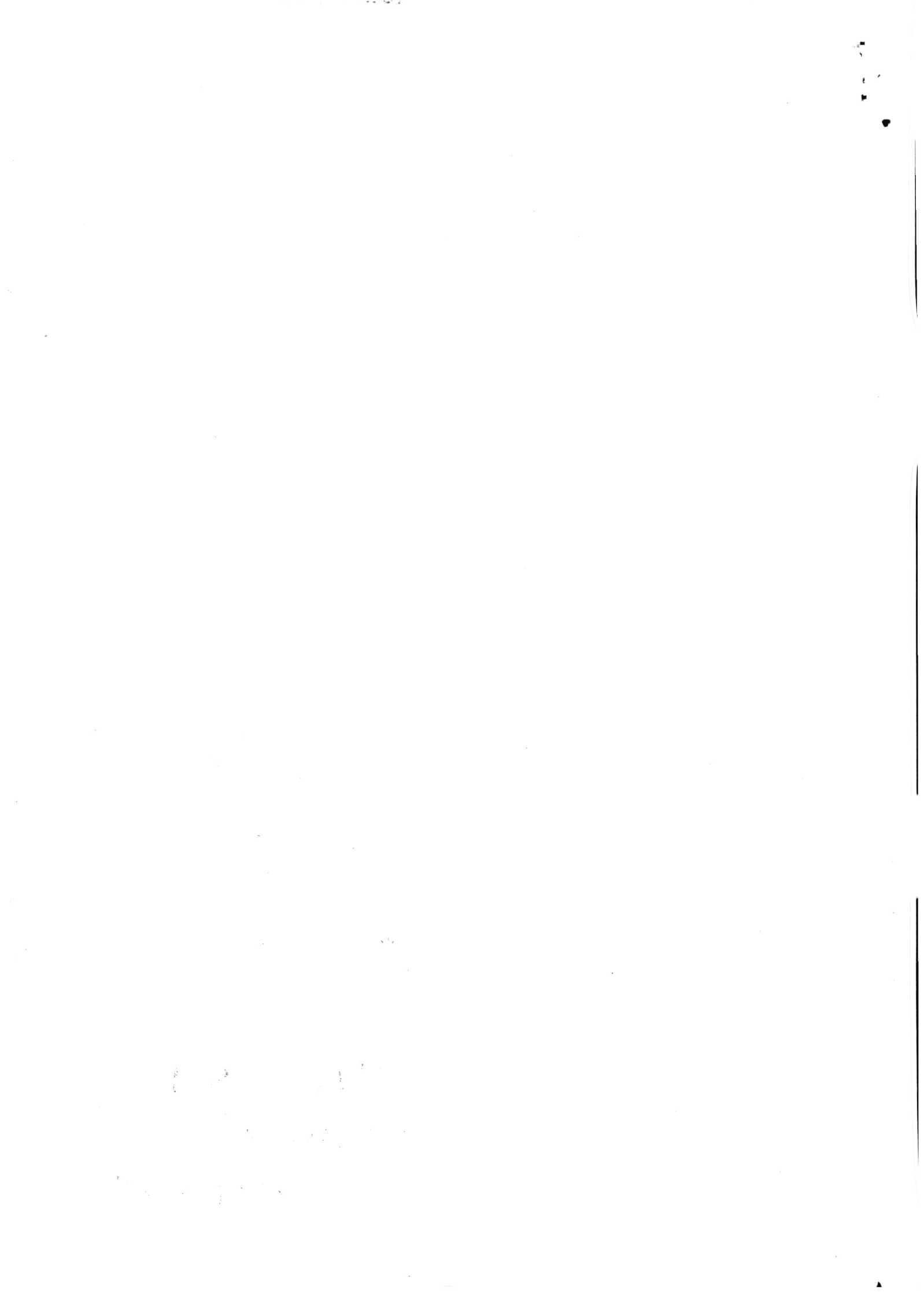


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PREFACE

Establishment of the Committee

The Standing Committee on Land, Environment and Natural Resources is established under the standing order 212(3) of the Senate Standing Orders. The mandate and the functions of the committee are set out under the Second Schedule to the Senate Standing Orders to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Membership of the Committee

The Committee is comprised of the following members:-

- | | |
|---------------------------------------|---------------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |
| 5. Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member |
| 6. Sen. Halake Abshiro, M.P. | - Member |
| 7. Sen. Boy Issa Juma, M.P. | - Member |
| 8. Sen. (Arch.) Slyvia Kasanga, M.P. | - Member |
| 9. Sen. Mwaruma Johnes, M.P. | - Member |

Mr. Speaker,

The Physical Planning Bill, National Assembly Bills No. 34 of 2017 seeks to provide for the planning, use, regulation and development of land as it seeks to give effect to Article 66 of the Constitution which provides for regulation of land use and property as follows—

(1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

(2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

The Bill also seeks to repeal the Physical Planning Act, No. 6 of 1996.

The Committee considered the Bill at length, conducted public participation and deliberated on the numerous submissions received. Based on the deliberations and public participation, the Committee will present a raft of amendments with the view of strengthening the provisions of the Bill for consideration by this House.

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Mr. Victor Bett, Mr. Mitchell Otoro and Mr. Ahmed Odhwa for the support extended to it in the conduct of the public hearings and in fulfilling its mandate. Further it wishes to thank stakeholders who made both written and oral submissions such as the Ministry of Lands and Physical Planning, the Ministry of Transport, Infrastructure, Housing and Urban Development, the National Land Commission, the National Environment Management Authority, the Kenya Wildlife Service, the National Construction Authority, the Architectural Association of Kenya, the Town and County Planners Association of Kenya, the Kenya Institute of Planners, the Institute for Social Accountability and the Institution of Surveyors of Kenya.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 137, to present a Report of the Standing Committee on Land, Environment and Natural Resources on the Physical Planning Bill, National Assembly Bills No. 34 of 2017.

Signed.....

Date..11-09-2018

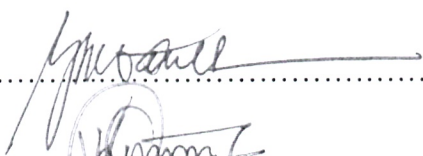
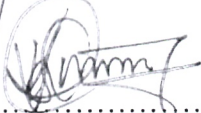

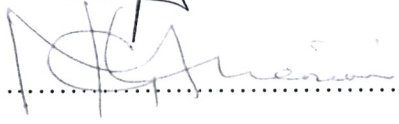
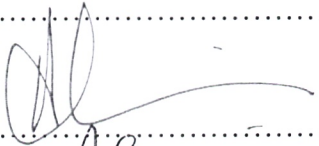
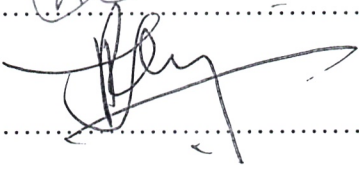
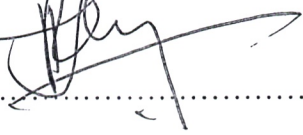


SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**

**ADOPTION OF THE REPORT OF THE SENATE STANDING COMMITTEE
ON LAND, ENVIRONMENT AND NATURAL RESOURCES
THE PHYSICAL PLANNING BILL,
NATIONAL ASSEMBLY BILLS NO. 34 OF 2017**

We, the undersigned members of the Senate Standing Committee Land, Environment and Natural Resources, do hereby append our signatures to adopt the Report-

1. Sen. Mwangi Paul Githiomi, M.P. 
2. Sen. Prengei Victor, M.P. 
3. Sen. Godana Hargura, M.P. 
4. Sen. George Khaniri, MGH, M.P. 
5. Sen. Ndwiga Peter Njeru, EGH, MP. 
6. Sen. Halake Abshiro, M.P. 
7. Sen. Boy Issa Juma, M.P. 
8. Sen. (Arch.) Sylvia Kasanga, M.P. 
9. Sen. Mwaruma Johnes, M.P. 

CHAPTER ONE

INTRODUCTION

1.0 Background

The Physical Planning Bill, National Assembly Bills No. 34 of 2017 is sponsored by, Sen. Kipchumba Murkomen, the Senate Majority Leader. It seeks to give effect to Article 66 of the Constitution which provides for regulation of land use and property as follows—

(1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

(2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

The object of the Bill is to provide for the planning, use, regulation and development of land. The Bill seeks to repeal the Physical Planning Act, No. 6 of 1996.

The Bill was published on 18th September, 2017, considered and passed by the National Assembly with amendments on 3rd May, 2018. It was read a First Time before the Senate on 16th May, 2018, and thereafter stood committed, pursuant to standing order 134(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 134 (5), invited submissions from members of the public on the Bill via an advertisement on the Standard Newspaper and the Daily Nation Newspapers. (See annex I copy of the advert)

1.1 The Object of the Bill

The object of the Bill is to provide for the planning, use, regulation and development of land, in the process repealing the Physical Planning Act, No. 6 of 1996. The Bill seeks to give effect to Article 66 of the Constitution which provides for regulation of land use and property as follows—

(1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

(2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

1.2 Overview of the Bill

The Bill provides as follows-

1.2.1 Objects of the Bill

The main object of the Bill is to make provisions for—

- (a) preparation and implementation of physical plans at all levels of government;
- (b) administration and management of physical planning in Kenya;
- (c) procedures and standards for development, control and regulation of physical planning and land use;
- (d) control and regulation of land use and physical planning;
- (e) the co-ordination of physical planning between by county governments;
- (f) dispute resolution with respect to physical planning; and
- (g) the functions of and the relationship between planning authorities.

1.2.2 Physical Planning Institutions

The Bill provides the following institutions with various functions in the implementation of its provisions:

I. National Physical Planning Consultative Forum

The Bill establishes the National Physical Planning Consultative Forum to be chaired by the Cabinet Secretary responsible for physical planning and includes members of both the National and county governments.

The main purpose of the Forum is to—

- (a) provide a platform for consultation on national physical development;

- (b) promote effective co-ordination and integration of physical development planning and sector planning;
- (c) advise on the mobilization of adequate resources for preparation and implementation of physical development and strategies; and
- (d) advise on strategic physical development projects of national, inter-county, county or transnational importance.

II. National Land Commission

The Bill provides that the National Land Commission shall—

- (a) in line with Article 67(2)(h) of the Constitution, have a monitoring and oversight role over physical planning in Kenya;
- (b) prepare, publish and publicise reports on the status of land use planning in Kenya;
- (c) develop a monitoring framework and formulate oversight parameters relating to physical planning; and
- (d) encourage the use of traditional dispute resolutions mechanisms in land use planning.

III. Cabinet Secretary

The Bill provides that the Cabinet Secretary responsible for physical planning shall—

- (a) formulate a national policy on physical planning;
- (b) issue policy statements, guidelines and circulars on aspects of physical planning;
- (c) approve national physical development plans; and
- (d) co-ordinate the national and county levels of planning.

IV. County Executive Committee

The Bill provides that the County Executive Committee member responsible for physical planning in each county shall—

- (a) formulate county policy on physical planning;
- (b) monitor and oversee technical physical planning functions at county level; and
- (c) promote the integration of county physical planning functions and sectoral planning levels.

V. Other Physical Planning Offices

The Bill also establishes the office of the **National Director of Physical Planning** whose key function is to advise the national government on strategic planning matters that impact on the whole country. At county levels, the Bill establishes the office of the **County Director of Physical Planning** and confers on it the role of advising county governments on physical planning matters.

1.2.3 Physical Development Plans

I. National Physical Development Plan

The Bill provides for the formulation of the National Physical Development Plan by the Cabinet Secretary responsible for physical planning and the National Director of Physical Planning. The Plan is meant to define strategic policies for the determination of general direction and trends of physical and sectoral development in Kenya and to provide a framework for the use and development of land. It is meant to cover an implementation period of twenty years but may be reviewed after ten years or on need basis. The Bill prescribes the objects of the Plan, the procedure with respect to its formulation, its contents, its approval process, including approval by Parliament, and its implementation.

II. Inter-County Joint Physical Development Plan

The Bill also provides for the formulation of Inter-County Joint Physical Development Plans by two or more counties. This Plan would be formulated by an Inter-County Joint Physical Planning Development Committee comprising of county executive committee members responsible for physical planning in each participating county and chaired by the National Director of Physical Planning. The plan would be restricted to the participating counties and is meant to provide common physical planning policies for the counties involved. It is also required to define its scope and geographical area. The Bill requires the Plan to be published and for public participation to be carried out before its finalization. The Bill further requires the Plan to be approved by the relevant County Assembly and the Cabinet Secretary and thereafter to be adopted jointly by the governors of the respective counties.

III. County Physical Development Plan

The Bill mandates each county government to prepare a County Physical Development Plan every ten years. The Plan, which is required to be in conformity with the National Physical

Development Plan and any relevant Inter-County Physical Development Plan, shall, among others, —

- (a) provide an overall physical development framework for the county;
- (b) guide rural development and settlement;
- (c) provide a basis for infrastructure and service delivery; and
- (d) identify the proper zones for industrial, commercial, residential and social developments.

The Bill provides that public participation be undertaken on the Plan and that it be approved by the respective county assembly before it is published and becomes operational.

IV. Local Physical Development Plan

The Bill mandates county governments to prepare a Local Physical Development Plan for each city, municipality, town or unclassified urban area within their respective counties. The Plan would, among others, provide —

- (a) for zoning, urban renewal or redevelopment;
- (b) for the regulation of land use and land development;
- (c) for the operationalisation of any Integrated City or Urban Development Plan; and
- (d) a framework and guidelines on building and works development in the city, municipality, urban area, or other smaller urban centres including local centres, and market centres.

The Bill also requires public participation be undertaken on the Plan and that it be approved by the respective county assembly before it is published and becomes operational.

Special Planning Area

The Bill gives county governments the power to declare a Special Planning Area where—

- (a) the area has unique development and environmental potential or challenges;
 - (b) the area is suitable for intensive and special development activity;
 - (c) development of the area significantly affects the immediate locality;
 - (d) development in the area raises significant urban design and environmental challenges;
- or
- (e) the declaration is meant to guide implementation of strategic national projects or guide the management of internally shared resources.

All new developments or developments approved within six months of the declaration of a Special Planning Area shall be suspended for a period of not more than two years or until a physical development plan in respect of the area is approved.

1.2.4 Development Control

The Bill restricts the development of buildings and land generally, requiring developers to get development permission from the relevant planning authority before undertaking any development. It also makes it an offence to carry out development without obtaining development permission. The offence is punishable by a fine of not more than Kshs. 500,000/= or imprisonment for not more than 2 months or both. The Bill further provides the process of application for development permission, stating that only the relevant qualified, registered and licensed professional shall prepare application documents and that the application be reviewed by all relevant authorities before approval. It also stipulates that all development permissions lapse when development fails to commence three years from their issuance.

The Bill allows the planning authorities to levy fees for applications for development permission. It also prohibits the issuance of licenses for the occupation, commercial or industrial use of any building which does not have development permission.

The Bill also mandates the Cabinet Secretary responsible for physical planning to give policy guidelines to public bodies pursuing projects of strategic national importance. It further allows county governments to, in consultation with the Cabinet Secretary responsible for national heritage and with just compensation to the affected owners, prohibits the demolition, alteration or extension of a building of special architectural value or historic interest.

The Bill however exempts the requirement for development permission for national defense and security developments and installations.

1.2.5 Enforcement

The Bill gives planning authorities the power to issue an enforcement notice to an owner, occupier, agent or developer of a property whose development does not comply with the provisions of the Bill on development permission.

1.2.6 Physical Planning Liaison Committees

The Bill establishes the following committees to hear appeals against the decisions of planning authorities.

I. National Physical Planning Liaison Committee

This Committee shall be established to advise the Cabinet Secretary responsible for physical planning on broad physical planning policies, strategies and standards and to hear and determine appeals against decisions of the national planning authority. It shall consist of—

- (a) a representative of the National Land Commission;
- (b) the Director of the National Environment Management Authority;
- (c) the Director-General of the Water Resource Management Authority;
- (d) the Director-General of the Kenya National Highways Authority;
- (e) the Chairperson of the National Construction Authority or a representative;
- (f) the Chief of the Kenya Defence Forces or a representative;
- (g) a representative of the Council of Governors;
- (h) a representative of the private sector;
- (i) a representative of architects in Kenya;
- (j) a representative of the Kenya Institute of Planners;
- (k) a representative of the Institute of Surveyors of Kenya; and
- (l) a representative of the Law Society of Kenya.

II. County Physical Planning Liaison Committee

This Committee is established in each county to advise the county executive committee member responsible for physical planning on broad physical planning policies, strategies and standards and to hear and determine appeals against decisions of the respective county planning authority. It shall consist of—

- (a) a representative of the Law Society of Kenya who shall be the chairperson;
- (b) a representative of the National Land Commission;
- (c) a representative of the Kenya Institute of Planners;
- (d) a representative of architects in Kenya;

- (e) a representative of the Institute of Surveyors of Kenya; and
- (f) two members representing the respective county chamber of commerce.

1.2.7 Provisions on Delegated Powers

The Bill gives the Cabinet Secretary responsible for physical planning the power to make regulations necessary for the operationalisation of the Bill.

1.2.8 Miscellaneous Provisions

I. Repeal clause

The Bill repeals the Physical Planning Act, 1996.

II. Transitional provisions

The Bill also provides that approvals for developments granted under the Physical Planning Act, 1996 shall be deemed to be approvals under the Bill once enacted, provided that the subject development does not fail to begin 24 months after the commencement of the Act. Similarly, applications for development under the current law shall be deemed to be applications under the Bill once enacted.

III. Pending disputes

The Bill finally provides that all disputes pending before the establishment of the national and county liaison committees shall be heard and determined by Environment and Land Court.

1.2.9 Schedules

The Bill also contains four Schedules as follows—

1. the **First Schedule** which provides the procedure of appointment of members of the National Physical Development Consultative Forum;
2. the **Second Schedule** which provides the contents of the National, Inter-County and County Physical Development Plans;
3. the **Third Schedule** which provides the contents of the Local Physical Development Plans; and
4. the **Fourth Schedule** which prescribes the matters which may be dealt with under development control and considerations to be made before granting development permission.

1.3 Consequences of the Bill

The Bill repeals the Physical Planning Act, 1996 and devolves some aspects of physical planning from the national level to the county levels in line with the Fourth Schedule to the Constitution. It also generally aligns the law on physical planning with the Constitution and other existing legislation.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

The Committee, pursuant to Article 118 of the Constitution and standing order 134 (5), invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper and Standard Newspapers on 14th June, 2018. On 19th and 21st June, 2018, the Committee met at the Red Cross Building, Ground Floor, Nairobi and received views on the Bill from stakeholders and members of the public. The Committee received oral and written submissions from —

1. Ministry of Lands and Physical Planning (MoLPP);
2. Ministry of Transport, Infrastructure, Housing and Urban Development (MoTIHUD);
3. National Land Commission (NLC);
4. The National Environment Management Authority (NEMA);
5. Kenya Wildlife Service (KWS);
6. National Construction Authority (NCA);
7. Town Planners Chapter - Architectural Association of Kenya (TPCAAK);
8. Town and County Planners Association of Kenya (TCPAK);
9. Kenya Institute of Planners (KIP);
10. The Institute for Social Accountability (TISA);
11. The Institution of Surveyors of Kenya (ISK);
12. Daniel Githira (Physical Planner);
13. Plan Onguso Malitinus Maina (MKIP);
14. Esther Atieno Were (Environmental Planner); and
15. Yvonne Mathenge-Edward (Environmental Planner).

2.1 Submissions from Stakeholders

The Committee received and considered the proposals from stakeholders on specific provisions of the Bill as follows-

(1) Preamble: Insertion of a preamble to the Bill

Proposal

Insert a Preamble as follows:

- 1) To bring into effect Article 66 of the Constitution of Kenya in respect of the States mandate to regulate land use and interests in and rights over land and property;
- 2) To facilitate the attainment of the principles of the Land Policy as provided in Article 60 of the Constitution of Kenya;
- 3) To facilitate the monitoring and oversight function over land-use planning by the National Land Commission as provided in Article 67 (2) (h) of the Constitution of Kenya
- 4) To facilitate the implementation of Article 68 of the Constitution of Kenya
- 5) Fourth Schedule Part 2 (8) of the Constitution of Kenya in respects of County Governments functions and powers over County Planning and Development
- 6) To provide a robust, comprehensive and responsive system of planning, land use regulation and regulations of investments in property.”

Response by Ministry of Lands and Physical Planning (MoLPP)

This is captured in Clause 3 of the Bill under Objects.

(2) Long title

Proposal 1

Delete the long title and substitute the same with the following:

“AN ACT of Parliament to give effect to Article 66, 68(b), 261 and the 5th Schedule of the constitution and make provision for the state to regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public

health, or land use planning and ensure investments in properties benefit local communities and their economies”

Rationale 1

To capture accurately the precise provisions and the letter and spirit of the Constitution.

Proposal 2

Delete the long title and substitute the same with the following:

“AN ACT of Parliament to effect article 66 and the fifth schedule of the constitution; to provide for planning, land use planning, and development of land, interests in and rights over property, and ensure that investments in property benefit local communities and their economies; and for connected purposes”

Rationale 2

To reflect the full scope of Article 66 of the Constitution.

Proposal 3

Delete the long title and substitute the same with the following:

“AN ACT of Parliament to give effect to Article 66(1) of the Constitution to make provisions for the planning, use, regulation and development of land and for connected purposes”

Rationale 3

Reason for legislation should be drawn from the Constitution.

MoLPP Response

The Bill gives effect to many provisions of the Constitution, including Articles 10, 60, 61, 66, 67, 68, 69, 186, 260, 261, the Bill of Rights, the Fourth and Fifth Schedule, related policies and practice among others. Including all of them in the title will make the title too clumsy.

Proposal 4

Amend the long title to provide for all matters included in the Bill.

Rationale 4

The long title is very important and must encompass all matters included in the Bill.

(3) Clause 1- Short title

Proposal 1

Delete the short title and substitute the same with the following:

“Land Use Planning and Property Regulation Act”

Rationale 1

The term “Land Use” is in line with the constitution whereas the term “Physical Planning” is not at all provided for or recognised under the Constitution. “Physical Planning” is therefore causing confusion and not in line with the letter and spirit of the Constitution.

Proposal 2

Delete the short title and substitute the same with the following:

“Planning and Land Use Regulation Act”

Rationale 2

To reflect the objects of land use planning as outlined in the Constitution (Article 66 and Schedule 5 – Part V).

Proposal 3

Delete the short title and substitute the same with the following:

“The Physical Planning and Integrated Development Act”

Proposal 4

Delete the short title and substitute the same with the following:

“The Land Use Planning Act”

Rationale 4

1. The term has no reference in the Constitution and the title “Physical Planning Bill” is not in line with Articles 66(1) and 67(2) (h), 68(b) and the Fourth and Fifth schedules of the Constitution.
2. The title is inconsistent with the integrated planning framework envisaged under sections 104(2), 107-111 of the County Governments Act 2012 and sections 36-42 of the Urban Areas and Cities Act 2011.
3. The National Land Policy at paragraphs 101-143, provides for “Land Use Planning” and not “Physical Planning”
4. The sessional Paper No.1 of 2017 on National Land use policy provides a framework for land use planning and not physical planning.

5. The Constitution in Article 260 interprets “land” to include—

- (a) *the surface of the earth and the subsurface rock;*
- (b) *any body of water on or under the surface;*
- (c) *marine waters in the territorial sea and exclusive economic zone;*
- (d) *natural resources completely contained on or under the surface; and*
- (e) *the air space above the surface;*

6) Sessional paper no. 3 of 2009 on the National Land policy para 104 & 105

The use and management of Land as the premier national resource cannot therefore be adequately planned within the context of physical planning.

MoLPP Response

Physical Planning is an amalgam disciplines that involves the organisation of space. The use of Land Use would be too limiting in scope and practice. Adopting the term “Planning” instead of physical planning will result in the loss the spatial aspect of the discipline as the term ordinarily refers to economic planning.

(4) The entire Bill

Proposal

Delete any reference to ‘physical planning’ and replace with ‘land use planning’ in the entire Bill.

Rationale

To align the Bill to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution.

MoLPP Response

Physical Planning is an amalgam disciplines that involves the organisation of space. The use of Land Use would be too limiting in scope and practice.

(5) **Clause 2- Interpretation**

Proposal 1

Amend the title from ‘interpretation’ to “definitions”.

Proposal 2

Amend the definition of the term ‘Cabinet Secretary’ to state as follows:

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to land use planning;

Rationale 2

To comply with Articles 66, 67 (2a), 68 (b) and the 5th schedule to the Constitution.

Proposal 2

Amend the definition of the term ‘building’ to exclude temporary and movable structures.

Rationale 3

To avoid bottlenecks in construction of small temporary structures including cowsheds, chicken cages, temporary tents etc.

Proposal 4

Amend the definition of ‘development’ to state as follows:

“development” means any land administration processes, any building operations, any engineering operations or mining operations in, on, under or over any land that have the eventual effect of bringing about material change in the density and use of any land and/or buildings, including;

- 1) any changes in the use of the land and/or buildings shall be deemed to constitute a development, including-
 - (a) change of use of rural and urban land;
 - (b) subdivision of rural and/or urban land for purposes of intensifying its use;
 - (c) amalgamation of rural and/or urban land;
 - (d) change of the use of a building;
 - (e) extension of use of land or buildings;
 - (f) the construction and use of buildings on land within the curtilage of a building, for any purpose incidental to the primary use of a building;
 - (g) the use and development of road reserves for purposes in addition to infrastructural functions.

- 2) any building operations upon, under or over any land, shall be deemed to constitute a development, including-
 - (a) alterations of the surface structure of land following landscaping;
 - (b) mining operations;
 - (c) any civil works linked to infrastructure development;
 - (d) the carrying out of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
 - (e) erection of fences of perimeters of any land or property;
 - (f) construction of new buildings;
 - (g) the construction and use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;
 - (h) alterations to internal structure of buildings;
 - (i) alterations to the external appearance of buildings;
 - (j) display of any advertisement on land and/or buildings.
- 3) any deposit of refuse, scrap or waste materials on land and/or buildings is deemed to be a change of use thereof, and consequently constitutes a development;
- 4) the holding of land for speculative purposes does not constitute use or development, but such lands will, for the purposes of this Act, attract development charges and levies as if they were developed in accordance to the operative plan for the area;
- 5) any other processes or activities as the Director-general may from time to time determine;
- 6) the following operations or uses of land shall not be deemed, for the purposes of this Act, to constitute a use or development for which a development permission is required-
 - (a) the carrying out for the maintenance, improvement or other alteration of any building of works which-
 - (i) does not affect the structural design of a building;
 - (ii) do not materially affect the external appearance of the building.
 - (b) the carrying out on land within the boundaries of a road by a local highway authority of any works required for the maintenance or improvement of the road;

- (c) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used.
- 7) any land administration processes, in so far as they anticipate change in intentions for the use of the land, shall, for the purposes of this Act, constitute a process for which a planning permission is required, and may include-
 - (a) allocation of unalienated public land;
 - (b) transfer of land ownership;
 - (c) conversion of land tenure from freehold to leasehold and vice-versa;
 - (d) renewal and/or extension of lease;
 - (e) processing of easements, way-leaves for provision of utility service infrastructure.

Rationale 4

To provide clarity for purposes of effective enforcement of development control provisions of the Bill.

Proposal 5

Amend the definition of the term ‘development’ to state as follows:

“development” means—

- (a) the making of any material change in the use or density of any buildings or land or the subdivision of any land which for the purpose of this Act is classified as Class “A” development; and
- (b) the erection of such buildings or works and the carrying out of such building operations, as the Cabinet Secretary may from time to time determine, which for the purposes of this Act is classified as Class “B” development: Provided that—
 - (i) the carrying out of works for the maintenance or improvement or other alteration, of or addition to, any building where such alteration or addition does not exceed 10 per cent of the floor area of the building measured on the date this Act becomes applicable to the area in which that building or land is situated;
 - (ii) the carrying out by a competent authority of any works required for the construction, maintenance or improvement of a road, if the works are carried out on land within the road reserves;

- (iii) the carrying out by any County Government or statutory body of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including breaking-open of any street for that purpose and the installation of services by such County Government or statutory body, shall not constitute development for the purposes of this Act:

Provided further that any County Government or statutory body shall within seven days, after completion of works carried out as in subparagraph (iii), restore the site to conditions that would not be injurious to users and the environment; For the avoidance of doubt, it is hereby declared that, for the purposes of this Act—

- (a) the deposit of refuse, scrap or waste materials on land involves a change of use thereof;
- (b) the use as two or more dwellings of a building previously used as one dwelling constitutes Class “A” development;
- (c) the erection of more than one dwelling or shop or of both dwelling and shop on one plot constitutes Class “A” development;
- (d) the display of any advertisement constitutes Class “A” development;
- (e) the use of any buildings or land within the curtilage of a dwelling for any purpose incidental to the enjoyment of the dwelling constitutes Class “A” development; “as in the existing Physical Planning Act of 1996”;

Rationale 5

To make the definition more accurate and comprehensive.

Proposal 6

Amend the definition of ‘Land use Planning’ to reflect “a broader framework for planning, management and development of land”;

Rationale 6

Land use planning is not a branch of physical planning but a broader framework for planning, management and development of land.

Proposal 7

Amend the definition of the term ‘land use planning’ to state as follows:

“land use planning” is the systematic process by which land and water potential, alternatives for land use, and economic and social conditions are assessed in order to select and adopt the best

land use options whose purpose is to select and put into practice those land uses that will best meet the needs of the people while safeguarding resources for the future;

Rationale 7

To make the definition more accurate and comprehensive.

Proposal 8

Delete the definition of the term ‘local physical planning development plan’ and replacing it as follows:

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

Rationale 8

To correct a typographical error.

MoLPP Response

Accept the proposal and correct the typographical error.

Proposal 9

Delete the definition of the term ‘local physical planning development plan’ and replace as follows:

“Urban Integrated Development Plan” means a plan for the area or part thereof of a city, municipal, town or urban council and includes a plan with reference to any trading or marketing centre;

Rationale 9

To comply with Article 184 of the Constitution and Part V of the Urban Areas and Cities Act.

Proposal 10

Amend the definition of the term ‘planning authority’ by deleting paragraph (b) and replacing it with (b) the County Government;

Rationale 10

To comply with section 104 (1) & (3) of the County Governments Act.

Proposal 11

Amend the definition of the term ‘planning authority’ to include chief officers charged with physical planning, director of county physical planning and sub-county planners among planning authorities.

Rationale 11

In the spirit of devolved functions.

Proposal 12

Amend the definition of the term ‘planning authority’ by including Urban City and Municipal Management Boards as planning authorities;

Rationale 12

Urban Management Boards, once established, are envisaged to be fully fledged institutions of management of urban areas with full charter and budget.

Section 13-14 of the Urban Areas and Cities Act establish Urban Management Boards which are planning authorities as provided under sections 20 & 21 of the said Act as follows:

20. Functions of a board

(1) Subject to the provisions of this Act a board of a city or municipality shall—

- (a) oversee the affairs of the city or municipality;
- (b) develop and adopt policies, plans, strategies and programmes, and may set targets for delivery of services;
- (c) formulate and implement an integrated development plan;
- (d) control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the city or municipality as may be delegated by the county government;
- (e) as may be delegated by the county government, promote and undertake infrastructural development and services within the city or municipality;
- (f) develop and manage schemes, including site development in collaboration with the relevant national and county agencies;

(g) maintain a comprehensive database and information system of the administration and provide public access thereto upon payment of a nominal fee to be determined by the board;

(k) monitor and, where appropriate, regulate city and municipal services where those services are provided by service providers other than the board of the city or municipality;

21. Powers of boards of cities and municipalities

(1) Subject to the Constitution and any other written law, the board of a city or municipality shall, within its area of jurisdiction—

(a) ensure the implementation and compliance with policies formulated by both the national and county government;

(b) make bye-laws or make recommendations for issues to be included in bye-laws;

(c) ensure participation of the residents in decision making, its activities and programmes in accordance with the Schedule to this Act;

Proposal 13

Amend the definition of the term ‘planning authority’ to state as follows:

“Planning Authority” means The County Government as provided for in the 4th Schedule Part 1/21 of the Constitution and County planning and development, including-

(a) statistics;

(b) land survey and mapping;

(c) boundaries and fencing;

(d) housing; and

(e) electricity and gas reticulation and energy regulation as provided in Part 2/8 of the Constitution;

Rationale 13

To make the definition more accurate and comprehensive.

Proposal 14

Amend the definition of the term ‘public purposes’ at paragraph (b) to remove ‘factories’ and ‘public housing’ from inclusion under public buildings.

Rationale 14

In professional practice (Planning), factories and public housing are never considered under public purpose.

Proposal 15

Review all definitions as terms are not comprehensive and appear sketchy (for instance it does not provide the 9 land-uses) and others refer to the defunct local authorities (for instance the description of the local physical planning development plans).

Rationale 15

To provide more clarity and for the avoidance of doubt in the interpretation of the Bill.

Proposal 16

Insert a new definition of the term ‘integrated development planning’ as follows:

“integrated development planning” means a process through which efforts of national and devolved levels of government and other relevant stakeholders are coordinated at local level, through which economic, social, environmental, legal and spatial aspects of development are brought together to produce a plan that meets the needs and sets the targets for the benefit of local communities.

Proposal 17

Insert a new definition of the term ‘map’ as follows:

“map” means a geographical representation of land which includes topographical maps, administrative boundary maps, sea charts, aeronautical charts and other thematic and special purpose maps, prepared in accordance to the provisions of the Survey Act, Cap 299.

Proposal 18

Insert a new definition of the term ‘Strategic Environmental Assessment’ as follows:

“Strategic Environmental Assessment” means a range of analytical and participatory approaches that aim to integrate environmental considerations into policies, plans and programmes and evaluate the inter-linkage with economic and social considerations”.

MoLPP Response

Accept the proposed amendment.

Proposal 19

Insert a new definition of the term ‘Director of County Physical Planning’ to perform functions similar to those of the national director within the county.

Proposal 20

Amend by inserting the following new definitions:

“architect” is a professional registered under relevant legislation of architects;

“agriculture use” includes land under crop farming and as defined in relevant agriculture legislation;

“building line/setbacks” means the required separation between a lot line (and/or right-of-way line) and a building or structure within which building is prohibited;

“building height” is the vertical distance from the lowest existing grade at the wall of the building to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitch or hip roof;

“cities” are as defined under the Urban Areas and Cities Act;

“community land” means land as defined in Article 63 of the Constitution;

“contractor” is that person or firm undertaking any building or civil works and registered under relevant legislation on construction works;

“County” means the division of the territory of Kenya specified in the First Schedule as provided for in Article 6(1) of the Constitution;

“County Executive Committee Member” means the CECM responsible for land use planning by which the executive authority of the county is vested in, and exercised by, a county executive committee as provided for in the Constitution Article 179;

“County Government” means the division of the territory of Kenya specified in the First Schedule as provided for in Article 6(1) of the Constitution and as provided for in Article 176.

(1) There shall be a county government for each county, consisting of a county assembly and a county executive;

“development application” means an application to develop land;

“development permission” means a development permission granted by a county to an applicant to develop land;

“education use” includes formal schools (pre-primary, primary, secondary), colleges, university, research institutions, village polytechnics, special education institutions;

“energy generation plant” includes hydro power, geothermal, thermal, wind, solar, nuclear plants;

“enforcement notice” means a notice served by a local authority under section 38 on the owner, occupier or developer of the land requiring that owner, occupier or developer to comply with provisions of that section;

“engineer” is that person or firm providing engineering services and registered under relevant legislation on engineering;

“Environmental Impact Assessment expert” is that environmental expert registered under relevant legislation on environment;

“floor area”, is the building total floor area;

“forests” are those public and private forest areas as defined in relevant legislation on forestry;

“function” includes power and duties;

“health facilities” includes hospitals, health centres, dispensaries and clinics or as defined in relevant health legislation;

“information and communication technology infrastructure” includes post offices, base stations, radio/TV stations;

“infrastructure land use development plan” means a land use plan showing the location, corridor network, wayleave, land budget and integrated land use for trunk infrastructure- electricity, oil/gas pipeline; water supply, sewerage, ICT cables etc. and in relation to fronting land uses;

“land” includes—

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;
- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface; as defined in the Constitution Article 260;

“land surveyor” is that person or firm providing land surveying services and registered under relevant legislation on land surveying;

“land valuer” is a person whose job is to estimate the value of land that is to be purchased.

“livestock use” includes land under livestock keeping and ranches;

“marine and fishing area” is a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values relating to marine life;

“mining” includes extraction of petroleum oil and gas, minerals etc. and as defined in relevant mining legislation;

“National Government” as provided for in Article 6(2) of the Constitution is the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation;

“natural resources” means the physical non-human factors and components, whether renewable or non-renewable, including— (a) sunlight; (b) surface and groundwater; (c) forests, biodiversity and genetic resources; and (d) rocks, minerals, fossil fuels and other sources of energy; as defined in Article 260 of Constitution and includes water bodies, marine waters and exclusive economic zone, rocks, minerals, fossil fuel and other sources of energy, airspace;

“owner”, in the case of freehold land means the person owning such land, and in the case of any land held under a lease for a period of not less than ten years, or for the natural life of any person or which is renewable from time to time at the will of the lessee indefinitely, or for periods which together with the first period thereof amount in all to not less than ten years, and includes any agent who receives rents or profits from any such persons and also any superintendent, overseer, or manager or any such owner of the freehold or lessee in respect of the holding on which he resides as such superintendent, overseer or manager;

“plinth”; is the lowest part of the wall of a building that appears above ground level, especially one that is formed of a course of stone or brick;

“plot coverage” is the ratio of building covered ground area to total plot area;

“plot ratio”, is the ratio of the building total floor area to total plot area;

“private land” consists of —

- (a) registered land held by any person under any freehold tenure;
- (b) land held by any person under leasehold tenure; and
- (c) any other land declared private land under an Act of Parliament as defined in Article 64 of the Constitution;

“property” is defined as in the Constitution Article 260 and includes any vested or contingent right to, or interest in or arising from land, or permanent fixtures on, or improvements to, land;

“public land” is—

- (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
- (b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;
- (c) land transferred to the State by way of sale, reversion or surrender;
- (d) land in respect of which no individual or community ownership can be established by any legal process;
- (e) land in respect of which no heir can be identified by any legal process;
- (f) all minerals and mineral oils as defined by law;
- (g) government forests other than forests to which Article 63 (2) (d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;
- (h) all roads and thoroughfares provided for by an Act of Parliament;
- (i) all rivers, lakes and other water bodies as defined by an Act of Parliament;
- (j) the territorial sea, the exclusive economic zone and the sea bed;
- (k) the continental shelf;
- (l) all land between the high and low water marks;
- (m) any land not classified as private or community land under this Constitution; and
- (n) any other land declared to be public land by an Act of Parliament— (i) in force at the effective date; or (ii) enacted after the effective date as defined in Article 62 of the Constitution;

“quantity surveyor” is that person or firm providing quantity surveying services and registered under relevant legislation on quantity surveying;

“quarry” means an area as defined in the relevant mining legislation

“rates”; is as defined in relevant legislation on rates and rating

“residential use” means housing or a home place for family occupation;

“riparian reserve” is that defined area of land around a water body that constitutes its larger ecosystem and as defined in relevant riparian legislation;

“road” means any road whether public or private and includes any street, square, court, alley, bridge, footway, path, passage or highway whether a thoroughfare or not;

“rural land use development plans” includes land use plans for sub-county, ward, village, individual farm holding and farmer homestead;

“site development master plan” means a detailed plan or blueprint used to guide development of particular plot of land through determination of the detailed layout of an area in relation to the natural environment and human requirements;

“safeguarding area” means any area adjoining any land owned or occupied by the armed forces of the Republic and which is declared by the Cabinet Secretary by notice in the Gazette to be a safeguarding area for the purposes of this Act;

“short-term plan” means a local land use development plan which elaborates in detail policies and proposals in relation to precise areas of land, and which provides the basis for both positive and regulatory planning to be realized within a specified period of time not exceeding 10 years and includes—

- (a) an action plan for comprehensive planning of areas selected for intensive change, which is to commence within a specified period, by improvement, re-development or new development, restoration and reuse of derelict land;
- (b) an advisory plan indicating permitted subdivision and use of land specified in such plan;
- (c) a subject plan for detailed treatment of a particular aspect of planning in relation to a part or the whole of a local physical development plan;
- (d) a part development plan indicating precise sites for immediate implementation of specific projects or for alienation purposes;

“special planning area” means an area that cuts across the boundaries of two or more county or sub county governments and which has land use development problems and declared as such;

“subdivision” in relation to land means the division of any land, other than buildings held under single ownership, into two or more parts whether the subdivision is by conveyance, transfer or partition or for the purpose of sale, gift, lease or any other purpose;

“the Kenya National Highways Authority” means the Authority of that name established under the Kenya Roads Act, 2007;

“the Kenya Rural Roads Authority” means the Authority of that name established under the Kenya Roads Act, 2007;

“town planner” is a person holding of professional degree in town planning; or town and country planning; or urban and regional planning or such equivalent from recognized university.

“transport land use development plan” means a land use plan showing location, corridor network, wayleave, land budget and integrated land use for street, road, railway, airport and water way or harbour and in relation to fronting land uses;

“urban centre” include municipalities, towns, markets and local centres as provided for under the Urban Areas and Cities Act;

“unalienated Government land” means Government land which is not for the time being leased to any person, or in respect of which the Commissioner of Lands has not issued any letter of allotment or reservation;

“urban land use development plan”- includes long term land use plan, zone land use development plan, site land use development plan;

“valuation roll” is as defined in relevant legislation on valuation roll;

“water bodies” include springs, wells, boreholes, streams, rivers, dam, lake and sea;

“wetlands” are water areas as defined in relevant legislation on environment and wetlands;

“wildlife sanctuaries” includes national parks, game reserves, conservancies and as defined in relevant legislation on wildlife.

Rationale 20

Many key terms on land use and property regulation are not provided in the Bill.

MoLPP Response

Interpretation is a legal drafting language and in any case additional terms will be interpreted in regulations.

(6) New clause on application of the Bill

Proposal 1

Insert a new clause to read as follows:

- 1) The provisions of this Act shall apply to the entire territory of the Republic of Kenya as delimited in Article 5 of the Constitution.
- 2) All land as defined in Article 260 and as classified in Article 61 of the Constitution.
- 3) All persons, institutions and governments are bound by the provisions of this Act.
- 4) Except as provided by this Act, no legislation not repealed by this Act may provide an alternative mechanism, measure, institution or system of planning, the regulation of land use and property rights in a manner inconsistent with provisions of this Act.

Rationale 1

The Bill does not specify the jurisdiction within which its powers may be exercised; it needs to leave no doubt as to its applicability. The Bill is designed to be the mother land use planning law and its provisions inform those of subsidiary legislation.

(7) Clause 3- Objects of the Act

Proposal 1

Include another object as follows: “to provide for research on land-use and development”.

Rationale 1

The objectives fail to capture the spirit of implementation of land use planning as per the constitution.

Provisions of existing legislation (Physical Planning Act, 1996; County Governments Act, 2012; Urban Areas and Cities Act, 2011) requiring plan development at County level and Urban areas as planning units.

MoLPP Response

Accept the proposal to read as follows:

“to provide for research on physical planning, land use policy and development and related matters”.

Add a new clause 12(f) to read as follows:

“undertake research on matters related to physical planning, land use policy and development and related matters”.

Proposal 2

Amend paragraph (c) and the Bill in general to restrict its ambit to policy and oversight matters with respect to planning.

Rationale 2

The clause proposes to control and regulate land use which is a function and the preserve of boards of municipals and cities as stipulated under section 20 of the Urban Areas and Cities Act, 2011.

Proposal 3

Amend paragraph (e) to provide a mechanism for dispute resolution related to physical planning.

Rationale 3

The clause is too wide and overlaps with the existing Arbitration Act.

(8) Clause 4- Principles and norms

Proposal 1

Delete the section in its entirety and substitute with the following:

Principles of Land-Use Planning

- (a) land-use planning must promote sustainable land use and liveable communities which integrates human needs in any locality.
- (b) development activities must be planned in a manner that integrates economic, social and environmental needs of present and future generations;
- (c) land-use planning must be comprehensive, sustainable and integrated at all levels of government, taking into consideration the interests of all parties concerned;

- (d) land-use planning must take into consideration long-term optimum utilization of land and conservation of scarce land resource including preservation of land with important functions;
- (e) land-use planning must be inclusive and must take into consideration culture and heritage of people concerned; and
- (f) land-use planning should take into account new approaches such as transit-oriented development, mixed land-uses, planning for public transport and non-motorized transport among others to achieve sustainable development and more efficient use of natural resources.

Rationale 1

The present clause only refers to the conduct of public service officers and public service deliver and does not provide for the overall principles of Planning.

The principles provided for under clause 4 relates more to public services or public service delivery as it seeks to provide for regulation of conduct of public entities and officers involved in planning which is not the subject matter of the Bill.

MoLPP Response

The proposed principles are specific professional principles which cannot be legislated because they keep changing over time.

(9) Heading of Part II

Proposal 1

Amend the title to the Part to state as follows:

PART II — PLANNING ADMINISTRATION

Rationale 1

The title does not capture the administration of planning. The proposed title will capture the various institutions and clearly define their mandate in planning at the National and County levels.

Proposal 2

Amend the title to the Part to state as follows:

PART II — PLANNING ADMINISTRATION AND MANAGEMENT

Rationale 2

Institutions are only one aspect of administration, this part should be comprehensive enough to capture Planning Jurisdictions and Levels of Planning, Planning Agencies, Planning Mandates And Responsibilities, and Planning Fora. These aspects are not properly defined in this Bill and this part therefore needs a complete reworking.

(10) New Sub-Part

Proposal 1

Insert a new Sub-Part under Part II to state as follows:

Planning Jurisdictions and Levels of Planning

Rationale 1

To clearly delineate and delimit the levels of planning and who has jurisdiction for which level. This is necessary to avoid confusion, especially as the Country proceeds to establish the new governance structure and devolution. The Bill does not elaborate these aspects in spite of committing itself to do so in the memorandum of objects and reasons.

(11) New clauses under Part II

Proposal 1

Insert a new clause to state as follows:

The Territorial Criteria

The execution, coordination and administration of the planning function, associated mandates of statutory planning authorities, citizens participation in the planning process, and the preparation of different types of plans, shall be organized in accordance with the subsidiarity principle and structured around three major territorial enclaves of cascading scales as follows;

- (a) national scale planning;
- (b) regional scale planning;
- (c) local scale planning.

Proposal 2

Insert a new clause thereafter to state as follows:

National Planning

National planning shall take place at the supra-scale of the entire Territory of the Republic of Kenya;

- 1) the national territory consists of the following sub-territories -
 - (a) the mainland territory as defined by internationally recognized boundaries between Kenya and neighbouring countries to the north, south and west and the Indian ocean coastline to the east, including islands and archipelagos;
 - (b) that whole area east of the East African coastline with the Indian Ocean that comprises the territorial sea, and the exclusive economic zone (EEZ), whose extent and dimensions are determined and delimited by the United Nations Convention on the Law of the Sea.
- 2) the national territory shall constitute the broadest scale for purposes of;
 - (a) coordination and administration of the planning function;
 - (b) further articulation of national policies as highlighted in section 16 to 18 of this Act;
 - (c) coordination of planning at intermediate and local scales;
 - (d) harmonization of planning practice by clearly outlining principles, norms and standards applicable to all planning processes, procedures and plan types.
- 3) the national government shall be responsible for planning at this level.

Proposal 3

Insert a new clause thereafter to state as follows:

Regional Planning

Regional planning shall proceed at the intermediate scale and includes the following sub-territories of Kenya;

- 1) The Resource Region as presently conceived and delimited in the six statutes establishing Regional Development Areas (RDAs), including Kerio Valley (Cap 441), Lake Basin (Cap 442),

Tana and Ardhi River (Cap 443), Ewaso Ngiro South (Cap 447), Ewaso Ngiro North (Cap 448), Coast (Cap 449), and as from time to time determined by Parliament -

- (a) resource regions are established to allow for the planned abstraction, use and development of nationally owned and shared natural resources and preservation of linked systems, the manner of spatialization which misaligns with, or transcends the confines of existing political/administrative boundaries;
- (b) such resources and systems shall be deemed the collective wealth of all Kenyans and consequently, national government shall take the lead in coordinating their planning and development, provided that it shall engage in intense consultation with county governments traversed by the such resource systems.

2) The County Region as distinguished and specified in Article 6(1) and First Schedule of the Constitution of Kenya, and as from time to time determined by Parliament -

- (a) the principles and objects of County planning are as outlined in Section 102 and 103 of the County Governments Act;
- (b) coordination of planning at this level falls within the ambit of respective county governments.

3) Sub-territories of the County region as provided for in section 48(1) of the County Governments Act and include but are not limited to sub-counties, wards, and rural villages -

- (a) the function of planning at this level is to allow for maximum participation of county residents in forging a vision and strategy for development of their habitat and immediate surroundings;
- (b) County governments shall have jurisdiction over planning at this level, although such jurisdiction may be delegated to decentralized county units.

4) The Inter-County Region as anticipated in both the Inter-Governmental Relations Act and the County Government Act;

- (a) the principle object of the inter-county region delimitation is to allow for contiguous counties to address cross border planning concerns, such as the case with border towns;

(b) planning at this level the shared jurisdiction of county governments affected by the specific planning concern and coordination shall follow mechanisms provided for under the Intergovernmental Relations Act, with technical assistance from the Director General of Planning appointed under section 41 of this Act.

5) The Metropolitan Region as envisioned in the National Vision 2030 policy framework, and as from time to time determined by Parliament -

(a) The principle object of the metropolitan region delimitation is to allow coordination of planning in conurbations or contiguous and interconnected cross-jurisdictional urban enclaves; and

6) planning at this level is the shared jurisdiction of county governments that make up the conurbations or metropolis and shall be coordinated as suggested in 4(b) above.

Rationale 3

To clearly delineate and delimit the levels of planning and who has jurisdiction for which level. This is necessary to avoid confusion, especially as the Country proceeds to establish the new governance structure and devolution. The Bill does not elaborate these aspects in spite of committing itself to do so in the memorandum of objects and reasons.

Proposal 4

Insert a new clause thereafter to state as follows:

Local Planning

36. Local planning shall constitute the most immediate level possible for the administration of the planning function -

1) This Act designates urbanized human settlements, as anticipated in Article 184 of the Constitution of Kenya, section 48(1) of the County Governments Act, and as provided for in Part II of the Urban Areas and Cities Act as local planning areas, and as from time to time determined by Parliament. These may further be categorized as follows -

(a) cities;

(b) municipalities; and

(c) towns.

2) the function of planning at this level is -

to allow for maximum participation of urban residents in negotiating a vision and strategy for development of their urban areas;

(a) to give effect to the development of cities, municipalities and towns as required by this Act and any other written law;

(b) to inform, guide and bind all planning and development decisions and ensure comprehensive inclusion of all functions; and

(c) to nurture and promote development of informal commercial activities in an orderly and sustainable manner;

3) local plans shall also be the basis for –

(a) preparation of environmental management plans; and

(b) preparation of valuation rolls for property taxation;

(c) planning and development control framework;

(d) provision of social and physical infrastructure and transportation;

(e) preparation of annual strategic plans and budget plans for a city or municipality;

(f) disaster preparedness and response strategy;

(g) preparation of a geographic information system and land information systems for a city, municipality or town;

(h) a framework for regulated urban agriculture.

4) county governments shall have jurisdiction over planning at this level, although such jurisdiction may be delegated to boards of cities and municipalities, and town committees.

Rationale 4

To clearly delineate and delimit the levels of planning and who has jurisdiction for which level. This is necessary to avoid confusion, especially as the Country proceeds to establish the new governance structure and devolution. The Bill does not elaborate these aspects in spite of committing itself to do so in the memorandum of objects and reasons.

Proposal 5

Insert a new clause thereafter to state as follows:

Special Planning Areas

Aside from the territorial criteria, the Cabinet Secretary, upon consultation with respective County government(s) or foreign government(s), may declare special planning areas -

1) Special planning areas shall be declared under the following circumstances -

where an area has unique resources and development potential;

- (a) where an area has been identified as suitable for intensive and specialized development activity;
- (b) where the development of that area might have significant effect beyond that area's immediate locality;
- (c) where the development of that area raises significant urban conservation challenges and urban design possibilities;
- (d) where the development of an area presents unique environmental challenges;
- (e) where an area requires guided management of internationally shared resources;
- (f) where an area is earmarked for implementation of strategic national projects; or
- (g) where open planning processes pose significant security risks to an area or installations and therefore needed a closed process.

2) special planning areas shall include, but are not limited to the following -

- (a) mining areas;
- (b) conservation areas;
- (c) infrastructure corridors;
- (d) enterprise zones;
- (e) protected areas;
- (f) controlled areas – national boundaries.

3) the declaration of an area as a special planning area shall be by notice in the Kenya Gazette and in at least two newspapers of national circulation and the notice shall specify the area declared as a special planning area, the reasons for which the declaration has been made, and effect of such declaration;

4) jurisdiction over planning of special planning areas is as follows -

- (a) the sole responsibility of National government in the case of protected areas;
- (b) a joint venture between National and County Government in the case of mining, conservation, infrastructure corridors and enterprise zones;
- (c) a joint venture between national and foreign government(s) in the case of extra-territorial matters, provided that affected County government(s) are adequately consulted.

Rationale 5

To clearly delineate and delimit the levels of planning and who has jurisdiction for which level. This is necessary to avoid confusion, especially as the Country proceeds to establish the new governance structure and devolution. The Bill does not elaborate these aspects in spite of committing itself to do so in the memorandum of objects and reasons. (See clause 48)

(12) New Sub-Part under Part II

Proposal 1

Insert a new Sub-Part under Part II to state as follows:

Planning Roles and Responsibilities

Rationale 1

The Bill, which is much similar to the existing Physical Planning Act, does not seem to appreciate changes in the Country's governance framework. Consequently, it maintains a top-heavy institutional structure and fails to outline and elaborate the institution framework for the county planning function – the mandates, roles and responsibilities of planning offices and officers are clearly elaborated in the following clauses/sections.

(13) Clauses 5, 6 and 7- National Physical Planning Consultative Forum

Proposal 1

Delete clauses 5, 6 and 7.

Rationale 1

1. Its functions duplicates the functions assigned to various national and county government agencies.
2. Usurps the functions and powers envisaged to urban management boards in the Urban Areas and Cities Act (sections 20-23).
3. The functions assigned can best be handled by the county executive Committee at the county level and the Cabinet at the National level.
4. The membership of the forum is bloated at more than **63 members**.
5. The large membership renders it dysfunctional.
6. Sec 6 (c) is ambiguous on who the advice is directed and the purpose.
7. Sec. 6(d) can best be handled at cabinet level.
8. Sec 7 (3) implies the forum will be a planning authority by itself.

(14) Clause 5- National Physical Planning Consultative Forum

Proposal 1

Delete sub-clause (1) and (2) and replace with the following:

- (1) There is established the National Land-use Planning Coordination Forum.
- (2) The National Land-Use Planning Coordination Forum shall consist of –
 - (a) the national director responsible for land-use planning, who shall be the chairperson;
 - (b) the county director responsible for land-use planning from each county;
 - (c) a representative of the Council of Governors who is versed with matters related to land-use planning or economic planning;
 - (d) a representative of the National Land Commission;

- (e) the national director responsible for economic planning;
- (f) a representative of National Environment and Management Authority;
- (g) the national director responsible for roads;
- (h) the national director responsible for culture;
- (i) a representative of Kenya Institute of Planners;
- (j) a representative of Institution of Surveyors of Kenya;
- (k) a representative of Architectural Association of Kenya;
- (l) a person nominated by an association representing the private sector in Kenya as shall be determined by the Cabinet Secretary;
- (m) a person representing public benefit organizations which implement programmes related to spatial planning or management;
- (n) a person nominated by the National Council of Persons with Disability; and
- (o) a private practicing planner co-opted by the Physical Planners Registration Board.

Rationale 1

The current provision makes the forum too bureaucratic and is not likely to address technical issues related to planning.

MoLPP Response

The use of Land use is limiting the scope of the proposed Forum. The term Land use connotes more on administrative aspects than the user.

The use of the word ‘coordination’ depicts day to day functioning which is not what is envisioned in clause 5 of the Bill.

Proposal 2

Amend paragraph 5 (2) (r) to state as follows:

“any other persons co-opted by the Forum for that person’s special skills, interest and knowledge”.

Insert a new paragraph 5 (2) (s) to state as follows:

- (s) One person each to represent –
 - (i) Cabinet secretary in charge of public/building works
 - (ii) Kenya Private Sector Alliance

- (iii) Town and County Planners Association of Kenya
- (iv) Kenya Property Developers Association
- (v) Institution of Engineers of Kenya

Rationale 2

To allow more persons and stakeholders from the urban and private sectors to join the forum.

(15) Clause 6- Functions of the National Physical Planning Consultative Forum

Proposal 1

Insert new paragraphs after paragraph (d) as follows:

- (e) provide a forum for coordinating national land-use planning
- (f) promoted effective coordination and integration of county land-use and/or spatial plans and sector plans
- (g) Coordinate technical transfer skills to all planning authorities
- (h) Consider national security, national interest in places such as airports, ports, highways, national parks, water catchment areas among others and ensure these are considered in County Plans and other sector plans.

Rationale 1

The Forum should primarily be a coordinating forum rather than consultative.

The Forum should be a technical organ, which addresses technical matters related to spatial planning. Matters related to spatial planning but are of high level policy or political nature should be handled under the Intergovernmental Relations Act where the President, Deputy President and Governors meet in the National and County Government Co-ordinating Summit.

MoLPP Response

The use of the word 'coordination' depicts day to day functioning which is not what is envisioned in this clause.

Under the Sessional Paper No. 1 of 2017 on the National Land Use Policy the coordination of Land use is the function of the National Council of Land Use Policy.

(16) Clause 8- Functions of the National Land Commission

Proposal 1

Amend paragraph 8 (a) to state as follows:

“to monitor and have oversight responsibilities over land use planning throughout the country”.

Rationale 1

To align the Bill to the requirements of article 67 of the constitution and the National Land Commission Act.

Proposal 1

Amend the clause to state as follows:

The provisions of this Act are subject to of Article 67 of the Constitution, which establishes and allocates functions to the National Land Commission. The provisions are relevant to this Act in so far as they aid the planning function or are influenced by it.

1) the following functions are geared towards complementing and aiding the role of the State under Article 66 (1) of the Constitution, which requires the regulation of the use of any land or any interest in or right over any land or property in the interest of defense, public safety, order, morality, public health or land use planning, and Article 66(2), ensuring that investments in property benefit local communities and their economies. The NLC assists these goals through three avenues, namely –

- (a) recommending a national land policy to the national government as per 67(2)b;
- (b) conducting research related to land and the use of natural resources, and make recommendations to appropriate authorities as per 67(2)d;
- (c) monitoring and having oversight responsibilities over land use planning throughout the country as per Article 67(2)h.

2) For qualification, the NLCs oversight mandate as per Article 67(2)h does not encompass organizational oversight – which denotes superintending over the goal setting, schedules and daily work flows of agencies charged with execution of planning mandates. Rather, in the letter and spirit of the Constitution, its entire mandate represents the institutionalization of a somewhat

separation of powers to hold those agencies to account on the bigger picture – sustainable land use practice.

3) the planning system, in turn, assists the NLC to effectively discharge the following functions –

- (a) the management of public land on behalf of the national and county governments per Article 67(2)a;
- (b) the initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress per Article 67(2)e;
- (c) the application of traditional dispute resolution mechanisms in land conflicts per Article 67(2)f;
- (d) the assessment of tax on land and premiums on immovable property in any area designated by law per Article 67(2)g.

4) following the provisions of Article 67(3), and consistent with its mandate as manager of public land on behalf of the national and county governments, this Act allocates the NLC the following functions -

- (a) the NLC shall hold in trust all public land banks established through acquisition of land for planning purposes;
- (b) the NLC shall implement the decisions of the National and County Planning and Development Authority that seek to regulate the use of land, interests in and rights over property, in compliance of stipulations set out in this Act;
- (c) the NLC shall register and implement determinations of Planning and Development Disputes Tribunals.

5) the NLC shall formulate and disseminate clear guidelines regarding its involvement in the planning system.

Rationale 2

To clear confusion through as the role of the National Land Commission with respect to oversight functions over land use planning has been a subject of much contestation and confusion since the promulgation of the constitution in 2010.

(17) New Sub-Part

Proposal 1

Insert the following Sub-Part:

Qualifications of Office Bearers

Rationale 1

The Bill leaves out many other officers involved in administering the planning function.

(18) New Clauses

Proposal 1

Insert the following new clause:

Certain offices to require special expertise

Because of the judicious and quasi-judicial nature of planning and development control decision-making, persons qualified for appointment as heads of certain planning offices and agencies, particularly those delineated in this Act, must possess the relevant knowledge, skills, experience and maturity necessary for effective discharge of all of the functions and powers of their respective offices.

Rationale 1

It is necessary to offer a rationale for defining the nature of expertise required for planning through a statute.

(19) Clause 9- Functions of the Cabinet Secretary.

Proposal 1

Delete any reference to “Physical planning” and replace with “land use planning” in the entire Section.

Rationale 1

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution.

Proposed Physical Planning Policy will be in conflict with existing Land Use Policy (Sessional Paper No. 1 of 2017)

Proposed National Physical Development Plans will be in conflict with existing National Spatial plan.

Proposal 2

Delete paragraph 9(e) and replace it with the following:

“(e) coordinating the spatial planning by counties the counties pursuant to section 21 of Part 1 of the Fourth Schedule to the Constitution of Kenya;

Amend to include the following role for the Cabinet Secretary:

(f) promoting and facilitating provision of capacity building and technical assistance of the counties pursuant to section 32 of Part 1 of the Fourth Schedule to the Constitution of Kenya.

Rationale 2

The responsibilities of the Cabinet Secretary should reflect the role of national government in land-use planning. In this aspect, a national spatial plan is of the same nature as a sessional paper (policy document) and hence requires approval by Cabinet and not the Cabinet Secretary.

MoLPP Response

The responsibility 9(f) is already catered for by Clause 12 of the bill.

The National Spatial Plan is a plan and not a sessional paper.

Proposal 3

Amend the clause to state as follows:

The Cabinet Secretary for the time being responsible for planning and the regulation of the use and development of land shall -

1) ensure that all constitutional imperatives, and the aspects of the national development vision as may from time to time be defined, and which are relevant to planning, are incorporated into planning process at all jurisdictions and plans of types.

2) notwithstanding the generality of the provisions of sub-section (1), the Cabinet Secretary shall

—

- (a) formulate overarching policies, principles and guidelines to inform planning activities in different jurisdictions;
- (b) ensure consistency between development visions formulated at national, regional and local levels;
- (c) ensure that all the necessary mechanisms are in place to facilitate the attainment of planning goals as articulated in this Act;
- (d) ensure the effective working of the planning system throughout the country;
- (e) declare special planning areas and ensure that plans are prepared and implemented thereof;
- (f) require sector ministries, departments and agencies to ensure effective planning for all development sectors under their jurisdiction;
- (g) ensure better collaboration, coordination and unity of effort amongst and across multiple agencies that are engaged in the planning process;
- (h) ensure the establishment, maintenance and operation of geographical and land information system for the general purpose of informing plan formulation and planning decision-making processes;
- (i) designate Planning Authorities as provided for in this Act;
- (j) facilitate functions, mandates and processes of all national and regional-level planning for a including but not limited to, the National Planning Consultative Forum and Special Areas Planning Consultative Forums as established in this Act;
- (k) facilitate the functions and mandates of the Planning and Development Disputes Tribunals throughout the country.

3) the Cabinet Secretary shall receive all categories and types of plans relating to territories outlined in this Act, finalized and certified by the Director-general of planning, and present them for adoption by the Cabinet, and subsequently approve them, and where necessary, present for approval by the Parliament;

4) the Cabinet Secretary shall, upon recommendation by the Director-general of Planning, approve all type plans delineated in sub-section 3 above;

- 5) The Cabinet Secretary shall approve all applications for purchase of land for planning purposes as provided for in this Act;
- 6) the Cabinet Secretary, subject to conditions set out in this Act, shall have the power to recall and withdraw plans approved by himself, the County Executive Member, or County Assembly;
- 7) the Cabinet Secretary shall formulate regulations and prescribe instruments for the better carrying out of provisions of this Act;
- 8) the Cabinet Secretary shall make available, the resources necessary for implementation of national and regional plans.

Rationale 3

The role of the CS in the Bill is not explicit.

Proposal 4

Delete paragraph 9(d).

Rationale 4

The provision conflicts with section 4.1.5 (i) of the sessional paper No1 of 2017 on National Land Use Policy

Monitoring and oversight is a function given to National Land Commission at Article 67 (2) (h) and section 5 (h) of National Land Commission Act.

(20) Clause 10- National Director of Physical Planning

Proposal 1

Amend the clause to state as follows:

There is established an office of the Director-General of Planning, which shall be an office in the National Public Service, and whose functions shall be–

1) the principle government adviser on all matters planning that are of strategic impact on the whole country, and shall, in addition, serve as the head of the National Planning Authority as established in this Act;

2) notwithstanding the generality of the provisions of sub-section (1) above, the Director-general shall –

advise the Cabinet Secretary on legislative and other measures that are necessary for enforcement of provisions of this Act;

(a) issue guidelines on principles, norms, values and standards for the general purposes of informing and harmonizing plan-making processes, procedures, outcomes and outputs;

(b) issue guidelines on the purposes, content and structure, and deliverables expected of all plan types delineated in this Act;

(c) issue detailed criteria for certification and approval of different types of plans by the County Director of Physical Planning;

(d) issue standards for the use of land and planned spaces in the interest of preserving intrinsic qualities, form functionality, and for the general purposes of maintaining public safety, public order, public morality, public health and amenity;

(e) issue guidelines on siting, density and appearance of buildings;

(f) undertake capacity building and technical support for statutory planning authorities.

3) the Director-general shall, in addition perform the following functions;

(a) issue, as per jurisdiction, declarations regarding areas earmarked for initiation of planning process, planning control or development control in accordance with the procedure set out in this Act;

(b) formulate national level plans and plans for resource regions as outlined in this Act;

- (c) coordinate the preparation of special area plans as per jurisdictions specified in this Act;
 - (d) assist counties in the preparation of inter-county and metropolitan plans as specified in this Act;
 - (e) establish and maintain liaison and cooperation with planning authorities;
 - (f) finalize and certify all plans for which he has jurisdiction and facilitate their legal translation through approval by respective authorities, and publishing in the Kenya Gazette;
 - (g) oversight over plan-making processes, procedures, outcomes and outputs, and ensuring strict observance of, and conformance to principles, norms and standards thereof;
 - (h) consider all applications for purchase of land for planning purposes as provided for in this Act, and advice the Cabinet Secretary;
- 4) the Director-general shall superintend the conduct and ethical practice of planning professionals under his charge in accordance to stipulations of the Professional Planners Act.

(21) Clauses 10-12-Office of the National Director of Physical Planning

Proposal 1

1. The title of the office of the National Director of Physical Planning should be Director General of land use planning.
2. The office holder should possess a minimum of a masters degree in urban and Regional planning.
3. At least fifteen years of active practise in urban and regional planning.

Rationale 1

National Director of physical planning is limiting in terms of the expected roles or responsibilities for coordinating county planning and development of general principles of land planning as provided under Fourth schedule.

There is precedence in government management structure to establish offices of director general as expert offices in specialized areas like land use planning.

Within the Public service holders of senior expert positions should have superior academic qualifications with masters as a minimum.

The office will serve as a referral position for any matters in land use planning, the holder of the office should have adequate skills and experience.

4. Limiting the term of office jeopardizes the performance of the office holder.

(22) Clause 11- Qualifications of the National Director of Physical Planning

Proposal 1

Delete the words “related discipline” in paragraph (b).

Rationale 1

To guarantee professional discipline, integrity and competence.

Proposal 2

Amend the clause to state as follows:

A person is qualified to occupy the office of the Director-general of Planning if that person –

- 1) is a citizen of Kenya;
- 2) possesses a minimum undergraduate qualification that is accredited as a professional degree in urban and regional planning or any of its associated sub-domains from a university or institution chartered and recognized as offering such programmes;
- 3) has knowledge or working experience in either of the following fields –
 - (a) natural resource management;
 - (b) environmental science;
 - (c) public administration and governance;
 - (d) urban management;
 - (e) planning law;
 - (f) social and community development;

- (g) economic planning.
- 4) has at least fifteen years post-qualification experience in professional planning engagements, ten of which he acquired as a Registered Professional Planner;
 - 5) is registered as a professional planner under the relevant statute;
 - 6) is a corporate member in good standing, of the Kenya Institute of Planners;
 - 7) is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law;
 - 8) meets all other criteria for appointment as stipulated by the Public Service Commission of Kenya.

Rationale 2

To provide a more comprehensive criteria.

Proposal 3

Amend clause 11 (b) to state as follows:

“holds a bachelor’s degree in urban and regional planning and a master’s in a discipline related to the physical planning functions from a recognized university;”.

Rationale 3

To conform with the provisions of the Scheme of Service by the Public Service Commission of Kenya.

Proposal 4

Amend clause 11 (d) to state as follows:

“has at least fifteen years’ post-qualification professional experience in physical planning;”.

Rationale 4

To conform with the provisions of the Scheme of Service by the Public Service Commission of Kenya.

(23) Clause 12-Office of the National Director of Physical Planning

Proposal 1

Delete reference to ‘physical planning’ and replace with the term “land use planning”.

Rationale 1

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution.

Proposed National Physical planning policy is in conflict with existing National Land Use Policy Sessional Paper No. 1 of 2017.

Proposed National Physical Development Plans are in conflict with existing National Spatial Plan.

Proposed inter-county Physical development Plans are in conflict with the existing County Spatial Plans (Section 110, County Governments Act).

Proposal 2

Amend to include the following to the functions of the National Director of Planning:

- (a) responsible for preparation of national land use plans;
- (b) to recommend land –use policy to the National government and County governments;
- (c) to cause the preparation of plans for purposes of implementing a comprehensive programme for the registration of title in land throughout Kenya by the national government
- (d) to conduct research related to land use and the use of natural resources, and make recommendations to appropriate authorities;.

Rationale 2

Need to strengthen research function as this will cascade down to county planning.

MoLPP Response

Reject proposals (a), b) and (c).

Accept proposal (d) as clause 12(f) and rephrase to state as follows:

1. “undertake research on matters related to physical planning and development”.

2. Insert a new sub-clause 12 (g) to state as follows:

“preparation of Part Development Plans for strategic national installations and projects”.

3. Insert a new sub-clause immediately before paragraph 12 (a) to state as follows:

“advise the two levels of Government on all matters relating to Physical Planning”.

4. Insert a new sub-clause in clause 12 to state as follows:

(i) where a planning authority in a county is unable to perform functions under this Act, the National Director of Physical Planning may petition the Summit established under the Intergovernmental Relations Act, 2012 to authorise the National Director of Physical Planning to perform physical planning related functions of the affected County

(ii) the Summit shall inquire into the matters raised by the Director of Physical Planning, and if satisfied, authorise the National Director of Physical Planning by a gazette notice to perform specified duties for a period not exceeding 12 months

(iii) for avoidance of doubt, when performing functions specified in (ii), the National Director of Physical Planning will do so within the established county physical planning structures under this Act

(iv) if there is need to extend the period specified in (ii) above, the Summit shall, three months before expiry of the specified period, forward a recommendation to the Senate for extension of that period

(v) if after the period specified in (iii) above, the Senate is of the opinion that the planning authority is still unable to perform the functions under this Act, the Senate may under Article 187 recommend transfer of specified physical planning functions to the National Director of Physical Planning.

(24) Clause 13- Responsibilities of the National Director of Physical Planning

The title of the office of the National Director of Physical Planning should be Director General of land use planning.

Proposal 1

Delete reference to “physical planning” and replace with “Land use planning” in the entire section.

Rationale 1

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution

Proposed County Physical Planning is in Conflict with spatial plans and section 110 of the County Government Act.

Proposal 2

Amend the clause to read as follows:

The County Executive Committee Member responsible for planning in each County shall –

- 1) ensure the effective institutionalization of the planning function of the county as outlined in Fourth Schedule, Part II (8) of the constitution;
- 2) notwithstanding the generality of the provisions of sub-section (1) above, the County Executive Committee Member shall –
 - (a) formulate and implement county-specific policies, strategies and programmes, and ensure consistency between these and those formulated at the national and regional levels;
 - (b) initiate and facilitate processes leading to the formulation and adoption of various categories and types of plans for the general purposes of framing and directing development within the entire county and all urban areas in the county;
 - (c) facilitate the coordination, and promote the integration of the various planning functions and processes at various spatial scales and across different sectors of the county;

- (d) ensure that all planning measures in the county serve to realize the objects and principles of devolution as outlined in Article 174 and 175 of the constitution; and
 - (e) ensure effective planning control, land use and development control for the general purposes of meeting the stipulations of Article 66 of the constitution, and for the specific purpose of facilitating development initiatives within the county;
 - (f) facilitate the functions and mandates of the County Planning and Development Authority as provided for in this Act, and oversee its effective functioning;
 - (g) facilitate functions and processes of all county-level planning fora including, but not limited to, Inter-county Consultative Forums, County, Sub-County, Ward and Village Consultative Forums as provided for in this Act.
- 3) the County Executive Committee Member shall receive all categories and types of plans for territories outlined in this Act, finalized and certified by the County Director of Planning or the Director-general of planning and present them for adoption by the County Executive Committee, and subsequently approve them, and where necessary present them for approval by the County assembly;
- 4) the County Executive Committee Member shall, upon recommendation by the County Director of Planning, approve all plans mentioned in sub-section 3 above;
- 5) the County Executive Committee Member shall formulate regulations and prescribe instruments for the better attainment of stipulations of respective county plans;
- 6) the County Executive Committee Member shall make available, the resources necessary for implementation of all county-specific regional plans and local plans.

Rationale 2

To make the clause more specific.

Proposal 3

Delete the clause.

Rationale 3

Legislating County Executive Committee Member is at variance with collective responsibility of County Executive Committees envisaged under Sections 36, 37 and 110 (3) of the County Governments Act 2012.

The planning function has been assigned to the county government as a corporate entity consisting of the County Executive and the County Assembly.

(25) New clauses

Proposal 1

Insert the following clause immediately after clause 13:

County Planning Department

There shall be established a County Planning Department that shall be headed by the County Director of planning and shall have the following functions;

- (a) coordinating integrated development planning within the county;
- (b) Ensuring integrated planning within the county;
- (c) ensuring linkages between county plans and the national planning framework;
- (d) Ensuring meaningful engagement of citizens in the planning process;
- (e) ensuring the collection, collation, storage and updating of data and information suitable for the planning process; and
- (f) Ensuring the establishment of a GIS based database system.
- (g) be responsible for development control in the county

Rationale 1

A fully functional planning department needed to facilitate the effective implementation of the planning services in the County (Section 105 of the County Governments Act, 2012).

MoLPP Response

The Bill has already proposed establishment of the office of County Director of Physical Planning who will be the head of the technical arm

A department is an administrative outfit that should not be established by law.

Proposal 2

Insert the following clause thereafter:

The Chief Officer responsible for Planning

The Chief Officer shall be responsible for:

- (a) Overall administration of the County planning function
- (b) Facilitating the planning process
- (c) Budget and resource allocation for planning

Rationale 2

The Chief officer is a key office in the county executive administration (County Governments Act, Section 40) and should be recognized in the Bill.

MoLPP Response

The office of the Chief Officer has been provided by the County Governments Act as purely administrative and accounting officer.

Proposal 3

Insert the following clause immediately after clause 13:

The Role of the City, Municipal Manager and Town Administrator

All administrators appointed to manage the affairs of Cities, Municipal areas, and Towns shall have the following responsibilities relative to the planning of urban areas –

- 1) in the case of City and Municipal Administrators, on delegation, functions of the County Executive Committee Member as outlined in this Act;
- 2) the County Executive Committee Member shall exercise full jurisdiction in the case of a City-county, towns without committees, and market centers;
- 3) in addition, City, Municipal managers and Town administrators shall –

- (a) formulate and implement urban development policy specific to their respective areas of jurisdiction;
- (b) ensure orderly and sustainable development of their urban areas;
- (c) ensure the purposeful utilization of land in the interest of the general welfare of the public;
- (d) ensure that investments in property benefit local communities and their wellbeing;
- (e) ensure adequate and effective stakeholder engagement in forging and formulation visions, strategies and programmes for their areas;
- (f) reserve and maintain all the land planned for open spaces, parks, and gardens in accordance with the approved development plan.

Rationale 3

Role not defined in the Bill.

(26) Clauses 14 & 16- Office of the County Director of Physical Planning

Proposal 1

Delete the two clauses and replace with a new clause 14 as follows:

There is established an office of the County Director of Planning, which shall be an office in the County Public Service, whose functions shall be -

- 1) the principle adviser to the county government, on all matters planning, and that are of strategic impact on the whole county, and shall, in addition, be responsible for appropriately organizing for the effective implementation of the planning function within the county,
- 2) notwithstanding the generality of the provisions of sub-section (1) above, the County Director shall -
 - (a) serve as the head of the County Planning and Development Authority as established in this Act;

- (b) issue, as per jurisdiction, declarations regarding areas earmarked for initiation of planning process, planning control or development control in accordance with the procedure set out in this Act;
 - (c) oversee the preparation of County-level plans as outlined in this Act;
 - (d) ensure that citizens participate in plan formulation processes, validation and implementation of planned measures;
 - (e) ensure that County plan-making processes, procedures, outcomes and outputs conform to principles, norms, values and standards stipulated by this Act and any other prescribing instrument;
 - (f) maintain a land information system for the general purpose of guiding planning decision-making;
 - (g) finalize and certify all plans for which he has jurisdiction and facilitate their legal translation through approval by respective authorities, and publishing in the Kenya Gazette;
 - (h) ensure the proper execution and implementation of approved plans;
 - (i) formulate by-laws to regulate zoning in respect of use and density of development and buildings;
 - (j) adopt planning space standards, norms and criteria for the beneficial uses of land;
 - (k) ensure the efficient working and effectiveness of planning decision-frameworks and development control system;
 - (l) ensure strict observance of zoning stipulations, land use guidelines and development standards for throughout the county; and
 - (m) regulate the height, design, appearance and siting of buildings.
- 3) the County Director shall superintend the conduct and ethical practice of planning professionals under his charge in accordance to stipulations of the Professional Planners Act.

Rationale 1

To make provision for the role of the County Director.

(27) Clause 15- Qualifications of the County Director of Physical Planning

Proposal 1

Delete the term “Related discipline” under clause 15(b).

Rationale 1

To guarantee professional discipline, integrity and competence.

Proposal 2

Amend the clause to state as follows:

A person is qualified to occupy the office of the County Director of Planning if that person –

- 1) is a citizen of Kenya;
- 2) possesses a minimum undergraduate qualification that is accredited as a professional degree in urban and regional planning or any of its associated sub-domains from a university or institution chartered and recognized as offering such programmes;
- 3) has at least ten years post-qualification experience in professional planning engagements, five of which he acquired as a Registered Professional Planner;
- 4) meets all other criteria for appointment as stipulated in the County Governments Act.

Rationale 2

To distinguish the qualification for Director General with those of County Director as it may prove difficult to get people with the highest of qualifications.

Proposal 3

Amend clause 15 (1) (b) to state as follows:

“holds a bachelor’s degree in urban and regional planning and a master’s in a discipline related to the physical planning functions from a recognized university;”.

Rationale 3

To conform with the provisions of the Scheme of Service by the Public Service Commission of Kenya.

Proposal 4

Amend clause 15 (1) (d) to state as follows:

“has at least ten years’ post-qualification professional experience in physical planning;”.

Rationale 4

To conform with the provisions of the Scheme of Service by the Public Service Commission of Kenya.

(28) Clause 16- Responsibilities of the County Director of Physical Planning

Proposal 1

Delete reference to “physical planning” and replace with “land use planning” in the entire section.

Rationale 1

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution

Proposed County Physical Planning is in conflict with “County Spatial Planning” in the County Governments Act, section 110.

Proposed “Local Physical Development Plans” is in conflict with city, municipal land use plans as provided for in the County Governments Act (section 111)

Proposed “Local Physical Development Plans” is in conflict with Urban Integrated Development Plans, Sections 36-42 of Urban Areas and Cities Act.

Proposal 2

Amend the clause to state as follows:

The County Director of Planning and head of County Planning Department shall be responsible for –

- (a) advising the county government on County planning matters;
- (b) preparation of county spatial, County Sectoral plans as per the County Government Act,
- (c) preparation of County Integrated Plan, City or Municipal Land-use Plans, Municipal Land-use Plans among others as provided in the County Government Act and Urban Areas and Cities Act;
- (d) Delegate in writing any of his functions under this Act, either generally or specially to any planning officer in the Sub county, Ward, Village or Urban levels;
- (e) The Director may contract and supervise the services of a registered and practicing physical planner and/or planning firm to prepare county spatial plans and/or land use policies;
- (f) preparation of inter-county development plans;
- (g) undertaking research on matters relating to development planning at the county level
- (h) certification of county plans and recommending to the county executive in charge of planning for adoption

MoLPP Response

Reject proposed amendments (a)-(g).

1. Accept proposed amendment (h) and rephrase to read as follows:

“certification of county plans and recommending to the county executive in charge of planning for approval”.

2. Add sub clause (i) and (ii) to read as follows:

(i) “communicating decisions of planning authorities on development applications based on the policies approved by the County Executive Committee Member for the time being in charge of physical planning matters”.

(ii) “Issuance of prescribed development control instruments”.

(29) New clauses

Proposal 1

Insert a new clause immediately after clause 16 to state as follows:

Private Sector

In discharging responsibilities under this Act, The Director may retain services of registered and licensed planners and or planning firm.

No body corporate shall carry on business as registered planner unless the directors thereof whose occupation involves the preparation of plans in respect of land under this and are registered physical planners.

Rationale 1

To introduce efficiency in delivery of planning services; capacity building of the planning private practice (Article and 10 and article 60 of the Constitution).

MoLPP Response

This issue will be addressed in the subsidiary legislations.

Proposal 2

Insert the following clause immediately after clause 16:

Officers with delegated functions

The functions and powers of the Director-general of Planning and County Director of Planning, when exercised for the general purposes guiding, harmonizing and standardizing planning practices, and regulating land use and development activities in their respective jurisdictions, shall be deemed to be exclusive to the occupants of these offices unless -

- 1) such functions and powers are delegated to other persons, as follows -
 - (a) from the Director-General to officers of the National Land Commission, Planning Authorities designated under this Act, and state departments;
 - (b) from the County Director to officers at decentralized county units, and city and municipal planning authorities.
- 2) the powers shall only be delegated to qualified persons as outlined in this Act;
- 3) the extent of such delegation shall include -

(a) oversight over plan-making processes, procedures, outcomes and outputs, and ensuring strict observance of, and conformance to principles, norms and standards thereof;

(b) superintending the conduct and ethical practice of planning professionals under their charge.

4) the function of plan certification and transmission of certified plans to approving authorities shall not be delegated, and shall remain exclusive to the Director-general and County Director of Planning, as per jurisdiction.

Proposal 3

Insert the following clause thereafter:

The Role of Parliament

Parliament shall approve all national policies that inform and guide planning practice through the Country.

Rationale 3

Though obvious, it needs to be stated in legislation. (*See clause 22(4)*)

Proposal 4

Insert the following clause thereafter:

The Role of County Assemblies

The provisions of this Act are subject to provisions of Article 185 of the Constitution, and shall, with respect to the county planning function, be interpreted as follows -

1) a county assembly may make any laws that are necessary for, or incidental to, the effective performance of the planning functions and exercise of the powers of the county government thereof;

2) a county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and County Planning and Development Authority;

3) a county assembly may receive and approve all policies, strategies and programmes formulated by the County Executive Committee;

- 4) a county assembly may receive and approve the category of plans delineated as Regional plans (regional coordination) and Urban Spatial (Structure) Plans in this Act;
- 5) A county assembly may receive and approve any regulations formulated by the County Executive Member for the effective discharge of the county planning function.

Rationale 4

The role granted to County Assemblies under clause 37(2) is insufficient.

(30) New clauses under Part III

Proposal 1

Insert the following clause under Part III:

Establishment and designation of Planning Authorities

This Act establishes and designates planning authorities for the general purposes of ensuring effective administration of the planning function and system, and for specific purposes of operationalizing the provisions of this Act.

- 1) the National government, as represented by the ministerial directorate responsible for planning, shall become the statutory planning authority for jurisdictions delineated in Sections (see SN 22, 27, 48) of this Act, and for purposes of executing roles outlined in Section 38 of this Act;
- 2) every County Government, as represented by the ministerial directorate responsible for planning, shall each become the statutory planning authority for jurisdictions delineated in Sections (See SN 27, 32) of this Act;
- 3) without prejudice to provisions of sub-section 1 and 2 above, the Cabinet Secretary responsible for planning may, by order published in the Kenya Gazette and after consultation with the Cabinet Secretary responsible for devolution, and other relevant Cabinet Secretaries, designate anybody or organ established by any written law to be a planning authority or joint planning authority for purposes of this Act;

4) in this regard, the Cabinet Secretary shall, upon commencement of this Act, designate the following bodies as Jurisdictional Planning Authorities for the general purposes of preparing and implementing plans relevant to their mandates, and to enforce related laws and regulations –

- (a) The Kenya Wildlife Service, in relation to plans to conserve and manage national parks and game reserves,;
- (b) The Kenya Forest Service, in relation to plans for the conservation of the country's forest reserves, green belts, riparian forests and urban forests;
- (c) Water Resources Management Authority, in relation to plans for the management of water catchment areas, drainage basins and regulating the use of water resources thereof;
- (d) The agency for the time being responsible for marine resources and maritime affairs, in relation to plans to develop and manage sea-based resources, promote and regulate activities of the blue economy;
- (e) The Agriculture and Food Authority, in relation to land use planning in aid of agriculture and the regulation of practices thereof;
- (f) The National Environment Management Authority, in relation to plans for the management and sustainable use of resource and environmental conservation;
- (g) Regional Development Authorities, in relation to long-range plans for development of all nationally owned and shared resources within delineated Resource Regions;
- (h) National Highways Authority, Kenya Urban Roads Authority, and the Kenya Rural Roads Authority, in relation to transportation corridor plans;
- (i) National Housing Corporation, in relation to plans for the development of public housing schemes and management of public housing areas thereof;
- (j) National Land Commission, for purposes of effectively discharging its oversight mandate over land use planning throughout the country.
- (k) Department of Defence, in relation to plans for security zones and controlled areas.

5) a Planning Authority designated under sub-section (4) above, shall carry out its planning functions under supervision of the Director-General of Planning.

Rationale 1

The Bill and other related legislation speak loosely to these agencies but fall short of anchoring them in law.

Proposal 2

Insert the following clause thereafter:

Status of Planning Authorities

Each Planning Authority shall assume the status of a body corporate and shall –

- 1) have perpetual succession and a common seal;
- 2) in its corporate name be capable of suing and being sued; and
- 3) be capable of performing such other functions as a body corporate may perform;
- 4) have a significant degree of autonomy from the parent National or County ministry, although the relevant offices and bodies shall exercise oversight functions as provided for by this Act;
- 5) for the avoidance of doubt, a County Planning and Development Authority shall not be equated to the County Planning Unit as provided for in Section 105(1) of the County Governments Act.

Rationale 2

Planning has long been subjected to political manipulations in the interest of advancing personal gain, and to the detriment of the public interest. The formation of a semi-autonomous entity, whose functions are overseen by the respective national and county officials will go a long way in making planning and planning agencies more effective.

Proposal 3

Insert the following clause thereafter:

Administration of Planning Authorities

Planning Authorities shall be administered as follows –

- 1) The Director-general shall be the chief executive of the National Planning Authority and shall
 - (a) be responsible for the day to day management of the affairs of the Planning Authority;
 - (b) manage the funds and property of the Authority; and
 - (c) perform any other functions as may be conferred upon him by this Act.
- 2) The County Director shall be the chief executive of the County Planning and Development Authority and shall carryout responsibilities similar to those of the Director-general;
- 3) Jurisdictional Planning Authorities shall, for administrative purposes, serve under the Chief Executives of their respective agencies.

Proposal 4

Insert the following clause thereafter:

Officers and Employees of the Planning Authority

The Director-general of Planning shall advise the Public Service Commission, the County Public Service Board, bodies designated as Planning Authorities, and respective managements of agencies that have in their employ officers with designated functions and powers, regarding the type, qualifications, experience and quantities of staff required in each Planning Authority.

Proposal 5

Insert the following clause thereafter:

Sector agencies to have planning departments

For purposes of effectively executing functions and mandates delegated under this Act, the National Land Commission, Planning Authorities, and state departments with delegated planning functions and mandates shall have adequately resourced, staffed and equipped planning departments.

Proposal 6

Insert the following new sub-part thereafter:

“Planning Forum and Liaison”

Rationale 6

The current reading of the Bill conflates the function of consultation and engagement on planning matters with that of dispute resolution. This amendment seeks to cure that by separating both roles and creating a separate section to deal with the latter.

Besides, the Bill only creates the National Planning Consultative Forum, in spite of the fact that much consultation for planning purposes proceeds at the lower levels. This amendment seeks to cure that by creating all consultative fora in line with the subsidiarity principle

Finally, planning fora are normally constituted in the course of the planning process. There is need to anchor these in law and guide their formation is to ensure representation in line with the constitutions inclusivity principle.

Proposal 7

Insert the following clause thereafter:

Establishment of Planning Consultative Forums

There are established Planning Consultative Forums in line with the territorial criteria and subsidiarity principle.

1) The following Planning Consultative Forums are established –

(a) Ward and Village Planning Consultative Forums, which are organs of County Governments and represent the lowest levels of engagement of citizens for purposes of urban and rural planning, respectively;

(b) City, Municipal or Town Planning Consultative Forums, which are organs of County Governments and for the purpose of engagement on city-wide or town-wide planning matters;

(c) the Sub-county Planning Consultative Forum, which is an organ of County Governments and for the purpose of engagement on planning matters affecting a Sub-county;

(d) the County Planning Consultative Forum, which is an organ of County Governments and for the purpose of engagement on County-wide planning matters;

(e) the Inter-county Planning Consultative Forum, which is an organ of two or more County Governments collaborating on a planning matter, including on metropolitan areas;

(f) the Special Areas Planning Consultative Forum, which is an organ of National Government and for purposes of engagement regarding Special Planning Areas as provided for under this Act

(g) the National Planning Consultative Forum , which is an organ of National Government and for purposes of engagement regarding planning matters that impact upon the whole country.

2) Certain existing bodies may convert themselves into Planning Consultative Forums for purposes of fulfilling provisions of this Act, provided that their composition is adjusted according to stipulations of this Act. The existing bodies include –

(a) Village Consultative Forums, established under Section 53 of the County Governments Act, which may take on functions of the Village Planning Consultative Forum;

(b) the Inter-governmental Forum, established under Sections 54(2) of the County Governments Act, and which may take on functions of the County Planning Consultative Forums;

(c) the Council of Governors, established under Section 19 of the Inter-governmental Relations Act, and which may take on functions of the Inter-county Planning Consultative Forums and as delegated to Joint Committees as provided for in Section 23 of the Inter-governmental Relations Act;

(d) the National and County Government Coordinating Summit established under section 7 of the Inter-governmental Relations Act, and which may take on functions of the Special Areas and National Planning Consultative Forums, as delegated to Inter-governmental Relations Technical Committee and Setoral Working Group or Committee as provided for in Section 11 and 13 of the Inter-governmental Relations Act.

3) for the avoidance of doubt –

(a) County Planning Consultative Forums shall not be equated to, but may be a typology of Citizen Fora to be established pursuant to Section 91(g) of the County Governments Act;

(b) City, Municipal or Town Planning Consultative Forums shall not be equated to, but may be a typology of Citizen Fora to be established pursuant to Section 22 of the Urban Areas and Cities Act

(c) Joint Planning Consultative Forums shall not be equated to Joint Committees of the County Assembly as provided for in Section 14(5 and 6) of the County Governments Act.

4) Nothing in this section may be construed as precluding a Cabinet Secretary from convening consultative fora on sectoral issues of common interest to the national and county governments.

Rationale 7

To include establishment of planning forums at all levels.

Proposal 8

Insert the following clause thereafter:

Status of Planning Consultative Forums

Planning Consultative For a shall have the status of ad-hoc institutions, meaning –

- 1) that they are established specifically for the purposes of engaging on a singular planning process relating to a specific type plan;
- 2) that they are disbanded upon conclusion of the planning process;
- 3) nothing stops a member from participating in multiple planning process, although it is desirable for purposes of broadening participation, that different participants are selected for different planning processes;
- 4) They are open forums to allow for the participation, in the planning process of as many people as possible.

Rationale 8

Bill is silent on status. Ad-hoc status is desirable as it will save the public from unnecessary burden of costs associated with more permanent bodies.

Proposal 9

Insert the following clause thereafter:

Functions of Planning Consultative Forums

Planning Consultative Forums are established for the general purpose of –

- 1) allowing greater participation and influence of the planning process and outcomes by citizens, both as individuals, and as collectives, and facilitating liaison between these and planning institutions, authorities and agencies;
- 2) notwithstanding the generality of the provisions of sub-section 1 above, all Planning Consultative Forums shall have the following functions within their respective areas of jurisdiction –
 - (a) facilitate continuous discourses and dialogue to create awareness on the importance of plan-led development;
 - (b) provide a forum for effective consultation on plans formulated at respective spatial jurisdictions;
 - (c) build capacity of key stakeholders for effective participation in problem identification, plan preparation, implementation and review;
 - (d) assist plan implementation processes marshalling resources for plan implementation, including mobilization of citizens to participate in co-production of planned measures;
 - (e) exercise oversight over the planning system for purposes of ensuring transparency and accountability, and that planning meets the aspirations of citizens by holding to account the various implementing agencies;
 - (f) act as watchdogs for purposes of achieving objectives of the system of development control.
- 3) in addition, Metropolitan, Inter-county, County, National and Special Areas Planning Consultative Forums shall have the following functions -
 - (a) ensuring linkages between urban, county and national planning frameworks;

- (b) ensure effective coordination and integration of economic, social, environmental and spatial planning;
- (c) advise on strategic projects of Metropolitan, County, Inter-County, National, or Transnational importance;
- (d) ensuring inter-agency and inter-departmental collaboration and coordination in plan-making and implementation;
- (e) build effective partnerships with non-state actors, including private corporations, non-governmental organizations, international development agencies, for purposes of achieving the objects of this Act and overarching goals of planning, and in mobilizing the implementation of capital projects.

Rationale 9

To include all planning fora.

Proposal 10

Insert the following clause thereafter:

Steering Committee of Planning Consultative Forums

Each Forum shall have core steering committees which shall be constituted as follows –

1) Ward and Village Planning Consultative Forums –

- (a) the Member of the County Assembly, who shall be the chairperson;
- (b) the Ward Administrator;
- (c) an officer exercising the delegated functions of the County Director as provided for under this Act, who shall provide the secretariat;
- (d) resident representative of the National Land Commission;
- (e) non-state actors as identified and nominated in sub-section 8 and 9 respectively, below.

2) City, Municipal or Town Planning Consultative Forums –

- (a) the membership of urban areas is as outlined in sub-section 4, below.
- (b) the respective City or Municipal manager or Town administrator shall be the chairperson;
- (c) all members of parliament representing constituencies in the area;
- (d) all members of the County Assembly representing wards in the area;
- (e) an officer exercising the delegated functions of the County Director as provided for under this Act, who shall provide the secretariat;
- (f) resident representative of the National Land Commission;
- (g) non-state actors as identified and nominated in sub-section 8 and 9 respectively, below.

3) Sub-county Planning Consultative Forums –

- (a) the Sub-county Administrators, who shall be the chairperson;
- (b) all members of parliament representing constituencies in the area;
- (c) all members of the County Assembly representing wards in the area;
- (d) an officer exercising the delegated functions of the County Director as provided for under the relevant section of this Act, who shall provide the secretariat;
- (e) resident representative of the National Land Commission;
- (f) non-state actors as identified and nominated in sub-section 8 and 9 respectively, below.

4) County Planning Consultative Forums –

- (a) County Governor who shall be the chairperson;
- (b) the County Director of Planning, who shall provide the secretariat;
- (c) all members of parliament representing constituencies in the County;
- (d) all members of the County Assembly representing wards in the County;
- (e) all County Executive Members responsible for various County development sectors;
- (f) resident representative of the National Land Commission;

(g) non-state actors as identified and nominated in sub-section 8 and 9 respectively, below.

5) Inter-county Planning Consultative Forums –

(a) the Chair of the Council of Governors, who shall be the chairperson;

(b) the County Directors of Planning drawn from collaborating Counties, and who shall form a joint secretariat;

(c) Governors of collaborating Counties;

(d) County Executive Committee Members of affected heads of affected County governments and who are responsible for planning matters;

(e) resident representative of the National Land Commission;

(f) non-state actors as identified and nominated in sub-section 8 and 9 respectively, below.

6) Special Areas Planning Consultative Forums -

(a) the Cabinet Secretary for the time being responsible for matters related to planning, who shall be the chairperson;

(b) the Director-general of Planning, who shall provide the secretariat;

(c) The Chair of the National Land Commission

(d) Cabinet Secretaries responsible for affected sectors;

(e) heads of relevant jurisdictional Planning Authorities;

(f) the Chair of the Council of Governors;

(g) the Governors of Counties affected by the declaration of a Special Planning Area;

(h) the Chairpersons of relevant Committees of the Council of Governors;

(i) County Executive Committee Members of affected heads of affected County governments and who are responsible for planning matters;

(j) the Chair of the Kenya Institute of Planners;

(k) the Chair of the Institution of Surveyors of Kenya;

7) The National Planning Consultative Forum -

(a) the Vice President, who shall be the chairperson;

(b) the Chair of the Council of Governors;

(c) Chairpersons of relevant Committees of the Council of Governors;

(d) all Cabinet Secretaries responsible for all development sectors warranting planning action;

(e) the Director-general of Planning, who shall provide the secretariat;

(f) the Chairperson of the National Land Commission;

(g) heads of Jurisdictional Planning Authorities;

(h) the Chair of the Kenya Institute of Planners;

(i) the Chair of the Institution of Surveyors of Kenya;

(j) the Chair of an association representing the private sector in Kenya as shall be determined by the Cabinet Secretary;

(k) the Chair of the Agricultural Society of Kenya;

(l) the head of the National Council of Non-governmental Organizations in Kenya;

(m) the Head of a registered national body representing associations of residents;

(n) the Head of a registered national body representing associations of Civil Society Organizations;

(o) the Chair of the National Council for Persons with Disability; and

(p) a representative of the caucus representing Planning Schools in Kenya.

8) With the exception of the Special Areas and National Planning Consultative Forum, all other Planning Consultative Forums shall have the following members representing non-state actors –

- (a) one registered planner, residing in the region, and nominated by the Kenya Institute of Planners;
 - (b) one registered surveyor, residing in the region, and nominated by the Institution of Surveyors of Kenya;
 - (c) a person nominated by a registered umbrella body representing the private sector in the area;
 - (d) a person nominated by a registered umbrella body representing the farmers in the area;
 - (e) a person nominated by a registered umbrella body representing Non-governmental Organizations in the area;
 - (f) a person nominated by a registered umbrella body representing associations of Civil Society Organizations in the area; and
 - (g) a person nominated by a registered umbrella body representing resident associations of residents in the area;
 - (h) a person nominated by a registered umbrella body representing Persons with Disability in the area.
- 9) for the avoidance of doubt, registered umbrella bodies are those mentioned in sub-section 7(h-n), above, and shall carry out their nominations as follows –
- (a) each nominating body shall, in a general meeting of the association or institute, nominate two persons, being one male and one female, and present to the respective appointing authority as delineated in Section 63 of this Act;
 - (b) the nominating body shall formulate guidelines detailing its expectations with respect to the role and conduct of its nominees to any Planning Consultative Forum, and in addition, shall reserve the right to recall its nominee in the event of breach of the same..

Rationale 10

In light of the fact that open forums are amorphous, there is need to infuse some measure of certainty and order in their organization and processes. Hence the formation of a core group of

individuals to take the lead in steering the process. The section is expanded to include composition of all steering committees.

Proposal 11

Insert the following clause thereafter:

Appointment of the Steering Committee of Planning Consultative Forums

The designated Appointing Authority with respect to all state and non-state members of Planning Consultative Forums is as follows –

- 1) the Governor of a County in the case of ward, village, City, Municipal or Town, Sub-County and County Planning Consultative Forums;
- 2) the Cabinet Secretary for the time being responsible for matters related to planning in the case of Special Areas, Inter-county and National Planning Consultative Forums;
- 3) The appointing authority, when appointing members of Planning Consultative Forums under sub-section 1 and 2, above, shall pay heed to provisions of Article 27 of the Constitution;
- 4) A person shall not be appointed a member of a Planning Consultative Forum if that person—
 - (a) is an undischarged bankrupt;
 - (b) has within a period of five years preceding the proposed appointment been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months; or
 - (c) has been found guilty of professional misconduct under any law.
- 5) All appointments shall be by notice in the Kenya Gazette and in at least two newspapers of national circulation.

Proposal 12

Insert the following clause thereafter:

Administration of Planning Forums

Planning Consultative Forums are organs of the National and County Governments and responsibility over administrative matters lies with the respective appointing authority as outlined under this Act, and shall be delegated to the respective Planning Authority. The following aspects shall be administered as follows;

1) with regards to facilitating the activities of Planning Consultative Forums -

- (a) the Cabinet Secretary shall facilitate functions, mandates and processes of National Planning and Special Area Consultative Forums as provided for under this Act;
- (b) the County Executive Member in charge of planning do likewise with respect to ward/village, metropolitan/city/town/market centre, sub-county, county and inter-county Consultative Forums
- (c) records of proceedings of deliberations of Planning Consultative Forums shall be safely deposited and maintained by the respective Planning Authority.

(31) Heading of Part III

Proposal 1

Amend the title to the Part to state as follows:

PART III — PLANS AND PLAN-MAKING

Rationale 1

The title fails to communicate the objects of this Part, which is to delineate categories and types of plans, their functions and elaborate processes involved in their preparation and implementation.

Proposal 2

More types of plans to be included that will touch on natural resource utilization, environmental management, funds equalization, and fulfilment of the Bills of Rights.

Refer to County Government Act, 2012 Part XI on County Planning and the Urban Areas and Cities Act, 2011, Third Schedule on the Preparation of an Integrated Plan.

Rationale 2

To comply with Article 204(2) of the Constitution.

MoLPP Response

Clause 33 (d), (f) and (i) of the bill caters for the recommended plans.

Further, local physical development plans include all the matters mentioned. This caters for the issues of emergent terminologies.

(32) Clause 13- Responsibilities of the National Director of Physical Planning

Proposal 1

Insert the following sub-part:

“Nature, Categories and Types of Plans”

Rationale 1

Different legislation have come up with a variety of type plans that are inconsistent with those contained in this Bill. As the framing planning law, this Bill ought to set the record straight with regard to the nomenclature of planning and plans.

Proposal 2

Insert the following clause thereafter:

Delineation Criteria

In delineating the categories and typologies of plans to be prepared under this Act, the following criteria shall apply –

- 1) The Territorial criteria which entails the delineation of planning jurisdictions and levels of planning based on spatial scales as outlined in this Act;
- 2) The Jurisdictional criteria which entails the distribution of institutional mandates over the planning function as follows –
 - (a) to National Government as provided for in this Act,
 - (b) to County Governments as provided for in this Act;
 - (c) to agencies and officers with delegated planning functions as outlined in this Act;

(d) to designated Planning Authorities as provided for in this Act

3) The Functional criteria which entails the specific needs that plans are intended to respond to and purposes they help realize as follows –

(a) providing an overarching and coordinating framework as is the case with Spatial, Structure and Strategic plans;

(b) detailing out programs and actions and project design as is the case with Development Plans;

(c) outlining a framework of implementation, monitoring and evaluation as is the case with Management Plans, which are implementation plans and shall focus on project prioritization, budgeting, implementation,

4) The Attributional Criteria which describes the nature and qualities of a plan as follows –

(a) Comprehensive planning which necessitates a holistic view and consideration of a planning problem and involves extensive techniques of public consultation, goal setting, data collection and analysis, forecasting, strategy and programme formulation, and project design;

(b) Strategic planning takes a broad-brush approach to understanding a planning problem, taking cognizance of contextual and institutional uncertainties and dynamism, and subsequently focusing on a limited set of actions with far-reaching outcomes;

(c) Integrated planning seeks to synchronize diverse elements into a programme of collective action, such as explained in this Act.

5) Based on a combination of these criteria, this Act adopts the generic categories and typologies of plans outlined this Act, to be prepared for purposes of achieving its various provisions.

Rationale 2

It is necessary to offer a logical criteria for delineating different categories and typologies of plans.

Proposal 3

Insert the following clause thereafter:

Framework plans

Framework Plans are high-level planning tools that furnish an overarching basis for the general purposes of facilitating coordination of development in medium and large-scale territories.

1) Framework plans shall –

- (a) be prepared for the territories delineated in this Act, to include national, resource, county and metropolitan regions, and for key development sectors as delineated in this Act;
- (b) focus majorly on clarifying policy by communicating a vision negotiated and consensually agreed amongst regional stakeholders, spatial structures that derive from and align to broad-based territorial systems and strategic orientations as informed, made possible and shaped by the existing potentials and challenges;
- (c) have a long-range perspective and implementation period of 25 to 30 years; (d) be implemented by means of more detailed medium and short-term development plans.

2) Four typologies of plans are envisaged under this category as follows -

- (a) National Spatial Plan which is geared towards addressing elements of the national Spatial Development Policy as outlined in this Act;
- (b) Regional Spatial Plans which shall focus on the coordination of policies and strategies affecting spatial organization of human practices and activities, and balancing these with natural support systems, in a sub-region of the national territory and territorial domains larger than a city;
- (c) Urban Structure Plans which shall focus on the spatial structure of cities, municipal areas and towns; and
- (d) Sector Strategy Plans which shall focus on giving strategic orientations targeted at achieving aspirations of key development sectors.

Rationale 3

This is a more accurate depiction of the nature, scope and function of these higher level plans.

Proposal 4

Insert the following clause thereafter:

Integrated Development Plans

Integrated Development Plans are planning tools that undertake a comprehensive and detailed treatment of planning issues and challenges as they impact upon a given territorial domain.

1) Development Plans shall –

- (a) be prepared for all of the territorial domains delineated in this Act, and key sectors as delineated in this Act;
- (b) focus on strategy elaboration, program formulation and project design;
- (c) have, in the case of plans outlined in sub-section 2(a to g) a medium-range perspective with a 10 to 15 year implementation period broken in successive five year short-term implementation plans;
- (d) have, in the case of plans outlined in sub-section 2(h, to i) a short-range perspective with a less than 5 year implementation period depending on the type plan;
- (e) have the nature, qualities and functions described in this Act;
- (f) subscribe to the principle of integrated planning as outlined in Section 19 of this Act.

2) plans to be prepared under this category shall include, but are not limited to the following –

- (a) National Development Plan which shall outline priorities for national development sectors, development of nation-wide infrastructure systems, and areas earmarked for implementation of strategic national projects;
- (b) Regional Development Plans which shall focus on development of territorial resources and associated systems for their sustainable utilization for the benefit of the region's population;
- (c) Urban Development Plans which shall provide a basis for growth of cities, towns and urban areas through the optimized use of physical resources, settlement infrastructure,

economic activities and capacities inherent in communities and individuals residing thereupon within a sustainable development framework;

- (d) Neighbourhood Plans which shall be prepared for urban precincts and settlement areas, and shall focus on provision of community facilities, services and amenities;
- (e) Ward or Village Plans which shall have a focus on provision of rural infrastructural services and revitalization of productive sectors for the purposes of improving the general welfare of rural communities;
- (f) Special Area Plans which shall be prepared for areas with qualities needing special consideration such as heritage areas, ecological areas, and whose continued existence and inherent integrity is guaranteed through preservation and conservation plans and regulatory measures;
- (g) Renewal or Redevelopment Plans which shall outline measures to regenerate areas afflicted by social-cultural decadence, economic recession and blighted by physical decay;
- (h) Masterplans which shall give a detailed elaboration of a planning intervention by integrating landscape planning, urban design and spatial design;
- (i) Part development plans which shall clearly demarcate an area or areas earmarked for purposes of acquisition and disposal, and indicate its land use framework, use and development stipulations, and easements if any;
- (j) Site Plans which shall clearly demarcate an area or areas earmarked for immediate development of the kind defined in this Act. Site plans also inform land administration procedures as provided for in this Act, and Development Applications as outlined in this Act.

3) attributional distinctions outlined in this Act may be adopted in the naming of various Development Plans.

Rationale 4

This is a more accurate depiction of the nature, scope and function of these plans.

Proposal 5

Insert the following clause thereafter:

Implementation Plans

63. An Implementation Plan is a tool that lends itself to facilitating the realization of planned measures by supporting the implementation of its integrated development plans.

1) All plans prepared as provided for under this Act shall be accompanied a Implementation Plans which shall –

- (a) Set out a clear programme of implementation that includes project prioritization, budgeting and execution modalities;
- (b) clearly set out the institutional structures necessary to operationalize the implementation framework and serve to guide their activities in this regard;
- (c) outline a clear programme for monitoring and evaluating plan performance in terms of efficiency of implementation processes and efficacy of planned measures in accordance with set benchmarks;
- (d) have as their ultimate goal, to guarantee sustainable outcomes as highlighted in this Act;
- (e) have a sort-range perspective tied to the attainment of stated goals and outcomes.
- (f) to support the implementation of its integrated development plan

2) plans to be prepared under this category shall include, but are not limited to the following -

- (a) Sector Plans which shall be prepared in relation to all public sectors warranting planning action, including, infrastructure utilities and service provision, health, education, housing, economic development, industry, communication, transport, waste management, water and sanitation, agriculture, tourism, and any other purposes as may be required under this Act or any other law, and which shall detail out the programmes of action necessary to revitalize these sectors and make them effective, and address the distributional efficiencies relative to associated facilities;

- (b) Subject Plans which shall be prepared to address a variety of thematic issues, including but not limited to, resettlement, land acquisition, pollution, urban decay, security;
- (c) Natural Resource Management Plan which shall be prepared in relation to all land and landed resources, outlining modalities for growing these, and enhancing their potential to serve everyday needs of society in a sustainable development framework;
- (d) Rural Land Use Management Plan which shall be prepared in connection with areas that are not urbanized, harmonizing competing needs for land and outlining measures to improve its productivity in a sustainable development framework;
- (e) Urban Zoning Plan which shall focus on regulating the material change in the use and density of urban land and buildings through the application of a variety of planning control and development control tools including by-laws, codes and standards;
- (f) Environmental Management Plans which shall be prepared for the general purpose of mitigating the impact of natural processes and human practices on the environment;
- (g) Reclamation and Restoration Plans which shall outline modalities for the restoration of land degraded by unsustainable resource extraction practices and pollution such as mining areas and waste dumping sites;
- (h) Public Health and Sanitation Plan which shall outline measures to prevent or control all forms of pollution and mitigate effects thereof;
- (i) Traffic Management Plans which shall pursue a harmonious integration of multiple transport modes and means within road corridors, and ensure convenience and safety of users thereof;
- (j) Capital Investment Plans shall assess the implementing capacity of an agency with regard to present and future resources and possibilities to be expended towards realizing planned measures;
- (k) Advisory Plans, which shall outline measures instituted to comply with stipulations accompanying grant of planning permission or to check compliance with an enforcement order as provided for in this Act are also considered as management plans.

4) all plans in sub-section 2, with the exception of the urban zoning plan in sub-section 2(e), may be prepared by designated planning authorities as provided for in this Act.

Rationale 5

This is a more accurate depiction of the nature, scope and function of these lower-level plans.

Proposal 6

Insert the following clause thereafter:

Purpose, Content and Structure of Plans

The Director-general shall, as provided for in this Act, and by means of statutory instrument, issue further clarification as to the matters which may be dealt with, the purpose and objects, content and structure, and nature of deliverables expected of each of the categories and typologies outlined by of plans outlined in this Act.

Rationale 6

The plans are too many to elaborate the Purpose, Content and Structure within the main body of the law. Subsidiary legislation would suffice.

Proposal 7

Insert the following clause thereafter:

The Status and Effect of Plans

All plans prepared as provided for under this Act have the status of legal documents, instruments prepared and deployed for the specific purposes of achieving the objects of this Act as outlined in the preamble -

- 1) plans assume a legal status when all of the following conditions are met –
 - (a) they are prepared and finalized by a Registered Professional Planner;
 - (b) they are certified by the relevant authority as specified in this Act;
 - (c) approved by respective authorities as specified in this Act;

(d) published in the Kenya Gazette;

(e) registered and entered in the archive of the National Planning Institute as provided for in this Act.

2) upon legal translation, all plans shall have the following effect –

(a) plans shall have legal force, and are binding to all those that are targeted by the plans and associated measures;

(b) no transactions on land of the type outlined in this Act shall proceed outside the framework of a certified, approved, published and registered plan;

(c) no public expenditure shall be sanctioned outside the framework of a certified, approved, published and registered plan.

Proposal 8

Insert the following sub-part thereafter:

“Plan Preparation – General Requirements”

Proposal 9

Insert the following clause thereafter:

Qualified Persons

All plans listed in this Act shall be prepared by legally qualified persons.

1) a person is considered qualified for the purposes of taking on responsibilities for plan formulation if that person meets all of the following requirements -

(a) possesses the relevant knowledge, skills, experience and maturity necessary to accurately interpret and respond to the terms of reference for tasks commissioned;

(b) possesses a minimum under-graduate qualification that is accredited as a professional degree in urban and regional planning; or any of its associated sub-domains from a university or institution chartered and recognized as offering such programmes;

- (c) has at least two years post-qualification experience in professional planning engagements;
- (d) is registered and licensed as a practicing professional planner under the Physical Planners Registration Act;
- (e) is a corporate member in good standing, of the National Planning Institute;

2) different categories and types of plans require different types of expertise and levels of experience as follows;

- (a) the lead consultant for purposes of commissioning to oversee processes to prepare all framing plans and integrated development plans, must, in addition to the criteria set in sub-section 1 above, be required to have at least 10 years post-qualification experience, five of which he acquired as a registered planner;
- (b) persons with specific qualifications that meet the criteria for recognition as associated professional planning sub-domains may take the lead for purposes of commissioning to oversee processes to prepare any of the Management Plans under Section _ of this Act;
- (c) unregistered planning professionals may be involved in the preparation of all plans under supervision by a qualified person as outlined in sub-section (a) above.

3) without prejudice to provisions of Section 1 and 2 above, the multidisciplinary nature of planning demands that the planning team for purposes of plan formulation include additional expertise in specialized areas that include but are not limited to the following -

- (a) architecture;
- (b) engineering;
- (c) geo-spatial science;
- (d) real estate;
- (e) economics;
- (f) sociology;
- (g) cultural anthropology;
- (h) geology;
- (i) environmental Science;
- (j) natural resource management;

- (k) public administration and governance;
 - (l) urban management;
 - (m) planning law;
 - (n) social and community development;
- 4) the involvement of the experts listed in sub-section (3) above is subject to those professionals being registered by their respective regulatory bodies, particularly where such exist;
- 5) all procurement for planning services shall strictly abide by the requirements of this Section;
- 6) Any person who, being not qualified, purports to be legally qualified for the purposes of preparing plans as provided in this Act shall be guilty of an offence and shall be liable on conviction –
- (a) to a fine not exceeding 1 million Kenya Shillings or to imprisonment for a term not exceeding 6 months or to both; or
 - (b) if the qualified person is a repeat offender, to a fine not exceeding 2 million Kenya Shillings or to imprisonment for a term not exceeding 12 months or to both.

Rationale 9

The availability of funds for plan preparation in the last two decades has attracted a lot of unqualified persons, quacks and “tenderpreneurs” into the procurement process for planning services. It is therefore necessary to clarify who can prepare different types of plans.

Proposal 10

Insert the following clause thereafter:

Procurement for planning services

Planning services shall be procured in accordance with general provisions for procurement of professional/intellectual services as set out in the Public Procurement and Assets Disposal Act.

- 1) such procurement shall however have due regard to –
- (a) provisions outlined in the Professional Planners Act with regards to the procurement of professional planning services;

(b) requirements on qualified persons as stipulated in this Act;

(c) the regulation of fees chargeable for services rendered as outlined in the Professional Planners Act and as per the guidelines issued by the relevant professional bodies and associations.

2) as much as possible, procurement for purposes of preparation of Framework Plans and Integrated Development Plans should be through design competition method as provided for in the Public Procurement and Assets Disposal Act. In this case, bidders will submit and be assessed based on the following –

(a) a concept plan indicating the likely orientation of the plan in terms of objects, content and substantive outcomes;

(b) a programme summarizing methodological and procedural innovations;

(c) an clear indication of phases and timelines associated with various procedures and processes;

(d) a general estimate of budget and costs associated with all aspects of plan preparation.

3) where the relevant Planning Authority decides to use the method outlined in sub-section 3, above, it shall seek the involvement of the National Planning Institute in the following areas-

(a) formulation of the Terms of Reference for the assignment;

(b) constitution of a Competition Assessment Panel;

(c) evaluation and determination of bids for participating consultants.

4) upon determination, the Planning Authority shall-

(a) recognize and appreciate all participating firms;

(b) determine the nature of award to the winning entry, first and second runners-up;

(c) award the tender based to any of the top three consultant based on declared capacities and responsiveness to other criteria as per Terms of Reference;

5) the consultant selected for tendering shall submit a final bid and enter negotiations with the procuring entity prior to commissioning.

Proposal 11

Insert the following clause thereafter:

Joint Planning Initiatives

Two or more parties may, by written agreement, and after consultation with the Director-general, enter into partnerships for purposes of jointly preparing and implementing framework plans and/or integrated development plans.

- 1) possible joint ventures as per this provision include but are not limited to initiatives between –
 - (a) national and county planning authority;
 - (b) planning authorities of two or more counties;
 - (c) statutory planning authority and designated planning authority
 - (d) planning authority and sectoral agency;
 - (e) planning authority and private developer
- 2) the parties may also establish a part, or parts, of their respective areas as a multijurisdictional service area to facilitate the provision of public services in that part or those parts of the area;
- 3) the parties shall establish joint consultative forums for purposes of allowing public participation in the planning process.

Proposal 12

Insert the following clause thereafter:

Mainstreaming Crosscutting Issues

All plans shall indicate the manner by which and the extent to which they have mainstreamed the following cross-cutting issues –

- 1) climate change adaptation and disaster risk reduction with a clear focus on the following-

- (a) integrating sustainability concerns in the core of planned measures, programmes and projects;
 - (b) outlining measures to insulate development from risks related to climate change and natural disasters;
 - (c) strengthening the capacity of communities to adapt and mitigate change;
 - (d) strengthening disaster preparedness and response.
- 2) gender and vulnerable groups (youth, elderly, people living with disability, children), with a focus on-
- (a) applying equality perspectives in the formulation of planned measures;
 - (b) adequate response to rights and fundamental freedoms for children, persons with disabilities, youth, minorities and marginalised groups and older members of society as enshrined in the Constitution;
 - (c) enhanced opportunity for the adequate participation of vulnerable groups in all phases of plan formulation, project planning and implementation;
 - (d) guarantee that these vulnerable groups have meaningful and equal opportunity to reach their full potential.
- 3) poverty alleviation and safeguarding livelihoods which shall focus on-
- (a) guaranteeing the economic and social rights of populations residing in each planning jurisdiction;
 - (b) equitable distribution patterns for resource within a given planning jurisdiction;
 - (c) equitable distribution of resources among different localities and social groups;
 - (d) guaranteeing food security and nutrition for the entire population.

Proposal 13

Insert the following clause thereafter:

Plan-making Principles, Norms and Standards

All planning and plans shall strive to achieve the values, norms, and standards as contemplated in this Act, and relevant subsidiary legislation. The norms and standards include but are not limited to -

- 1) norms and standards relating to plan-making processes as follows;
 - (a) all plan-making processes and procedures shall endeavor to align to those outlined in Part IV of this Act, and with respect to the specific type plan;
 - (b) all initiators and overseers of a planning process have a duty to allow participation of the public, consult, seek representations, and integrate public views.
- 2) norms and standards relating to the outcome of plans and planned measures as follows;
 - (a) all plans shall subscribed to the principles outlined in this Act, and promote spatial equity, social inclusion, orderly development and sustainability;
 - (b) all plans shall be relevant for each level and have an inherent internal consistency, and reflect horizontal and vertical consistency between and with other plans
- 3) norms and standards with respect to planning decision frameworks, processes and procedures as follows;
 - (a) all planning decision-making shall have due regard to convenience and time and cost-consciousness in the delivery of services to all parties
 - (b) all planning decision frameworks shall be transparent, inclusive, and fair to all parties
- 4) norms and standards relating to the nature and content of plans as follows;
 - (a) all plans shall have an inherent internal consistency, and reflect horizontal and vertical consistency between and with other plans;
- 5) norms and standards regarding the format of plans as follows;
- 6) all planning reports and accompanying maps shall adopt the format, style and symbology for the respective plan as prescribed in Part 4 of this Act and further elaborated in any approved guideline, handbook or manual.

Proposal 14

Insert the following sub-part thereafter:

“Planning Processes and Procedures”

Proposal 15

Insert the following clause thereafter:

Initiation of a Planning Process

No planning, of any kind, and related to any jurisdiction, shall commence unless such is initiated by the authority that is mandated, in this Act, to formally initiate the process.

- 1) responsibility to initiate a planning process vests in the following public authorities-
 - (b) the Cabinet Secretary as provided;
 - (c) the County Executive Member;
 - (d) sector-based ministries;
 - (e) Designated Planning Authorities;
 - (f) when a private entity seeks to undertake a planning exercise on private land, such shall be deemed to have been initiated by the authority in sub-section 1(b).
- 2) in each of the above cases, the advice of the head of the respective Planning Authority, which shall take the form prescribed in this Act will form the basis decision-making as to whether or not to initiate a planning process.
- 3) the Cabinet Secretary shall, assume responsibility for initiating a planning process in the following circumstances;
 - (a) where a County Government does not have a Statutory Planning and Development Authority;
 - (b) where sector-based ministries do not have planning departments,
 - (c) where Planning Authorities have not been designated as per this Act; or
 - (d) where any of these fail to meet the capacity requirements for undertaking planning and/or development control function as prescribed under this Act.
- 4) without prejudice to provisions of subsection 3 above, the Cabinet Secretary shall act upon receiving a resolution from the authorities mentioned in sub-section 1 above, to the effect that

they are unable to initiate and conclude a planning process, and upon verification and confirmation, direct the commencement of a planning process;

5) a County Government shall, within a period of three months from the election of its County Assembly, ascertain that —

(a) there is an existing County Integrated Development Plan adopted and approved by a previous County Executive and County Assembly, respectively, adopt that integrated development plan or review the integrated development plan; and

6) there is no existing County Integrated Development Plan or the County considers that it is necessary to review the existing plan, initiate the planning process.

Proposal 16

Insert the following clause thereafter:

Declaration of a Planning Area

No planning, of any kind, and related to any jurisdiction, shall commence in the absence of a declaration, by the relevant authority, of areas earmarked for initiation of planning of a planning process.

1) the power to declare planning areas vests with the following authorities —

(b) the Cabinet Secretary in relation to special planning areas, and as provided for in this Act;

(c) the County Executive member as per jurisdiction, and as provided for in this Act, and;

(d) the City or municipal manager or town administrator as per jurisdiction, and as provided for in this Act.

2) the relevant Planning Authority shall submit to the authorities mentioned in subsection 1, above, a proposal for the preparation of a plan, and which shall include —

(a) defining the geographical area and community to which the plan relates;

(b) a reasoned statement of the need for the plan;

(c) definition of the proposed scope and contents of the plan;

(d) a suggested timetable for the preparation of the plan;

- (e) the framework for obtaining representations from persons likely to be affected by or likely to wish to submit representations and views on the proposed plan during the course of its preparation;
 - (f) proposals for the validation of the plan by governmental and non-governmental stakeholders; and
 - (g) such other matters as are required by the Officer or are considered by the Authority to be necessary for a decision to be made on the proposal.
- 3) where the relevant authority rejects a proposal submitted under sub-section 2 above, he may require the relevant Planning Authority to submit a fresh or modified proposal for the same plan or a new proposal for a different plan;
- 4) where the relevant authority approves the proposal submitted under subsection 2 or 3, he shall proceed as follows;
- (a) ensure allocation of adequate resources necessary for initiation and completion of all processes and procedures associated with the type-plan;
 - (b) publish a notice of intention to prepare a plan in the Kenya gazette, in at least one newspapers with a national circulation, a daily newspaper of general circulation in the area, and carryout broadcast in local electronic media, except that where newspapers are not widely circulated, the authority shall take additional steps to ensure that the notice is communicated to the residents of its area;
 - (c) constitute the relevant Steering Committee for Planning Consultative Forum as provided for in this Act.

Proposal 17

Insert the following clause thereafter:

Land Survey and Mapping

The relevant Planning Authority shall, prior to commencement of plan formulation processes, cause to be undertaken a detailed technical survey and mapping in respect of the area to which

the plan relates, carried out in the manner prescribed in the Schedule of this Act, and with respect to each plan category.

1) the purpose of the survey and mapping exercise is to –

- (a) assist in the delineation of boundaries of the planning area;
- (b) assist in the generation of a broad range of Geographical Information System (GIS)-based maps and descriptions that meet the technical requirements for the plan;
- (c) provide the content for preparation of base maps sieve maps of key spatial, environmental and man-made features;
- (d) facilitate analysis and interpretation of the influence of factors such as gradient, environment qualities and infrastructure layouts on land cover, land use and settlement patterns throughout the plan area;
- (e) assist in clarifying and problematizing existing conditions; and
- (f) give guidance as to the manner by which the land in the area may be used, and optimal locations for new developments;
- (g) provide a basis for development of Geographical Information Systems and Land Information Systems in aid of future planning decision-making.

2) data may be obtained from existing sources, including, but not limited to maps, digital data, secondary datasets, documentation and reports, or freshly produced, provided that-

- (a) a thorough ground mapping and ground-truthing exercise will use of Global Positioning devices to acquire accurate GPS coordinates for key points of interest within the plan area, and erect monuments of ground control points;
- (b) all aerial/satellite imagery acquired either through aerial survey or existing sources will be subjected to photogrammetric techniques and geo-referencing;
- (c) the established control point network shall form the basis of generating a digital elevation model, contour, and determine the elevation values for each coordinate in the project so as to get a profile of the ground;

(d) the data will then be used to digitize and extract all features of interest within the plan area, including but not limited to; population and demography, infrastructure and services, economy, culture, environment, land use and settlement morphology.

(e) the data will subsequently be compiled and migrated into a GIS format database, stored properly, an optimized for access through ordinary computers and any other digital equipment, and the web;

(f) hard copy printouts of layered themes and a synthesis base-map shall also be provided.

3) the Survey of Kenya shall issue guidelines in respect of gridlines and requirements for coordinates based on appropriate systems, and scales of maps for different categories of plans.

Proposal 18

Insert the following clause thereafter:

Background Studies

The relevant Planning Authority shall, prior to commencement of plan formulation processes, cause to be undertaken background studies providing details on matters relevant to the area to which the plan relates.

1) the subject of the background studies is as detailed out in the Schedule of this Act, and with respect to each plan category;

2) the background studies and collected data shall facilitate a systematic analysis and interpretation of key aspects of the plan area, including but not limited to-

(a) the principal physical, social, economic and environmental characteristics of the area including the principal purposes for which land is used;

(b) the size, composition and distribution of population of the area;

(c) the communications, transport systems and traffic in the area;

(d) the public services and the physical and social infrastructure provided in the area;

(e) the present development and use of land in the area; and

(f) opportunities and challenges that are presented by factors observed in sub-section (a) to (e), above.

3) the systematic analysis shall lead to a synthesis of the existing situation in such a manner that assists the Planning Team to have a clear understanding of endogenous and exogenous factors that influence development trends and dynamics of the plan area, prospects and challenges growth, and ongoing initiatives to resolve them.

4) The background studies report shall inform all decision-making and shall shape the nature of planning interventions.

Proposal 19

Insert the following clause thereafter:

Plan Formulation

1) The relevant Planning Authority shall manage the drafting of any process leading to the formulation of any of the plan categories mentioned in this Act in accordance with the adopted planning programme provided for under section this Act.

2) Plan formulation, and with respect to all Framework Plans and Integrated Development Plans shall follow a generic multistage process that entails the application of the following procedures and activities;

(a) Visioning and goals/objectives setting - A thorough review of the planning context and framework as outlined in Part II of this Act, including, but not limited to the following;

(i) national policies and guidelines;

(ii) stated aspirations and priorities of the people of the jurisdictions to which the plan relates; and

(iii) as informed by a fair assessment of the area's development potential.

(b) Concept formulation and design of alternatives strategies - the Planning Team, informed by general appreciation of the existing situation, and taking cognizance of stakeholders' views and negotiated vision, will come up with a limited set of alternate scenarios to be presented as models to frame the future of the plan area.

- (i) alternative development scenarios shall be identified and illustrated;
 - (ii) specific development strategies and controls that are required to support each scenario will have to be determined
 - (iii) each of the scenarios will be assessed in qualitative and quantitative terms.
- (c) Formulation of Draft Plan - the first draft of the plan shall be formulated from the preferred draft amongst the alternatives or from a combination of desirable outcomes from all alternatives, and shall-
- (i) incorporate the insights of initial consultative engagements;
 - (ii) outline key strategic orientations for the plan;
 - (iii) identify flagship programmes and projects;
 - (iv) design strategies and actions to address each of the plan's objectives;
 - (v) the draft will also suggest a spatial framework that will support a balanced and harmonious development;
 - (vi) the plan formulation process shall take account plans and planning strategies of neighbouring jurisdictions.

Plan review and validation – in fulfilment of the requirement of this Act, the Planning Authority shall, during the course of the planning period, cause the draft plan to be presented to, and receive objections, comments and contributions from the public, communities and other stakeholders in accordance with a planning programme. The relevant stakeholder groupings as identified as follows -

- (i) a congregation of the relevant Planning Consultative Forum as provided for in Section 62 of this Act, and as a means to solicit their views and agreement on the planned outcomes;
- (ii) a multidisciplinary team consisting of technical heads of Sector-based ministries or departments, and for purposes of ensuring coordination with appropriate regulatory authorities responsible for sectoral plans.

- (d) Preparation of the Final Plan - a final version of the plan shall incorporate the views of all stakeholders prior to submission to the Approving Authority, provided that the Final Plan shall -
- (i) be finalized and submitted in the format prescribed, and accompanied by deliverables outlined in this Act
 - (ii) be written and illustrated in a manner that communicates with a broad audience..
- (e) Design of an implementation and resource framework – the associated implementation plan shall be prepared upon completion of the Final Plan and shall-
- (i) elaborate the sequencing and time frame (short, medium and long term) of the interventions;
 - (ii) identify resources necessary for the realization of different aspects of the plan;
 - (iii) identify implementing agencies and assess their capacity need relative to the task at hand;
 - (iv) at this time, the steering committee will report progress on networking initiatives aimed at raising capital for the realization of planned outcomes.
- (f) Appraisal of Final Plan and associated outputs – the Final Plan, and the Implementation Framework shall be submitted to the County Director of Planning or as the case may be, the Director-general of Planning and for purposes of scrutiny and ensuring that the plan takes full account of statutory, technical and professional requirements;
- (g) Adoption and Approval of Final Plan - the relevant authority as provided for in this Act will initiate activities towards legal translation of the Plan through professional certification, formal adoption and approval by the respective Approving Authority as outlined in this Act.

Proposal 20

Insert the following clause thereafter:

Public Participation and Plan Validation

The relevant Planning Authority shall ensure that the plan proposals reflect the general aspirations of the people and communities for which the plan is made.

1) the Planning Authority, upon commencement of the plan preparation process and before finally determining its content for submission to the Approving Authority, shall take such steps as to ensure –

- (a) that adequate publicity is given regarding the impending planning process, and in accordance with the procedure set out in this Act
- (b) that persons who may be expected to desire an opportunity of making representations with respect to matters listed in the planning programme approved are made aware that they are entitled to an opportunity of doing so; and
- (c) that such persons are given an adequate opportunity of making such representations;
- (d) that interested parties are given an elaborate programme outlining the various stages of involvement and nature of representations expected at each critical stage of plan formulation.

2) a detailed stakeholder analysis shall precede commencement of public involvement processes, the aim being to identify interests relevant to the planning process and ensure wholesome and equal representation of all stakeholders, including but not limited to-

- (a) social groupings including but not limited to gender-based, youth, senior citizens, and the physically challenged;
- (b) community-based organizations;
- (c) mutual benefit associations;
- (d) non-governmental organizations;
- (e) Private developers and investors.

3) the stakeholder analysis report shall form the basis of constituting the relevant Planning Consultative Forum as provided for in this Act, the latter which shall then provide the framework of an orderly and harmonious stakeholder engagement process;

4) public involvement shall at all times be open and transparent, and may take a variety of forms including but not limited to-

- (a) direct participation in the planning process through meetings;
- (b) public exhibitions;
- (c) public debates and media discourses;
- (d) formal submission of written memoranda.

5) the Planning Authority shall, within the prescribed period, consider any representations made to it, and as material matter in the formulation of planned measures;

6) the final outcome of the planning process, particularly planned measures, shall be deemed to be outcomes of a collaborative process of co-creation, and shall constitute a pact between government and citizens, and subsequent implementation shall be binding on both.

(33) Clauses 17 – 49 - Physical Development Plans

Proposal 1

Amend the Bill by deleting Physical Development Plans and replacing them with land use plans.

Rationale 1

1. The planning framework established through the plans disregards the integrated framework established under the County Governments Act Section 102-115 and the integrated development planning framework provided under Section 36-41 of the Urban Areas and Cities Act 2011. This is likely to create confusion.
2. The bill creates contradiction in the names of the plans to be prepared which are not aligned to the plans provided for in County Governments Act 2012 at sections 107(1)(a-c) 110 and 111 (1) namely
 - (a) County Spatial Plan
 - (b) city /municipal land use plans,
 - (c) city /municipal building and zoning plans

(d) city/urban areas building and zoning plans

(e) Location of recreation areas and public facilities.

- The naming of the plans is an attempt to sustain the status quo of the Physical Planning Act Cap 286 which has been ineffective and limited in scope.
- These plans are a duplication and or contradict the plans provided for under sections 107-111 of the County Governments Act 2012 and section 36-42 of the Urban Areas and Cities Act 2011. This creates confusion, duplication and unnecessary additional expenditure for counties.

Proposal 2

Amend the Bill by deleting Physical Development Plans and replacing them with plan typologies provided for under the County Governments Act (section 107-111) and the Urban Areas and Cities Act (section 36-42).

Rationale 2

1. The planning framework established through the plans disregards the integrated framework established under the County Governments Act Section 102-115 and the integrated development planning framework provided under Section 36-41 of the Urban Areas and Cities Act 2011. This is likely to create confusion *for the counties and the urban management boards*.
2. The bill creates *ambiguities and* contradictions in the names of the plans to be prepared which are not aligned to the plans provided for in County Governments Act 2012 at sections 107(1)(a-c) 110 and 111 (1) namely
 - (a) County Spatial Plan
 - (b) city /municipal land use plans,
 - (c) city /municipal building and zoning plans
 - (d) city/urban areas building and zoning plans
 - (e) Location of recreation areas and public facilities.

These plans are a duplication and or contradict the plans provided for under sections 107-111 of the County Governments Act 2012 and section 36-42 of the Urban Areas and Cities Act 2011. This creates confusion, duplication and unnecessary additional expenditure for counties.

(34) Clauses 17 - 22- National Physical Development Plan

Proposal 1

1. Rename the plans “National Spatial Plan”.
2. The Cabinet Secretary should be the preparatory authority.

Rationale 1

1. The government has already prepared and approved a national spatial plan (2015-2045)
2. The plan is a policy document which is multi sectoral in application

MoLPP Response

Accept No. 2 by amending to read “The Cabinet Secretary shall initiate preparation of the National Physical Development Plan on the advice of the National Director of Physical Planning”.

(35) Clause 17- Responsibilities of the National Director of Physical Planning

Proposal 1

1. Amend the name of the plan to state “The National Spatial Plan”.
2. Align clause 17(1) to the functions of the cabinet secretary and the National director of Planning respectively, as stipulated above. The Director of National Planning should be responsible for the preparation of the National Spatial Plan while the Cabinet Secretary should recommend the plan for approval by Parliament.
3. Amend clause 17 (2) (a) to cover an implementation period of thirty years.

Rationale 1

The clause is ambiguous; the functions need to be separated.

- 1) By adopting the term —National Physical Development Plan, Clause 17 provides for development of a parallel national spatial plan since the national government prepared and developed the National Spatial Plan, 2015–2045. This creates overlap and policy conflict as a government should not prepare 2 similar documents whose functional mandate is the same. Consequently, clause 17 should be in consonance with what government has already envisaged and committed to which is the National Spatial Plan, 2015-2045.
- 2) The national government has already prepared and adopted the National Spatial Plan, 2015–2045 which covers a period of 30 years

(36) Clause 18- Purpose and objects of the National Physical Development Plan

Proposal 1

Delete Section and insert the following:

The National Land-use Plan shall be prepared in accordance with the national Land-Use Policy, the plan shall provide a framework for the use and development of land and provide for spatial planning matters that are of national interest including:

- (a) designation of appropriate integrated development priorities and economic activities on land for the applicable geographical zone in Kenya;
- (b) international and national transport infrastructure and communication such as national trunk roads, ports and harbours, airports and railways;
- (c) national institutions such as universities, research institutions and referral hospitals;
- (d) national industrial parks
- (e) national forests and parks;
- (f) water resources, national ecosystem resources and national environment management;
- (g) energy exploration and exploitation resources;
- (h) natural features such as mountains, escarpments;
- (i) ancient and historical monuments; and

- (j) provide a framework to guide inter-county, county and development of urban areas.

Rationale 1

- 1) The National Spatial Plan should focus on spatial planning matters of national importance or that have national implications.
- 2) The National Spatial Pan should not provide for policy matters as provided under clause 18. The National Land-Use Policy and related polices should be the appropriate policy document to provide for the matters stipulated under clause 18.

MoLPP Response

The issues raised have been comprehensively captured under Clause 18.

Further, under 19 (1) (a) provides for the national director to consider other relevant national policies.

(37) Clause 19- Procedure for preparation of the National Physical Development Plan

Proposal 1

1. Amend clause 19 (1) (d) to state “ensure effective participation of the National Spatial Planning Co-ordination Forum”.
2. Amend clause 19 (2) to state “The National Director of Planning shall, at least fourteen days before commencement of the preparation of a National Land Use Spatial Plan, publish a notice in the Gazette and in at least two newspapers of national circulation, appropriate electronic media (with national coverage) and placement of notices at all county headquarters of the intention to prepare a National Land Use Spatial Plan.”

Rationale 1

1. Paragraph (d) assumes that the Forum should only interact with the proposed plan by reviewing it as opposed to engaging in the entire process of development of the Plan.
2. Electronic Media is currently the most efficient and cost effective mode of communication. The role to publish be retained with the National Director of Planning.

MoLPP Response

There is no provision for national coordination forum.

(38) Clause 20- Content of National Physical Development Plan

Proposal 1

Delete clause 20 (1) (c).

Rationale 1

(1) c) provides for matters that should be provided for under the national land-use policy and not the plan. Comments noted above on clause 18 apply in this part as well.

Proposal 2

Insert a new Clause 20 (5) to state as follows:

“(5) A Strategic Environmental Assessment shall be prepared and submitted to the National Environmental Management Authority upon which an approval shall be obtained before the National Physical Development Plan is approved”.

MoLPP Response

Accept the proposed amendment.

Proposal 3

Reduce the period for completing the preparation of the plan to twelve months.

Rationale 3

The period is too long and will escalate costs.

(39) Clause 21- Notice of preparation of National Physical Development Plan

Proposal 1

Reduce the period for the publication of a notice of the National Physical Development Plan by the Cabinet Secretary upon its preparation under sub-clause (1) to 14 days.

Proposal 2

Reduce the period for the review of the National Physical Development Plan by the Cabinet Secretary under sub-clause (3) to 21 days.

(40) Clause 22- Approval of National Physical Development Plan

Proposal 1

Amend the clause by inserting a new sub-clause (4) and (5) as follows–

22. (4) The Cabinet Secretary shall submit the National Spatial Plan to the National Assembly within fourteen days after approval by Cabinet for consideration and final adoption.

(5) The National Assembly shall, upon consideration of the Plan submit it to the Senate for consideration in accordance with the Standing Orders applicable in Parliament.

Rationale 1

The National Spatial Plan is fundamental policy document of national importance and should receive final approval by the National Assembly and the Senate.

MoLPP Response

Reject proposed insertion of sub-clause 22 (5). The proposed amendment is referring to the bill and not the plan.

Replace the words “submitted to the Cabinet for approval” with “approved by the Cabinet Secretary” in Clause 22(3).

Delete the words “by the Cabinet” immediately after the word “approval” in Clause 22(4)

Substitute the word “approval” with “adoption” 22(4)

In Clause 22 (5) substitute the two words “approval” with the words “adoption”.

Proposal 2

Provide a time limit for receiving applications for review under sub-clause 1, preferably 21 days.

(41) Clause 24- Status Reports

Proposal

Identify the public institutions by name and provide for the manner of enforcement of the clause.

Rationale

Public institutions not identified by name and the manner of enforcement.

(42) Clause 25- Establishment of Inter-County Joint Physical Development Planning Committees

Proposal 1

1. Intercounty Plans to be prepared under the framework provided for in Inter-governmental Relations Act Section 23 and Article 189 (2) of the Constitution.
2. The plans should be called inter county land use plans.

Rationale 1

1. The Section contradicts Inter-governmental Relations Act Section 23.
2. Pre determining the membership and assigning National Director as chair goes against and undermines the spirit of devolution in Article 189 (2)
3. Cooperating counties should have a freehand to determine how their matters are addressed.

Proposal 2

Delete clause 25 (3) (a) and (5).

Rationale 2

1. Align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution
2. Proposed Physical development Plan is in conflict with County Spatial plan, County Governments Act section 110.
3. National Director of Physical Planning cannot be chairman and secretary for county committee as this contravenes Article 6 and 189 of the Constitution
4. Under Article 6 (2), County and National Government are distinct and the National Director cannot chair and be secretary to county committee and affairs.

Proposal 3

1. Change the title of the plan to Regional Land Use Plan.
2. Establishment of inter-county joint land use planning committees.

Rationale 3

National Land Use Spatial Plans and Regional Land use Plans should be approved under intergovernmental arrangement if we are to respect the Constitutional status of both levels of government

MoLPP Response

1. There is no Regional Joint Physical Planning Development Committees in the bill.
2. The approval of Inter-County Plans is a residual function of the National Government under Article 196 (3) of the Constitution.

Proposal 4

Amend section 25 (2) to state:

“In the preparation of the Inter-County physical development plan, the counties shall form an Inter-County Physical Planning Committee.”

Rationale 4

To remove the phrase ‘Physical Planning Committee’ which is repeated towards the end of the provision.

Proposal 5

Amend section 25 (3) to include Chief Officers of planning, Director of county physical planning, County Commissioners and Members of County Assemblies.

(43) Clauses 25-31 – Inter-County Physical Development Plan

Proposal 1

Substitute the word ‘Inter-County Physical Development Plan’ with ‘Regional Spatial Plan’.

Rationale 1

When planning for an area comprising of more than one administrative unit we should adopt the term regional. This is considering the area may comprise of more than 2 counties.

MoLPP Response

In the spirit of devolution, the term 'regional' does not feature.

(44) Clause 29- Approval of an Inter-County Physical Development Plan

Proposal 1

Intercounty plans to be approved by the respective county assemblies.

Rationale 1

Contravenes the spirit of Devolution and takes away the approval powers of County Assemblies provided for under Article 185 (3) and (4) of the Constitution.

Proposal 2

Amend the clause to state as follows:

"...submit the same to the National Director of Physical Planning for recommendation to the Cabinet Secretary for final approval".

Rationale 2

The Cabinet Secretary is the approving authority.

(45) Clauses 33-39 - County Physical Development Plan

Proposal 1

Delete section 32-39.

Rationale 1

Duplicates provision of section 110 of the County Governments Act 2012.

(46) Clause 32- County Physical Development Plan

Proposal 1

Amend the clause to read as follows:

32(1) Pursuant to section 110 of the County Governments Act, a county government shall prepare a County Spatial Plan.

(2) A county spatial plan shall be prepared to cover an implementation period of twenty or thirty years.

Rationale 1

1) Cause 32 seeks to provide for preparation of a separate and parallel document in the form of a spatial plan as envisaged under section 110 of the County Governments Act.

2) The County Governments Act is the substantive law governing implementation of county functions as assigned under the Constitution of Kenya. Consequently, the Bill should not seek to contradict the County Governments Act. Instead, the Bill should seek to complement and provide for the mechanism and standards for preparation of County Spatial Plans as stipulated under the County Governments Act.

To align the Title to the County Governments Act Section 107 that refers to the types of plans as follows:

- a) County Integrated development Plans;
- b) County Sectoral Plans;
- c) County Spatial Plans; and
- d) Cities and Urban Areas Plans.

MoLPP Response

County government is not the planning authority.

Clause 32(4) of the bill addresses the issue of naming of the plan.

Insert a new clause immediately after clause 86 in the Miscellaneous Provisions:

Section 110 be repealed

To read as

“plans prepared as contemplated in Section 110 of the County Governments Act, 2012 shall be deemed as plans prepared under this Act. For avoidance of doubt, such physical plans prepared under the Urban Areas and Cities Act No. 13 of 2011 shall be prepared and approved as provided for under this Act”.

(47) Clause 35- Contents of a County Physical Development Plan

Proposal 1

Amend sub-clause (1) by inserting the words “based on current and accurate base map prepared in accordance to the Director of Survey” immediately after the words ‘County Physical Development Plan.

Rationale 1

To ensure that the plans are based on an accurate base map.

(48) Clause 37- Completion and approval of a County Physical Development Plan

Proposal 1

Amend sub-clause (1) to read as follows:

37 (1) If there are no applications for the review of a county spatial plan or if all applications for review have been heard and determined, the county executive committee member in charge of planning shall publish a notice of plan completion in the Gazette and in at least two newspapers and electronic media with a national circulation within thirty days of the county development plan’s completion.

Rationale 1

It is not possible to publish an entire plan in the Gazette.

MoLPP Response

Approve the proposed amendment.

(49) Clause 41- Local Physical Development Plan

Proposal 1

Change the title of the plan to align with the County Government Act and the Urban Areas and Cities Act.

The Local Physical Development Plan should therefore read the Integrated Urban Area or City Development Plan.

Rationale 1

Align this section with the provisions of preparation of an integrated urban area or city development plan in the Urban Areas and Cities Act, Third Schedule, County Government Act, Section 111.

MoLPP Response

The two Acts are not principal physical planning laws.

Clause 41 (3) and 42 (c) addresses the issue of integrated city or urban development plans contemplated in the two cited acts.

The Integrated Development Plan and County Integrated Development Plans are investment plans.

(50) Clause 45- Notice of and objections to a Local Physical Development Plan

Proposal 1

Amend the clause to provide that County Assembly approved plans be submitted to the National Director of Physical Planning for inspection and scrutiny.

Rationale 1

County plans may be subject to manipulation.

(51) Clause 48- Declaration of a Special Planning Area

Proposal 1

1. Amend paragraph (1) (a) to include 'natural resources' consideration with respect to unique potential or challenges.
2. Insert a new paragraph (1) (f) to state as follows:

“special planning areas would include wildlife conservation and protection areas, forests, riparian reserves, mineral resources, security control areas, major infrastructure project areas, regional development authorities and other areas as declares under their respective legislation”.

Rationale 1

1. The provision does not properly outline natural resource land use among the potential special planning areas.
2. There is no provision for listing of examples of areas that can be declared as special planning areas to provide a general guide.

(52) Clause 52- Development permission

Proposal 1

Change Planning Authority to County Government in the entire clause to state as follows:

- 1) A person shall not carry out development within the area of a County government without a development permission granted by the County Government
- 2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.
- 3) The County Government may require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.
- 4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the County Government shall undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.
- 5) The County Government may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause

6) The County Government may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

Rationale 1

1. The County Government is mandated to undertake development control.
2. This is also in line with the spirit of devolution.

MoLPP Response

1. The responsibility should rest in a particular office.
2. Section 104 (3) of the County Governments Acts mandates county governments to designate departments or boards as Planning Authorities.

(53) Clause 53- Application for development permission

The title of the office of the National Director of Physical Planning should be Director General of land use planning.

Proposal 1

Change Planning Authority to County Government in the entire clause to state as follows:

- 1) A person shall obtain development permission from the County Government by making an application in a prescribed form and at the prescribed fee to the County Director of Physical Planning
- 2) An applicant for development permission shall provide documents, plans and particulars as may be required by the County Government to indicate the purposes of the proposed development.
- 3) An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which that land shall be subjected and the portion of the land the applicant shall provide for easements as a consequence of the applicant's proposed development.
- 4) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that

land and the applicant shall provide that written consent to the County Government at the time of applying for development permission.

5) The development permission granted by County Government shall be subject to compliance with the provisions of any other written law.

6) Where an applicant does not receive written response for development permission within sixty days, such permission shall be assumed to have been given in terms of this Act.

MoLPP Response

1. The responsibility should rest in a particular office.
2. Section 104 (3) of the County Governments Acts mandates county governments to designate departments or boards as Planning Authorities.

Proposal 2

Define the term 'applicant'.

Rationale 2

To remove doubt and discourage quacks in the industry.

(54) Clauses 55, 56, 57 & 60- Development Control

Proposal 1

Delete clauses 55, 56, 57 & 60.

Rationale 1

The processes should be left to county governments and their regulations.

(55) Clause 55- Development application referred to relevant authorities

Proposal 1

Include Urban Development.

Proposal 2

Amend the clause to read as follows:

- 1) Within seven days of receiving an application for development permission, a County Government may give a copy of the application to the relevant authorities or agencies to review and comment on all relevant matters; (list all relevant agencies)
- 2) Within fourteen days of receiving the copy of the development permission from the County Government, the relevant authorities or agencies shall submit their comments to the County Government;
- 3) the County Director of Physical Planning shall refer the application to the technical planning committee for consideration of development approval.

Rationale 2

The list is on thematic areas and does not mention the relevant agencies and/or departments to be consulted. It also does not recognize the role of other private agencies such as conservation bodies, neighbourhood associations etc. The planning authority responsible for development control is the County Government and should therefore be explicitly mentioned.

MoLPP Response

1. Reject the proposed amendments as they will result in micromanaging county governments.
2. Insert a new sub clause immediately after 55 (1) to read as follows:

“an application for development application which involves a major public policy, have significant impacts on environment and adverse effects that include displacement of people and transcends more than one county should be forwarded to the National Director of Physical Planning for guidance and recommendation”.

(56) Clause 56- Decision making and communication

Proposal 1

Include “shall be bound by the National Urban Development policy.

Proposal 1

Amend sub-clause (1) to commence as follows:

(1) When considering an application for development permission, the Technical Physical Planning Committee:-

(a) shall be bound by the relevant approved county spatial plan, city development plan and/or integrated urban plan;

MoLPP Response

Accept the proposed amendment by inserting the following immediately after the word 'urban plan'

“national land use policy, environmental guidelines, physical planning standards, and other applicable laws and regulations”.

Proposal 2

Amend sub-clause (1) to insert a new paragraph (f) as follows:

(1) When considering an application for development permission the planning authority;

(f) shall take into consideration the requirement of an Environmental Impact Assessment licence issued under EMCA and to address environmental impacts and mitigation measures;

MoLPP Response

Accept the proposed amendment by amending paragraph 4 of the Fourth Schedule to state as follows:

“Subject to provisions of EMCA (Amendments) 2015, planning authorities shall require applications for major developments to be subjected to environmental impact assessment”.

(57) Clause 60- Commencement and completion of building

Proposal 1

Regulations ought to adequately provide for the enforcement of the clause.

Rationale 1

The enforcement of this provision should be adequately qualified in the Regulations as the same is subject to matters relating to arbitration, unforeseen delays, litigation among others.

(58) New Clause

Proposal 1

Insert the following new clause immediately after clause 64:

Land Survey and Registration

65 (1) The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with.

(2) For the purposes of subsection (1) “Registrar” has the same meaning respectively assigned to it in section 2 of the Registration of Titles Act (Cap. 281), section 3 of the Registered Land Act (Cap. 300) and in relation to land to which part II of Land Titles Act (Cap. 282) applies means the Principal Registrar or any Registrar appointed for the purposes of that part.

Rationale 1

This section was in the CAP 286, the intention is to ensure that land survey conforms with planning provisions to ensure the provision of infrastructure services and conformity to zoning regulations.

MoLPP Response

Accept the proposed amendment by inserting a new clause immediately after Clause 63 to state as follows:

Land Survey and Registration

(1) Any survey document that effects a development for which a development permission has not been granted by a relevant planning authority shall stand invalid

(2) Any application made to the registrar relating to development of land shall include a development permission premised on an approved plan

(3) Any registration document prepared by the registrar that effects development as defined by this Act without development permission shall stand invalid.

(4) Part development plans for alienation of public land prepared by the County Director of Physical Planning shall be presented to the National Director of Physical Planning for comments.

(5) For the purposes of subsection (3) “The Registrar” has the same meaning assigned to it under Section 12 and 13 of the Land Registration Act, No. 3 of 2012.

(59) Clause 68- Establishment of National Physical Planning Liaison Committee

Proposal 1

Include the National Director of Urban Development in the National Forums for Liaison.

(60) Clauses 68-82 - Physical Planning Liaison Committees

Proposal 1

Delete sections 67 – 81.

Rationale 1

1. Section 68(4) opens the chairmanship of the committee to non-planners, a planning matter should be adjudicated by professional planners. The body that regulates the planning profession should nominate the chair.
2. Committee bloated and not cost effective and inefficient
3. The proposal does not provide departure from the old framework to make them more functional or effective.

(61) Clauses 68-84 - Physical Planning Liaison Committees

Proposal 1

1. Amend the name of Physical Planning Liaison Committees to state Planning Tribunals. These tribunals should be independent of the planning authority but comprise of technical experts in land-use planning and related disciplines.
2. They should also include nominees from the Architectural Association of Kenya which is recognized in the current Act

Rationale 1

In the past Physical Planning Tribunals have been ineffective as the planning authority sits in the committees to determine issues emanating from plans they have prepared or/and development approvals they have granted.

MoLPP Response

Recently enacted statutes establish committees not Tribunals.

Tribunals are part of the judiciary.

(62) Clause 69- Composition of the National Physical Planning Liaison Committee

Proposal 1

Amend paragraph 69 (1) (e) to state refer to the Executive Director/ Chief Executive Officer.

Rationale 1

The appropriate designation for the NCA member to the Committee is the Executive Director / Chief Executive Officer who is responsible for the day to day management of the affairs of the Authority.

(63) Clause 72- Composition of the County Physical Planning Liaison Committee

Proposal 1

Include a representative of the National Construction Authority in the County Physical Planning Liaison Committee.

Rationale 1

The Authority maintains regional offices across counties in the country. It is proposed that the Authority's Regional Officers form part of the County Physical Planning Liaison Committees due to their quality assurance activities in liaison with County Governments.

Proposal 2

Include the following in the County Physical Planning Liaison Committee:

- (a) one person nominated by the town and County Planners Association of Kenya
- (b) one person nominated by the Kenya Private Sector Alliance

(c) one person nominated by the Kenya Property Developers Association

(d) one person nominated by the Institute of Engineers of Kenya.

Rationale 2

Expand to include stakeholders in the urban and Private sectors.

(64) Clause 84- Indemnity for public officers acting under this Act

Proposal 1

Amend the clause to read as follows:

“The Director-General, the County Director, and officers with delegated functions and powers, appointed under this Act shall not be subject to any action or other proceeding for, or in respect of any act done, or omitted to be done without negligence and in good faith, in the exercise or purported exercise of any of the functions conferred by or under this Act, by any person for any injury to him, his property or any interests caused by the exercise of the powers conferred on the Planning Authority by this Act.”

Rationale 1

To make the clause more comprehensive.

(65) First Schedule - Procedure of appointment of members of national physical planning consultative forums

Proposal 1

Delete the schedule.

Rationale 1

Schedule is unnecessary since the membership to the forum is predetermined.

(66) Second Schedule - Contents of National, Inter-County and County Physical Development Plans

Proposal 1

1. Separate the various plans.
2. Delete Inter-county Physical Development Plans.

Rationale 1

1. Contents of National, Inter-County and County Physical Development Plans cannot be lumped together since they are different types of plans.
2. The schedule introduces The Inter-county Physical Development Plans which are not provided for in the body of the Bill.

(67) Third Schedule - Contents of Local Physical Development Plans

Proposal 1

Delete “Contents of Local Physical Development Plans”.

Rationale 1

Renewal and redevelopment plans are not mentioned in the body of Bill hence the schedule introduces new types of plans.

Proposal 2

Align the purpose of the Local Physical Development Plan in the Third Schedule to the provisions of the Urban Areas and Cities Act and the County Government Act.

(68) Fourth Schedule - Matters which may be dealt with under development control

Proposal 1

Amend paragraph 4 of the schedule to state as follows:

“Planning authorities shall require applications for major developments to be subjected to environmental impact assessment”.

Rationale 1

The statement is hanging.

(69) New Schedule

Proposal 1

Insert a new schedule to outline the general contents and matters to be dealt with in Special Planning Area Plans.

Rationale 1

The schedules have no provisions outlining either the contents or the matters to be dealt with in Special Planning Area plans.

(70) Second and Third Schedules

Proposal

Delete the Second and Third schedules.

Rationale

This is sufficiently provided under the County Governments Act and the Urban Areas and Cities Act.

(71) General Proposals

The title of the office of the National Director of Physical Planning should be Director General of land use planning.

Proposal 1

Amend sections 107 (1) (c) and 110 of the County Governments Act to comply with the Bill by deleting county spatial plans.

Rationale 1

County spatial plans are the same as county physical development plans and as such one of them ought to be deleted/repealed.

Proposal 2

Amend the entire Bill to remove reference to “planning authorities” and replace with “county government”.

Rationale 2

Development Control and granting of development permissions is the mandate of the County government.

Proposal 3

Amend the Bill to provide for proper and meaningful public participation in the preparation of all plans.

Rationale 3

It is necessary to dictate specific public participation processes to facilitate proper public engagement in making plans.

Proposal 4

Reject the entire Bill and send it back to the Ministry for proper public participation and redrafting.

Rationale 4

The Bill is defective in structure and substance. Meaningful stakeholder engagement ought to be undertaken before the Bill is introduced to Parliament.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 Observations and Determinations

A preamble generally explains the reasons for a law and does not have a legal effect. In any case drafting practice has moved away from including preambles in legislation, restricting their use to Constitutions or international conventions.

The Constitution does not make reference to the term physical planning but rather uses the term land use planning. It is therefore important to stick to the constitutional language, more so since practise has moved away from using physical planning and now use the term land use planning.

There is no overlap between the Bill and the Arbitration Act. The Bill may however be amended to clarify the scope of its dispute resolution provisions.

Clause 9 (d) provides that all technical officers, including from other ministries and independent commissions e.g. the National Land Commission will be monitored by and report to the Cabinet Secretary. This will infringe on the independence of autonomous institutions and generally interfere with the working of various public offices.

The national physical planning consultative forum is an important and essential body established to provide a platform for consultation between the two levels of government and other relevant stakeholders in physical planning matters. The body is however bloated and membership should be reduced to ensure effective and productive engagement, noting that it is not necessary to include all county executive committee members responsible for planning as they can be represented by nominees of the Council of County Governors.

The qualifications of the National and County Directors of Physical Planning should ensure that a person appointed to the office is competent to perform the functions of the office, noting that a bachelor's degree may not offer sufficient competency, especially for the National Director of Physical Planning. Competency should however not be used to discourage and disqualify the youth by requiring a lot of experience.

The qualifications of the National and County Directors of Physical Planning should not be restricted to physical planners but should be expanded to all professional planners in fields related to land use planning.

Research on land use planning is of key importance, as is research in any sector really, and the offices established under the Bill should be mandated to carry out research on land use and land use planning and development.

The function of a city or municipal manager is provided under section 28 of the Urban Areas and Cities Act, 2011 which states that they “*shall implement the decisions and functions of the board and shall be answerable to the board*”. The functions of the managers should therefore be restricted to implementing the decisions of their respective boards, which boards are responsible for running the cities and towns. The same should apply to a town administrator, whose function as provided under section 31 of the Act is to perform functions determined by the respective town committee.

The functions of the office of the National and County Directors of Physical Planning should be performed by the office and not sub-contracted to private entities and consultants. Consultation should only occur in rare and exceptional circumstances, otherwise the office would be defunct and therefore a loss to taxpayers.

The Second and Third Schedules to the Bill provide for contents of national, inter-county, county and local physical development plans. There is however need for the plans to address issues related to climate change, human rights, poverty eradication and gender and vulnerable groups.

The Bill does not ignore public participation in the preparation of physical development plans as it makes provision on the same under clauses 21, 28, 34 (3), 36, 45 and 48 (5).

The purpose and contents of the physical development plans contemplated under the Bill are not sufficiently addressed under the plans provided for under both the County Governments Act and the Urban Areas and Cities Act.

The national government or its appointees should not be required to approve county plans, including inter-county plans as this will interfere with the independence of county governments. Plans prepared by county governments are required, under the Bill, to adhere to and be aligned

with the framework provided under the national plans and such adherence will be sufficient to protect national interests.

Spatial planning is the methodology and approach used to influence the distribution of people and activities to achieve optimal utilisation of physical, economic and sociocultural resources. It is therefore wider than physical planning, with physical planning being just one component of spatial planning. The two terms therefore cannot be used interchangeably.

Section 111 of the County Governments Act provides for the preparation of land use, building and zoning plans for cities, municipalities and urban areas whereas section 38 of the Urban Areas and Cities Act provides for the preparation of an integrated city or urban area development plan for cities and urban areas. The two Acts do not make provision on preparation of plans for rural areas. The local physical development plans envisaged under this clause however makes planning provisions for both urban and rural areas.

Paragraph 8 of Part 2 of the Fourth Schedule to the Constitution provides county planning and development as a county function and as such county government ought to be given the authority to issue development permission under Part IV of the Bill.

3.1 Recommendations

The Committee makes the following recommendations and proposes to make the following amendments to the Bill:

1. To include the following among the objects of the Bill under clause 3:
 - (a) to provide a robust, comprehensive and responsive system of planning, land use regulation and regulations of investments in property; and
 - (b) to ensure that investments in property benefit local communities and their economies.
2. To amend the title of the Bill to state “Land Use Planning Act” and to further make amendments to the entire Bill to remove reference to ‘physical planning’ and substitute with the term “land use planning” in the proper context. To also amend the definition of land use planning to remove reference to it being a branch of physical planning.
3. To amend clause 2 of the Bill to delete the definition of the term ‘local physical planning development plan’ and provide that “local physical development plan” means a plan for a part of a county and includes a plan with reference to any trading or marketing centre; to correct a typographical error.
4. To amend Clause 3 (e) of the Bill to restrict dispute resolution to land use planning matters.
5. To amend the marginal note on clause 4 of the Bill and insert a new clause on ‘principles and norms of land use planning’ and adopt the following principles and norms in the new clause:
 - (a) land use planning must promote sustainable land use and liveable communities which integrates human needs in any locality.
 - (b) development activities must be planned in a manner that integrates economic, social and environmental needs of present and future generations;
 - (c) land use planning must be comprehensive, sustainable and integrated at all levels of government, taking into consideration the interests of all parties concerned;

- (d) land use planning must take into consideration long-term optimum utilization of land and conservation of scarce land resource including preservation of land with important functions;
 - (e) land use planning must be inclusive and must take into consideration culture and heritage of people concerned; and
 - (f) land use planning should take into account new approaches such as transit-oriented development, mixed land-uses, planning for public transport and non-motorized transport among others to achieve sustainable development and more efficient use of natural resources.
6. To amend the membership of the National Physical Planning Consultative Forum, which the Committee proposes to amend to National Land Use Planning Consultative Forum, under clause 5 (2) of the Bill as follows:
- (a) to remove the chairperson of the relevant committee of the Council of Governors and provide “three Governors appointed by the Council of Governors or their representatives”;
 - (b) to remove the county executive committee members; and
 - (c) to remove the stipulation that the Cabinet Secretary determines the association representing the private sector.
7. To amend clause 5 (3) of the Bill to remove the stipulation that nominating bodies nominate two persons and the Cabinet Secretary appoints one person in accordance with the First Schedule.
8. To amend the Bill by deleting clause 9(d).
9. To amend the name of the office of the National Director of Physical Planning to state Director General of Land Use Planning.
10. To amend clause 11 (b) of the Bill to state that among the qualifications of a Director General of Land Use Planning is that one ‘holds a master’s degree in urban and regional planning or related discipline from a recognized university’.

11. To delete clause 11 (c) of the Bill and substitute it with ‘is registered as a professional planner and is in good standing with the relevant professional body’ to ensure that the qualifications for Director General of Land Use Planning are not restricted to physical planners.
12. To delete clause 11 (d) of the Bill and substitute it with ‘has relevant post-qualification professional experience in land use planning’ to ensure that the qualifications for Director General of Land Use Planning do not disqualify youthful applicants.
13. To amend clause 12 of the Bill to include the following as responsibilities of the Director General of Land Use Planning:
 - (a) undertaking research related to land use and land use planning and development and making appropriate recommendations to the relevant bodies; and
 - (b) preparation of Part Development Plans for strategic national installations and projects.
14. To amend clause 16 of the Bill to include the following as responsibilities of the County Director of Land Use Planning:
 - (a) maintaining a land information system to guide land use planning;
 - (b) undertaking research on matters relating land use and land use planning within the respective county;
 - (c) communicating decisions of the county government on development applications; and
 - (d) issuance of development permission and other development control instruments under this Act with the approval of the county executive committee member responsible for land use planning.
15. To amend the Bill to provide a county planning consultative forum for each county. This forum would be convened whenever plans within the respective county are being prepared to facilitate consultation and proper public participation and disbanded upon completion of the plan making process. The membership of the forum will, with

necessary adjustments, mirror the membership of the National Land Use Planning Consultative Forum as provided under clause 5 (2) of the Bill.

16. To amend the title to Part III of the Bill to state “Land Use Development Plans”.
17. To amend the names of all the plans in the Bill to state ‘land use development plans’.
18. To amend clause 17 of the Bill to provide that the Cabinet Secretary ‘shall cause the national land use development plan to be prepared’ so that the obligation to ensure the plan is prepared rests with the Cabinet Secretary irrespective of the person who prepares the plan.
19. To amend clause 21 of the Bill by setting appropriate timelines under sub-clause (1), (2) and (3).
20. To amend clause 25 of the Bill to provide that the Director General of Land Use Planning will be an ex-officio member of an Inter-County Joint Land Use Development Planning Committee and that the relevant county executive committee members from each county shall appoint a chairperson and a vice chairperson from among themselves in their first meeting which meeting will be convened by the Director General of Land Use Planning.
21. To amend section 25 (2) of the Bill to remove the phrase ‘Physical Planning Committee’ appearing at the end of the clause to correct a typographical error/repetition.
22. To amend clause 29 of the Bill to remove reference to processing, certification or approval of county plans by either the Director General of Land Use Planning or the Cabinet Secretary.
23. To amend the Bill to provide that plans prepared under the Urban Areas and Cities Act shall be prepared and approved as provided for under the Bill once enacted.
24. To amend clause 37 of the Bill to provide that the county executive committee member publishes a notice of completion of the plan as opposed to publishing the entire plan.
25. To amend the Bill to exclude the areas covered under the plans contemplated in the Urban Areas and Cities Act (e.g. cities, municipalities and urban areas) from the ambit of local land use development plans.

26. To amend clause 48 (1) (a) of the Bill to include “natural resources” consideration with respect to unique potential or challenges.
27. To amend Part IV of the Bill to stipulate that development permission shall be issued by county governments.
28. To amend clauses 52 and 62 of the Bill to provide that any property constructed without the issuance of development permission or in contravention of the conditions of the respective development permission shall be demolished at the cost of the owner of the property.
29. To amend clause 55 of the Bill to include ‘urban development’ as one of the matters due for comment from the relevant authorities or agencies prior to the issuance of development permission.
30. To amend clause 56 of the Bill to provide that county governments shall ensure that proposed developments adhere to the relevant county, local, city, urban, town and special area plans before issuing development permission.
31. To amend the Bill to provide for the invalidity of documents relating to development of land made and registered without issuance of development permission.
32. To amend clause 69 (1) of the Bill to—
 - (a) include the National Director of Urban Development in the National Land Use Planning Liaison Committee;
 - (b) increase membership of the Council of County Governors in the National Land Use Planning Liaison Committee to two; and
 - (c) to refer to the Architectural Association of Kenya under paragraph (i).
33. To amend the Bill by renaming Physical Planning Liaison Committees ‘Land Use Planning Liaison Committees’.
34. To amend clause 72 (1) of the Bill to include a representative of the National Construction Authority in the County Land Use Planning Liaison Committee.

35. To amend the Bill by deleting the First Schedule and providing (under clause 5) that the relevant members of the National Land Use Consultative Forum appointed under the Schedule shall be directly nominated by their relevant bodies and appointed by the Cabinet Secretary.
36. To amend the Second and Third Schedules to the Bill to address climate change, human rights, poverty eradication and gender and vulnerable groups issues in the analysis of national, inter-county, county and local physical development plans.
37. To amend paragraph 4 of the Fourth Schedule to state the “Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment”.

The Committee shall introduce the above amendments as more specifically provided under the annexed schedule during the committee of the whole house for consideration and approval of the Senate.

REPUBLIC OF KENYA



**NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SECOND SESSION**

THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

THE PHYSICAL PLANNING BILL, NATIONAL ASSEMBLY BILLS NO. 34 OF 2017

The Physical Planning Bill, National Assembly Bills No. 34 of 2017 was read a First Time in the Senate on 16th May, 2018 and was thereafter committed to the Senate Standing Committee on Land, Environment and Natural Resources for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 134 of the Senate Standing Orders, the Senate Standing Committee on Land, Environment and Natural Resources now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bill shall be held on **Thursday 21st June, 2018 from 9:00 a.m. to 12:00 noon at Committee Room 10, First Floor, Main Parliament Buildings, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **csenate@parliament.go.ke**, to be received on or before **Thursday 21st June, 2018 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**



Kenya Bureau of
Standards
Established by Law No. 12

MINUTES OF THE 37TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 12TH SEPTEMBER, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 10.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Halake Abshiro, M.P.
5. Sen. Mwaruma Johnes, M.P.

PRESENT

- **Chairperson**
- **Vice Chairperson**
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MGH, M.P. - Member
2. Sen. Boy Issa Juma, M.P. - Member
3. Sen. Sylvia Kasanga, M.P. - Member
4. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Ahmed Odhowa
3. Ms. Joyce Chelang'at
4. Mr. Wilson Bosumet

SENATE SECRETARIAT

- Clerk Assistant
- Principal Researcher
- Audio Recording
- Seargent at Arms.

MINUTE SEN/SCLNR/206/2018: PRELIMINARIES

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

MINUTE SEN/SCLNR/207/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted and was proposed by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Halake Abshiro, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Matters Arising;
5. House Keeping;
 - Correspondences, Committee Sittings in Uasin Gishu, Pending Site Visits
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLENR/208/2018:**CONFIRMATION OF MINUTES**

The Committee resolved that the confirmation of minutes should be done before the forthcoming meeting begins as is contained in the agenda. If it becomes inevitable and the minutes have to be differed, then they should be confirmed at a maximum of 5 set of minutes.

The Minutes of the 7th sitting held on 13th March, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Godana Hargura, M.P. and seconded by Sen. Victor Prengei, M.P. respectively.

The Minutes of the 13th sitting held on 9th May, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 18th sitting held on 7th June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Victor Prengei, M.P. and seconded by Sen. Mwangi Githiomi, M.P. respectively.

The Minutes of the 19th sitting held on 14th June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 20th sitting held on 19th June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Victor Prengei, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 21st sitting held on 20th June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 22nd sitting held on 21st June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Victor Prengei, M.P. respectively.

The Minutes of the 23rd sitting held on 27th June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Victor Prengei, M.P. respectively.

The Minutes of the 24th sitting held on 28th June, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Victor Prengei, M.P. respectively.

The Minutes of the 25th sitting held on 5th July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 26th sitting held on 5th July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 27th sitting held on 11th July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 28th sitting held on 26th July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Paul Githiomi, M.P. respectively.

The Minutes of the 29th sitting held on 31st July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 30th sitting held on 31st July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 31st sitting held on 31st July, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 32nd sitting held on 1st August, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

The Minutes of the 33rd sitting held on 7th August, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Mwangi Githiomi, M.P. respectively.

The Minutes of the 34th sitting held on 8th August, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Prengei Victor, M.P. respectively.

The Minutes of the 35th sitting held on 9th August, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Godana Hargura, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 36th sitting held on 11th September, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

MINUTE SEN/SCLNDR/209/2018: MATTERS ARISING

i). UNDER MINUTE SEN/SCLNDR/71/2018: ANY OTHER BUSINESS;

The Committee discussed about the recent developments on Ndakaini Dam in Murang'a County and was informed that although quorum wasn't achieved during the site visit, the matter has since been resolved and the Dam is fully operational at the moment.

ii). UNDER MINUTE SEN/SCLNDR/118/2018: DELIBERATIONS ON THE STATUS OF STATEMENTS BEFORE THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

The Committee relooked at the Statement requested by Sen. Ledama Olekina, MP on the status of over 63,000 acres of land owned by the Agricultural Development Cooperation (ADC) Laikipia County, and discussed the matter of the caveat that that was recommended by the Committee and resolved to let the matter rest at that.

iii). UNDER MINUTE SEN/SCLNDR/128/2018: PRE-PUBLICATION SCRUTINY OF THE NATURAL RESOURCES (BENEFIT SHARING) BILL 2018

The Committee discussed the Committee's resolution to approve the proposed Natural Resources (Benefit Sharing) Bill, 2018 for publication subject to the following concerns being addressed by the sponsor-

That the proposed Bill be amended to remove petroleum, natural gas, minerals, geothermal energy and wind from the ambit of the proposed law. The sponsor may then consider amending the Mining Act, 2016, the Petroleum (Exploration, Development and Production) Bill, 2017 and the Energy Bill, 2017 to align them to the provisions under the proposed Bill.

The Committee was concerned that wind being a Natural Resource may have not been legislated upon in other pieces of legislation and should therefore be omitted in the Bill.

iv). UNDER MINUTE SEN/SCLNDR/191/2018: MEETING WITH THE PETITIONERS ON THE PETITION BY REPRESENTATIVES OF THE COMMUNITY WILDLIFE CONSERVANCIES

The Committee resolved to start interrogating the matter by first visiting a sample of the wildlife conservancies to enable the Committee to familiarize itself with the conservancies' then thereafter the Committee can proceed and invite the relevant stakeholders. The scheduled date suggested was the weekend of 11th October, 2018 and thereafter the Committee sitting with stakeholders would then follow.

v). UNDER MINUTE SEN/SCLNDR/197/2018: MEETING WITH THE PETITIONER ON THE PETITION BY THE RESIDENTS OF KAJIADO COUNTY ON THE ADVERSE ENVIRONMENTAL AND SOCIAL EFFECTS ARISING FROM THE CONSTRUCTION OF PHASE 2A OF THE STANDARD GAUGE RAILWAY (NAIROBI – NAIVASHA SECTION)

The Committee discussed the matter of the site visit that was postponed due to lack quorum at the last minute. The Committee then resolved to give new dates. The suggested date was the weekend commencing 25th October, 2018.

vi). **UNDER MINUTE SEN/SCLNR/87/2018: MEETING WITH THE CS LANDS ON THE STATUS OF STATEMENTS BEFORE THE COMMITTEE**

The statement regarding the encroachment of private land at Ikanga, Taita Taveta County by the Kenya Airports Authority (KAA) (See letter Ref: SEN/D-COMM/LEN/VOL.1/(23) 2018 dated 13th March, 2018) and resolved that further inquiries be carried out on the matter and establish why compensations have since never been done. The Committee therefore resolved to invite the Kenya Airports Authority to respond to the issues raised by the Senator of Taita Taveta County on 20th September, 2018.

MINUTE SEN/SCLNR/210/2018: HOUSE KEEPING; CORRESPONDENCES, COMMITTEE SITTINGS IN UASIN GISHU, & PENDING SITE VISITS

The Committee postponed the agenda due to constraints of time to the next sitting.

MINUTE SEN/SCLNR/211/2018: ANY OTHER BUSINESS;
There was no other business raised.

MINUTE SEN/SCLNR/212/2018: DATE OF NEXT MEETING;
The meeting was adjourned at 11.23am and the date of the next meeting was scheduled for 19th September, 2018 at 9.00am.

SIGNATURE.......... DATE 13-09-2018
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 36TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 11TH SEPTEMBER, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. George Khaniri, MGH, M.P.
4. Sen. Godana Hargura, M.P.
5. Sen. Boy Issa Juma, M.P.
6. Sen. Halake Abshiro, M.P.

PRESENT

- **Chairperson**
- **Vice Chairperson**
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Slyvia Kasanga, M.P.
2. Sen. Ndwiga Peter Njeru, EGH. M.P.
3. Sen. Mwaruma Johnes, M.P.

- Member
- Member
- Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Ms. Joyce Chelang'at

SENATE SECRETARIAT

- Clerk Assistant
- Legal Counsel
- Audio Recording

MINUTE SEN/SCLNDR/200/2018: PRELIMINARIES

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/201/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted with amendments to allow beginning with agenda 5 then come back to agenda 4 after the guests have arrived. The agenda was therefore proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Halake Abshiro, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda
3. Confirmation of Minutes
4. Adoption of the Committee Report on the Physical Planning Bill
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNDR/202/2018:

CONFIRMATION OF MINUTES

The Confirmation of minutes was differed to the next Committee meeting.

MINUTE SEN/SCLNDR/203/2018: ADOPTION OF THE COMMITTEE REPORT ON THE PHYSICAL PLANNING BILL, 2017

The Committee adopted its report with the following recommendations and proposes to make the following amendments to the Bill:

1. To include the following among the objects of the Bill under clause 3:
 - (a) to provide a robust, comprehensive and responsive system of planning, land use regulation and regulations of investments in property; and
 - (b) to ensure that investments in property benefit local communities and their economies.
2. To amend the title of the Bill to state “Land Use Planning Act” and to further make amendments to the entire Bill to remove reference to ‘physical planning’ and substitute with the term “land use planning” in the proper context. To also amend the definition of land use planning to remove reference to it being a branch of physical planning.
3. To amend clause 2 of the Bill to delete the definition of the term ‘local physical planning development plan’ and provide that “local physical development plan” means a plan for a part of a county and includes a plan with reference to any trading or marketing centre; to correct a typographical error.
4. To amend Clause 3 (e) of the Bill to restrict dispute resolution to land use planning matters.
5. To amend the marginal note on clause 4 of the Bill and insert a new clause on ‘principles and norms of land use planning’ and adopt the following principles and norms in the new clause:
 - (a) land use planning must promote sustainable land use and liveable communities which integrates human needs in any locality.
 - (b) development activities must be planned in a manner that integrates economic, social and environmental needs of present and future generations;
 - (c) land use planning must be comprehensive, sustainable and integrated at all levels of government, taking into consideration the interests of all parties concerned;

- (d) land use planning must take into consideration long-term optimum utilization of land and conservation of scarce land resource including preservation of land with important functions;
 - (e) land use planning must be inclusive and must take into consideration culture and heritage of people concerned; and
 - (f) land use planning should take into account new approaches such as transit-oriented development, mixed land-uses, planning for public transport and non-motorized transport among others to achieve sustainable development and more efficient use of natural resources.
6. To amend the membership of the National Physical Planning Consultative Forum, which the Committee proposes to amend to National Land Use Planning Consultative Forum, under clause 5 (2) of the Bill as follows:
 - (a) to remove the chairperson of the relevant committee of the Council of Governors and provide “three Governors appointed by the Council of Governors or their representatives”;
 - (b) to remove the county executive committee members; and
 - (c) to remove the stipulation that the Cabinet Secretary determines the association representing the private sector.
 7. To amend clause 5 (3) of the Bill to remove the stipulation that nominating bodies nominate two persons and the Cabinet Secretary appoints one person in accordance with the First Schedule.
 8. To amend the Bill by deleting clause 9(d).
 9. To amend the name of the office of the National Director of Physical Planning to state Director General of Land Use Planning.
 10. To amend clause 11 (b) of the Bill to state that among the qualifications of a Director General of Land Use Planning is that one ‘holds a master’s degree in urban and regional planning or related discipline from a recognized university’.
 11. To delete clause 11 (c) of the Bill and substitute it with ‘is registered as a professional planner and is in good standing with the relevant professional body’ to ensure that the qualifications for Director General of Land Use Planning are not restricted to physical planners.

12. To delete clause 11 (d) of the Bill and substitute it with ‘has relevant post-qualification professional experience in land use planning’ to ensure that the qualifications for Director General of Land Use Planning do not disqualify youthful applicants.
13. To amend clause 12 of the Bill to include the following as responsibilities of the Director General of Land Use Planning:
 - (a) undertaking research related to land use and land use planning and development and making appropriate recommendations to the relevant bodies; and
 - (b) preparation of Part Development Plans for strategic national installations and projects.
14. To amend clause 16 of the Bill to include the following as responsibilities of the County Director of Land Use Planning:
 - (a) maintaining a land information system to guide land use planning;
 - (b) undertaking research on matters relating land use and land use planning within the respective county;
 - (c) communicating decisions of the county government on development applications; and
 - (d) issuance of development permission and other development control instruments under this Act with the approval of the county executive committee member responsible for land use planning.
15. To amend the Bill to provide a county planning consultative forum for each county. This forum would be convened whenever plans within the respective county are being prepared to facilitate consultation and proper public participation and disbanded upon completion of the plan making process. The membership of the forum will, with necessary adjustments, mirror the membership of the National Land Use Planning Consultative Forum as provided under clause 5 (2) of the Bill.
16. To amend the title to Part III of the Bill to state “Land Use Development Plans”.
17. To amend the names of all the plans in the Bill to state ‘land use development plans’.

18. To amend clause 17 of the Bill to provide that the Cabinet Secretary 'shall cause the national land use development plan to be prepared' so that the obligation to ensure the plan is prepared rests with the Cabinet Secretary irrespective of the person who prepares the plan.
19. To amend clause 21 of the Bill by setting appropriate timelines under sub-clause (1), (2) and (3).
20. To amend clause 25 of the Bill to provide that the Director General of Land Use Planning will be an ex-officio member of an Inter-County Joint Land Use Development Planning Committee and that the relevant county executive committee members from each county shall appoint a chairperson and a vice chairperson from among themselves in their first meeting which meeting will be convened by the Director General of Land Use Planning.
21. To amend section 25 (2) of the Bill to remove the phrase 'Physical Planning Committee' appearing at the end of the clause to correct a typographical error/repetition.
22. To amend clause 29 of the Bill to remove reference to processing, certification or approval of county plans by either the Director General of Land Use Planning or the Cabinet Secretary.
23. To amend the Bill to provide that plans prepared under the Urban Areas and Cities Act shall be prepared and approved as provided for under the Bill once enacted.
24. To amend clause 37 of the Bill to provide that the county executive committee member publishes a notice of completion of the plan as opposed to publishing the entire plan.
25. To amend the Bill to exclude the areas covered under the plans contemplated in the Urban Areas and Cities Act (e.g. cities, municipalities and urban areas) from the ambit of local land use development plans.
26. To amend clause 48 (1) (a) of the Bill to include "natural resources" consideration with respect to unique potential or challenges.

27. To amend Part IV of the Bill to stipulate that development permission shall be issued by county governments.
28. To amend clauses 52 and 62 of the Bill to provide that any property constructed without the issuance of development permission or in contravention of the conditions of the respective development permission shall be demolished at the cost of the owner of the property.
29. To amend clause 55 of the Bill to include 'urban development' as one of the matters due for comment from the relevant authorities or agencies prior to the issuance of development permission.
30. To amend clause 56 of the Bill to provide that county governments shall ensure that proposed developments adhere to the relevant county, local, city, urban, town and special area plans before issuing development permission.
31. To amend the Bill to provide for the invalidity of documents relating to development of land made and registered without issuance of development permission.
32. To amend clause 69 (1) of the Bill to—
 - (a) include the National Director of Urban Development in the National Land Use Planning Liaison Committee;
 - (b) increase membership of the Council of County Governors in the National Land Use Planning Liaison Committee to two; and
 - (c) to refer to the Architectural Association of Kenya under paragraph (i).
33. To amend the Bill by renaming Physical Planning Liaison Committees 'Land Use Planning Liaison Committees'.
34. To amend clause 72 (1) of the Bill to include a representative of the National Construction Authority in the County Land Use Planning Liaison Committee.
35. To amend the Bill by deleting the First Schedule and providing (under clause 5) that the relevant members of the National Land Use Consultative Forum appointed under the Schedule shall be directly nominated by their relevant bodies and appointed by the Cabinet Secretary.

36. To amend the Second and Third Schedules to the Bill to address climate change, human rights, poverty eradication and gender and vulnerable groups issues in the analysis of national, inter-county, county and local physical development plans.

37. To amend paragraph 4 of the Fourth Schedule to state the "Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment".


The Committee then proceeded to adopt its report after having been proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Prengei Victor, M.P.

MINUTE SEN/SCLNR/204/2018: ANY OTHER BUSINESS;

Since the Justice and Legal Affairs Committee were not able to raise quorum the Joint meeting that was to be called thereafter could not start.

MINUTE SEN/SCLNR/205/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.23am and the date of the next meeting was to be called on notice.

SIGNATURE.....for ..... DATE.....12/9/18.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 33RD MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 7TH AUGUST, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. George Khaniri, MGH, M.P.
3. Sen. Mwaruma Johnes, M.P.

PRESENT

- **Chairperson**
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Slyvia Kasanga, M.P.
5. Sen. Boy Issa Juma, M.P.
6. Sen. Ndwiga Peter Njeru, EGH. M.P.

- **Vice Chairperson**
- Member
- Member
- Member
- Member
- Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Hassan Odhowa
3. Mr. Mitchell Otoro
4. Mr. Wilson Bosumet
5. Mr. Alex Rithi

SENATE SECRETARIAT

- Committee Clerk
- Principal Researcher
- Legal Counsel
- Sergeant at arms
- Media Relations

MINUTE SEN/SCLNLR/182/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNLR/183/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted with amendments to allow beginning with agenda 5 then come back to agenda 4 after the guests have arrived. The agenda was therefore proposed by Sen. George Khaniri, MGH, M.P. and seconded by Sen. Mwaruma Johnes, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Introductions*
2. Adoption of the agenda
3. Confirmation of Minutes
4. Review of Physical Planning Bill Matrix
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNR/184/2018: CONFIRMATION OF MINUTES

The Confirmation of minutes was deferred to the next Committee meeting.

MINUTE SEN/SCLNR/185/2018: REVIEW OF PHYSICAL PLANNING BILL MATRIX

The Legal Counsel took the Committee through the Matrix and the Committee made interventions as listed

(a) Clause 24

Proposal

Identify the public institutions by name and provide for the manner of enforcement of the clause.

Rationale

Public institutions not identified by name and the manner of enforcement.

Committee resolved – Proposal adopted

(b) Clause 25

1. The plans should be called inter county land use plans.

Rationale

1. The Section contradicts Inter-governmental Relations Act Section 23.
2. Pre determining the membership and assigning National Director as chair goes against and undermines the spirit of devolution in Article 189 (2)
3. Cooperating counties should have a freehand to determine how their matters are addressed.

Proposal

Amend section 25 (2) to state:

“In the preparation of the Inter-County physical development plan, the counties shall form an Inter-County Physical Planning Committee.”

Rationale

To remove the phrase ‘Physical Planning Committee’ this is repeated towards the end of the provision.

Committee resolved – Proposal to amend the clause to provide that the National Director of Physical Planning will be an ex-officio member of the committee and that the various county executive committee members shall appoint a chairperson

and vice chairperson from among themselves in their first meeting which will be convened by the National Director of Physical Planning.

Proposal 2 adopted to state "Inter-County and Use Development Plan.

Proposal rejected. Amend to provide for the National Director to be an ex-officio member of the committee.

(c) Clause 29

Proposal rejected.

To amend the clause to remove reference to processing, certification or approval by either the National Director of Physical Planning or the Cabinet Secretary.

(d) Clause 32

MoLPP Proposal/Response rejected.

To amend the Bill to provide that plans prepared under the Urban Areas and Cities Act No. 13 of 2011 shall be prepared and approved as provided for under the Bill once enacted.

(e) Clause 37

Proposal

Amend sub-clause (1) to read as follows:

37 (1) If there are no applications for the review of a county spatial plan or if all applications for review have been heard and determined, the county executive committee member in charge of planning shall publish a notice of plan completion in the Gazette and in at least two newspapers and electronic media with a national circulation within thirty days of the county development plan's completion.

Rationale

It is not possible to publish an entire plan in the Gazette.

MoLPP Response

Approve the proposed amendment.

Committee resolved – Proposal partially adopted to specifically provide that the county executive committee member publishes a notice of completion of the plan.

To amend the plan to state County Land Use Development Plan.

(f) Clause 41

To amend the clause to exclude cities, municipalities and urban areas from the ambit of local development plans.

To also amend the name of the plan to state 'Local Land Use Development Plan'.

(g) Clause 48

Proposal

1. Amend paragraph (1) (a) to include 'natural resources' consideration with respect to unique potential or challenges.

Rationale

1. The provision does not properly outline natural resource land use among the potential special planning areas.

Committee resolved – Proposal adopted

(h) Clause 52

Proposal

Change Planning Authority to County Government in the entire clause to state as follows:

- 1) A person shall not carry out development within the area of a County government without a development permission granted by the County Government
- 2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.
- 3) The County Government may require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.
- 4) Where a person who is required to do so fails to comply with the provisions of subsection (3), the County Government shall undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.
- 5) The County Government may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause
- 6) The County Government may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

Rationale

1. The County Government is mandated to undertake development control.
2. This is also in line with the spirit of devolution.

MoLPP Response

1. The responsibility should rest in a particular office.
2. Section 104 (3) of the County Governments Acts mandates county governments to designate departments or boards as Planning Authorities.

Committee resolved – Proposal adopted to clearly stipulate that development permission shall be issued by county governments.

(i) Clause 53

Proposal

Change Planning Authority to County Government in the entire clause to state as follows:

- 1) A person shall obtain development permission from the County Government by making an application in a prescribed form and at the prescribed fee to the County Director of Physical Planning
- 2) An applicant for development permission shall provide documents, plans and particulars as may be required by the County Government to indicate the purposes of the proposed development.
- 3) An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which that land shall be subjected and the portion of the land the applicant shall provide for easements as a consequence of the applicant's proposed development.
- 4) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the County Government at the time of applying for development permission.
- 5) The development permission granted by County Government shall be subject to compliance with the provisions of any other written law.
- 6) Where an applicant does not receive written response for development permission within sixty days, such permission shall be assumed to have been given in terms of this Act.

Rationale

No rationale provided.

MoLPP Response

1. The responsibility should rest in a particular office.

Section 104 (3) of the County Governments Acts mandates county governments to designate departments or boards as Planning Authorities.

Committee resolved – Proposal adopted

(j) Clause 55

Proposal

Include Urban Development.

Committee resolved – Proposal adopted to include ‘urban development’ as one of the matters due for comments from the relevant authorities or agencies prior to the issuance of development permission.

(k) Clause 56

Proposal

Amend sub-clause (1) to commence as follows:

(1) When considering an application for development permission, the Technical Physical Planning Committee:-

(a) shall be bound by the relevant approved county spatial plan, city development plan and/or integrated urban plan;

Rationale

No rationale provided.

MoLPP Response

Accept the proposed amendment by inserting the following immediately after the word ‘urban plan’

“national land use policy, environmental guidelines, physical planning standards, and other applicable laws and regulations”.

Committee resolved – Proposal adopted with respect to specifying adherence of development application to county, local and urban plans but otherwise rejected.

(l) Clause 60

Proposal

Regulations ought to adequately provide for the enforcement of the clause.

Rationale

The enforcement of this provision should be adequately qualified in the Regulations as the same is subject to matters relating to arbitration, unforeseen delays, litigation among others.

Committee resolved – Proposal noted

(m) NEW CLAUSE

Proposal

Insert the following new clause immediately after clause 64:

Land Survey and Registration

65 (1) The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with.

(2) For the purposes of subsection (1) "Registrar" has the same meaning respectively assigned to it in section 2 of the Registration of Titles Act (Cap. 281), section 3 of the Registered Land Act (Cap. 300) and in relation to land to which part II of Land Titles Act (Cap. 282) applies means the Principal Registrar or any Registrar appointed for the purposes of that part.

Rationale

This section was in the CAP 286, the intention is to ensure that land survey conforms with planning provisions to ensure the provision of infrastructure services and conformity to zoning regulations.

MoLPP Response

Accept the proposed amendment by inserting a new clause immediately after Clause 63 to state as follows:

Land Survey and Registration

(1) Any survey document that effects a development for which a development permission has not been granted by a relevant planning authority shall stand invalid

(2) Any application made to the registrar relating to development of land shall include a development permission premised on an approved plan

(3) Any registration document prepared by the registrar that effects development as defined by this Act without development permission shall stand invalid.

(4) Part development plans for alienation of public land prepared by the County Director of Physical Planning shall be presented to the National Director of Physical Planning for comments.

(5) For the purposes of subsection (3) "The Registrar" has the same meaning assigned to it under Section 12 and 13 of the Land Registration Act, No. 3 of 2012.

Committee resolved – Proposal adopted to provide for the invalidity of documents relating to development of land made and registered without issuance of development permission.

(n) Clause 68

Proposal

Include the National Director of Urban Development in the National Forums for Liaison.

Committee resolved – Proposal adopted

(o) Clause

They should also include nominees from the Architectural Association of Kenya which is recognized in the current Act

Rationale

In the past Physical Planning Tribunals have been ineffective as the planning authority sits in the committees to determine issues emanating from plans they have prepared or/and development approvals they have granted.

MoLPP Response

Recently enacted statutes establish committees not Tribunals.

Tribunals are part of the judiciary.

Committee resolved – Proposal adopted to amend the name of the Physical Planning Liaison Committees to ‘Land Use Planning Liaison Committees’.

(p) Clause 72

Proposal

Include a representative of the National Construction Authority in the County Physical Planning Liaison Committee.

Rationale

The Authority maintains regional offices across counties in the country. It is proposed that the Authority’s Regional Officers form part of the County Physical Planning Liaison Committees due to their quality assurance activities in liaison with County Governments.

Committee resolved – Proposal adopted

(q) First Schedule

Proposal

Delete the schedule.

Rationale

Schedule is unnecessary since the membership to the forum is predetermined.

Committee resolved – Proposal adopted to also amend clause 5 (3) to remove the requirement for nominating two persons for appointment by the Cabinet Secretary.

(r) Third Schedule

Proposal rejected.

To provide that land use plans prepared under the Urban Areas and Cities Act and the County Governments Act comply with the provisions of the Bill once enacted.

(s) Fourth Schedule

Proposal

Amend paragraph 4 of the schedule to state as follows:

“Planning authorities shall require applications for major developments to be subjected to environmental impact assessment”.

Rationale

The statement is hanging.

Committee resolved – Proposal adopted

(t) General

Proposal

Amend the entire Bill to remove reference to “planning authorities” and replace with “county government”.

Rationale

Development Control and granting of development permissions is the mandate of the County government.

Committee resolved – Proposal adopted to clearly stipulate that development permission shall be issued by county governments.

The Committee was able to complete its review and instructed the secretariat to proceed with the preparation of the Report.

MINUTE SEN/SCLN/186/2018: ANY OTHER BUSINESS;

There was no other business discussed in the meeting.

MINUTE SEN/SCLN/187/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 10.58am and the next meeting was scheduled for Wednesday, 8th August, 2018.

SIGNATURE.....*for*  DATE.....*12/9/18*.....

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

MINUTES OF THE 32ND MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 2ND AUGUST, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. George Khaniri, MGH, M.P.
3. Sen. Mwaruma Johnes, M.P.
4. Sen. Halake Abshiro, M.P.
5. Sen. Godana Hargura, M.P.

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. Slyvia Kasanga, M.P.
3. Sen. Boy Issa Juma, M.P.
4. Sen. Ndwiga Peter Njeru, EGH. M.P.

- **Vice Chairperson**
- Member
- Member
- Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Mr. Wilson Bosumet
4. Ms. Abdi Hawa
5. Ms. Joyce Chelang'at

SENATE SECRETARIAT

- Committee Clerk
- Legal Counsel
- Sergeant at arms
- Sergeant at arms
- Audio Recording

MINUTE SEN/SCLN/176/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLN/177/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted with amendments to allow beginning with agenda 5 then come back to agenda 4 after the guests have arrived. The agenda was therefore proposed by Sen. George Khaniri, MGH, M.P. and seconded by Sen. Halake Abshiro, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Introductions*
 - *Chairpersons remarks*
2. Adoption of the agenda
3. Confirmation of Minutes
4. Review of Physical Planning Bill Matrix
5. Any other Business;
6. Date of the next meeting;

7. Adjournment.

MINUTE SEN/SCLNENR/178/2018: CONFIRMATION OF MINUTES

The Confirmation of minutes was deferred to the next Committee meeting.

**MINUTE SEN/SCLNENR/179/2018: REVIEW OF PHYSICAL PLANNING
BILL MATRIX**

The Legal Counsel took the Committee through the Matrix and the Committee made interventions as listed

(a) Clause 17 – 22

The Cabinet Secretary should be the preparatory authority.

The plan is a policy document which is multi sectoral in application

Committee resolved – Proposal adopted

(b) Clause 22

Replace the words “submitted to the Cabinet for approval” with “approved by the Cabinet Secretary” in Clause 22(3)

Delete the words “by the Cabinet” immediately after the word “approval” in Clause 22(4)

Proposal

Provide a time limit for receiving applications for review under sub-clause 1, preferably 21 days.

Rationale

No rationale provided.

Committee resolved – Proposal rejected. To amend the clause to clearly state that the plans will be simultaneously submitted before both houses of Parliament for approval.

Proposal adopted by providing timelines under sub-clause (1), (2) and (3) of clause 21 of the Bill.


Due to time constraints, the Committee resolved to continue with the rest of the Matrix during the next sitting.

MINUTE SEN/SCLNENR/180/2018: ANY OTHER BUSINESS;

There was no other business discussed in the meetings.

MINUTE SEN/SCLNENR/181/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 1.58pm and the next meeting was scheduled for Tuesday, 2nd August, 2018.

SIGNATURE *for*  DATE *12/9/18*

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

MINUTES OF THE 30TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 31ST JULY, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 12.00 NOON.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. George Khaniri, MGH, M.P.
3. Sen. Mwaruma Johnes, M.P.
4. Sen. Halake Abshiro, M.P.
5. Sen. Slyvia Kasanga, M.P.

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P. - **Vice Chairperson**
2. Sen. Boy Issa Juma, M.P. - Member
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
4. Sen. Godana Hargura, M.P. - Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Mr. Wilson Bosumet
4. Ms. Abdi Hawa

SENATE SECRETARIAT

- Committee Clerk
- Legal Counsel
- Sergeant at arms
- Sergeant at arms

MINUTE SEN/SCLNDR/163/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/164/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Slyvia Kasanga, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Review of Physical Planning Bill Matrix;
5. Any other Business;
6. Date of the next meeting.

MINUTE SEN/SCLNDR/165/2018: CONFIRMATION OF MINUTES

The Confirmation of minutes was deferred to the next Committee meeting.

MINUTE SEN/SCLNDR/166/2018: REVIEW OF PHYSICAL PLANNING BILL MATRIX

The Legal Counsel took the Committee through the Matrix and the Committee made interventions as listed

(a) Clause 14, 16

Proposal rejected. To amend clause 16 to include the following as a responsibility of the County Director of Land Use Planning: ‘maintaining a land information system to guide land use planning’.

(b) Clause 16

Proposal

Delete reference to “physical planning” and replace with “land use planning” in the entire section.

Rationale

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution

Proposed County Physical Planning is in conflict with “County Spatial Planning” in the County Governments Act, section 110.

Proposed “Local Physical Development Plans” is in conflict with city, municipal land use plans as provided for in the County Governments Act (section 111)

Proposed “Local Physical Development Plans” is in conflict with Urban Integrated Development Plans, Sections 36-42 of Urban Areas and Cities Act.

Add sub clause (i) and (ii) to read as follows:

(i) “communicating decisions of planning authorities on development applications based on the policies approved by the County Executive Committee Member for the time being in charge of physical planning matters”.

(ii) “Issuance of prescribed development control instruments”.

Committee resolved – Proposal adopted and to further amend the clause to include ‘undertaking research on matters relating land use and land use planning within the respective county’ as a responsibility of the County Director of Land Use Planning. Similarly by adding the following responsibilities to the County Director of Land Use Planning:

‘communicating decisions of the county government on development applications’ and ‘issuance of development permission and other development control instruments under this Act with the approval of the county executive committee member responsible for land use planning’.

(c) NEW CLAUSES UNDER PART III

Proposal rejected.

To amend the Bill to provide a county planning consultative forum for each county. This forum would be convened whenever plans within the respective county are being prepared to facilitate consultation and proper public participation and disbanded upon completion of the plan making process. The membership of the forum will, with necessary adjustments, mirror the membership of the National Physical Planning Consultative Forum as provided under clause 5 (2) of the Bill.


Due to time constraints, the Committee resolved to continue with the rest of the Matrix during the next sitting.

MINUTE SEN/SCLNLR/167/2018: ANY OTHER BUSINESS;

There was no other business discussed in the meetings.

MINUTE SEN/SCLNLR/168/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 1.58pm and the next meeting was scheduled for Wednesday, 1st August, 2018.

SIGNATURE.......... DATE.....12/9/18.....

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

MINUTES OF THE 29TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 31ST JULY, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Slyvia Kasanga, M.P.
4. Sen. Mwaruma Johnes, M.P.
5. Sen. George Khaniri, MGH, M.P.

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. Boy Issa Juma, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. Godana Hargura, M.P.

- **Vice Chairperson**
- Member
- Member
- Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Mr. Wilson Bosumet
4. Ms. Abdi Hawa

SENATE SECRETARIAT

- Committee Clerk
- Legal Counsel
- Sergeant at arms
- Sergeant at arms

MINUTE SEN/SCLN/151/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLN/152/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Slyvia Kasanga, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Review of Physical Planning Bill Matrix;
5. Pending Petitions before the Committee;
6. Any other Business;
7. Date of the next meeting.

MINUTE SEN/SCLN/158/2018:

CONFIRMATION OF MINUTES

The Confirmation of minutes was deferred to the next Committee meeting.

MINUTE SEN/SCLN/159/2018:

REVIEW OF PHYSICAL PLANNING BILL MATRIX

The Legal Counsel took the Committee through the Matrix and the Committee made interventions as listed

(a) PART II

Proposal rejected.

To amend to state Land Use Planning Institutions.

(b) Clause 5

Committee resolved - To amend the name of the forum to state national land-use planning consultative forum.

To amend the membership of the forum as follows: to remove the chairperson of the relevant committee of the Council of Governors and provide “three Governors appointed by the Council of Governors or their representatives”;

to remove the county executive committee members; and to remove the stipulation that the Cabinet Secretary determines the association representing the private sector.

To amend to remove the stipulation that nominating bodies nominate two persons and the Cabinet Secretary appoints one person in accordance with the First Schedule.

(c) Clause 9

Proposal

Delete any reference to “Physical planning” and replace with “land use planning” in the entire Section.

Rationale

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution.

Proposed Physical Planning Policy will be in conflict with existing Land Use Policy (Sessional Paper No. 1 of 2017)

Proposed National Physical Development Plans will be in conflict with existing National Spatial plan.

Proposal

Delete paragraph 9(d).

Rationale

The provision conflicts with section 4.1.5 (i) of the sessional paper No1 of 2017 on National Land Use Policy

Monitoring and oversight is a function given to National Land Commission at Article 67 (2) (h) and section 5 (h) of National Land Commission Act.

Committee resolved – Proposal adopted

(d) Clause 10

Committee resolved – Proposal rejected. To amend the office to Director General of Land Use Planning.

(e) Clause 10-12

Proposal

1. The title of the office of the National Director of Physical Planning should be Director General of land use planning.
2. The office holder should possess a minimum of a masters degree in urban and Regional planning.

Rationale

National Director of physical planning is limiting in terms of the expected roles or responsibilities for coordinating county planning and development of general principles of land planning as provided under Fourth schedule.

There is precedence in government management structure to establish offices of director general as expert offices in specialized areas like land use planning.

Within the Public service holders of senior expert positions should have superior academic qualifications with masters as a minimum.

The office will serve as a referral position for any matters in land use planning, the holder of the office should have adequate skills and experience.

Committee resolved – Proposal adopted Proposal 2 partially adopted by amending clause 11 (b) to state ‘holds a master’s degree in urban and regional planning or related discipline from a recognized university’.

(f) Clause 11

Proposal

Amend clause 11 (b) to state as follows:

“holds a bachelor’s degree in urban and regional planning and a master’s in a discipline related to the physical planning functions from a recognized university;”.

Rationale

To conform with the provisions of the Scheme of Service by the Public Service Commission of Kenya.

Committee resolved –To amend the clause by deleting paragraph (c) and substituting it with ‘is registered as a professional planner and is in good standing with the relevant professional body’.

Proposal partially adopted by amending clause 11 (b) to state ‘holds a master’s degree in urban and regional planning or related discipline from a recognized university’.

(g) Clause 12

Proposal

Delete reference to ‘physical planning’ and replace with the term “land use planning”.

Rationale

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution.

Proposed National Physical planning policy is in conflict with existing National Land Use Policy Sessional Paper No. 1 of 2017.

Proposed National Physical Development Plans are in conflict with existing National Spatial Plan.

Proposed inter-county Physical development Plans are in conflict with the existing County Spatial Plans (Section 110, County Governments Act).

MoLPP Response

Reject proposals (a), b) and (c).

Accept proposal (d) as clause 12(f) and rephrase to state as follows:

1. “undertake research on matters related to physical planning and development”.

2. Insert a new sub-clause 12 (g) to state as follows:

“preparation of Part Development Plans for strategic national installations and projects”.

Committee resolved – Proposal rejected. To amend the clause to include ‘undertaking research related to land use and land use planning and development and make appropriate recommendations the relevant bodies’ as a responsibility of the Director General of Land Use Planning.

(h) Clause 13

Proposal

Delete reference to “physical planning” and replace with “Land use planning” in the entire section.

Rationale

To align to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution

Proposed County Physical Planning is in Conflict with spatial plans and section 110 of the County Government Act.

Committee resolved – Proposal adopted

Due to time constraints, the Committee resolved to continue with the rest of the Matrix during the next sitting.

MINUTE SEN/SCLNR/160/2018: PENDING PETITIONS BEFORE THE COMMITTEE


The Committee resolved to invite the resident from Kajiado County, Mr. Samuel M. W’Njuguna following his request to meet the Committee on matters pertaining to the Petition by the residents of Kajiado County on the Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section).

MINUTE SEN/SCLNR/161/2018: ANY OTHER BUSINESS;

There was no other business discussed in the meetings.

MINUTE SEN/SCLNR/162/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.48am and the next meeting was scheduled for the same day at 12.00Noon.

SIGNATURE.....for: ..... DATE.....12/9/18.....

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

MINUTES OF THE 28TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 26TH JULY, 2018 IN, COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Sylvia Kasanga, M.P.

PRESENT

- **Chairperson**
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P. - **Vice Chairperson**
2. Sen. Mwaruma Johnes, M.P. - Member
3. Sen. Boy Issa Juma, M.P. - Member
4. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
5. Sen. George Khaniri, MGH, M.P. - Member
6. Sen. Godana Hargura, M.P. - Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Mr. Wilson Bosumet
4. Ms. Abdi Hawa

SENATE SECRETARIAT

- Committee Clerk
- Legal Counsel
- Sergeant at arms
- Sergeant at arms

MINUTE SEN/SCLNENR/151/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNENR/152/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Sylvia Kasanga, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Review of Physical Planning Bill Matrix;
5. Pending Petitions before the Committee;
6. Any other Business;
7. Date of the next meeting.

MINUTE SEN/SCLNENR/153/2018:

CONFIRMATION OF MINUTES

The Confirmation of minutes was deferred to the next Committee meeting.

MINUTE SEN/SCLNR/154/2018: REVIEW OF PHYSICAL PLANNING BILL MATRIX

The Legal Counsel took the Committee through the Matrix and the Committee made the following interventions:

(a) Clause 1

1. The National Land Policy at paragraphs 101-143, provides for “Land Use Planning” and not “Physical Planning”

2. The sessional Paper No.1 of 2017 on National Land use policy provides a framework for land use planning and not physical planning.

3. The Constitution in Article 260 interprets “land” to include—

(a) the surface of the earth and the subsurface rock;

(b) any body of water on or under the surface;

(c) marine waters in the territorial sea and exclusive economic zone;

(d) natural resources completely contained on or under the surface; and

(e) the air space above the surface;

6) Sessional paper no. 3 of 2009 on the National Land policy para 104 & 105

The use and management of Land as the premier national resource cannot therefore be adequately planned within the context of physical planning.

Committee resolved - Amend the title of the Bill to state “Land Use Planning Act”.

(b) Entire Bill

Proposal

Delete any reference to ‘physical planning’ and replace with ‘land use planning’ in the entire Bill.

Rationale

To align the Bill to requirements Articles 2(3), 2(4), 60, 66, 67 (2h), 68 (b), 162 (2b) 260, 261, Fourth Schedule Part 1/21 and Fifth Schedule of the Constitution.

MoLPP Response

Physical Planning is an amalgam disciplines that involves the organisation of space. The use of Land Use would be too limiting in scope and practice.

Committee resolved – Proposal adopted to amend

(c) Clause 2

Proposal

Amend the definition of the term ‘Cabinet Secretary’ to state as follows:

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to land use planning;

Rationale

To comply with Articles 66, 67 (2a), 68 (b) and the 5th schedule to the Constitution.

Proposal

Delete the definition of the term ‘local physical planning development plan’ and replacing it as follows:

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

Rationale

To correct a typographical error.

MoLPP Reponse

Accept the proposal and correct the typographical error.

Proposal

Amend the definition of the term 'public purposes' at paragraph (b) to remove 'factories' and 'public housing' from inclusion under public buildings.

Rationale

In professional practice (Planning), factories and public housing are never considered under public purpose.

"County Executive Committee Member" means the CECM responsible for land use planning by which the executive authority of the county is vested in, and exercised by, a county executive committee as provided for in the Constitution Article 179;

Committee resolved - Amend the definition of 'land use planning' to remove reference to it being a branch of physical planning.

Proposal partially adopted. To provide for the definition of the county executive committee member to mean the county executive committee member responsible for matters relating to land use planning in each county.

(d) Clause 3

Proposal

Include another object as follows:

"to provide for research on land-use and development".

Rationale

The objectives fail to capture the spirit of implementation of land use planning as per the constitution.

Provisions of existing legislation (Physical Planning Act, 1996; County Governments Act, 2012; Urban Areas and Cities Act, 2011) requiring plan development at County level and Urban areas as planning units.

MoLPP Response

Accept the proposal to read as follows:

1. "to provide for research on physical planning, land use policy and development and related matters".

2. Add a new clause 12(f) to read as follows:

"undertake research on matters related to physical planning, land use policy and development and related matters".

Proposal

Amend paragraph (e) to provide a mechanism for dispute resolution related to physical planning.

Rationale

The clause is too wide and overlaps with the existing Arbitration Act.

Committee resolved - Proposal adopted. MoLPP Response/ Proposal 1 rejected. To adopt language of the main proposal and exclude physical planning, land use policy.

Proposal adopted to restrict dispute resolution to land use planning matters.

(e) Clause 4

Proposal

Delete the section in its entirety and substitute with the following:

Principles of Land-Use Planning

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

Rationale

The present clause only refers to the conduct of public service officers and public service deliver and does not provide for the overall principles of Planning.

The principles provided for under clause 4 relates more to public services or public service delivery as it seeks to provide for regulation of conduct of public entities and officers involved in planning which is not the subject matter of the Bill.

MoLPP Response

The proposed principles are specific professional principles which cannot be legislated because they keep changing over time.

Committee resolved - Proposal partially adopted. To amend the marginal note on the clause and insert a new clause on 'principles and norms of land use planning' and adopt the proposed principles in the new clause.

Due to time constraints, the Committee resolved to continue with the rest of the Matrix during the next sitting.

MINUTE SEN/SCLNR/155/2018: PENDING PETITIONS BEFORE THE COMMITTEE


The Committee resolved to begin inquiries and invitations on the Petition by Representatives of the Community Wildlife Conservancies on the budgetary support to Wildlife Conservancies for sustainable conservation and community development.

MINUTE SEN/SCLNR/156/2018: ANY OTHER BUSINESS;

The Committee suggested that it would be important to consider having the Committee discuss and adopt its report on the Physical Planning Bill at Intercontinental Hotel since the matters being discussed are bulky in nature following many submission that were obtained during the Public Hearing.

MINUTE SEN/SCLNR/157/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.30am and the date of the next meeting was scheduled for Wednesday, 1st August, 2018.

SIGNATURE *for*:  DATE *2/8/18*

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

MINUTES OF THE 22ND MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 21ST JUNE, 2018 IN, GROUND FLOOR BOARDROOM, RED CROSS, PARLIAMENT BUILDINGS AT 9.00 AM.

MEMBERS

- | | |
|---------------------------------------|---------------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. Ndwiga Peter Njeru, EGH. M.P. | - Member |
| 4. Sen. Halake Abshiro, M.P. | - Member |
| 5. Sen. George Khaniri, MGH, M.P. | - Member |

PRESENT

ABSENT WITH APOLOGY

- | | |
|------------------------------|----------|
| 1. Sen. Sylvia Kasanga, M.P. | - Member |
| 2. Sen. Boy Issa Juma, M.P. | - Member |
| 3. Sen. Mwaruma Johnes, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |

IN ATTENDANCE

PUBLIC

(Signed attendance list attached)

SENATE SECRETARIAT

- | | |
|-------------------------|--------------------|
| 1. Mr. Victor Bett | - Committee Clerk |
| 2. Mr. Mitchell Otoro | - Legal Counsel |
| 3. Mr. Wilson Bosumet | - Sergeant at arms |
| 4. Ms. Joyce Chelang'at | - Audio Officer |

MINUTE SEN/SCLN/121/2018: PRELIMINARIES

The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLN/122/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Prengei Victor, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Remarks by the Chairperson*
 - *Introductions*
2. Adoption of the agenda;
3. **Public Hearing on the Physical Planning Bill, 2017**
 - **Views from stakeholders**
 - **Views from members of the Public**
4. Any other Business;
5. Date of the next meeting.

6. Adjournment

MINUTE SEN/SCLNR/123/2018: **MEETING WITH STAKEHOLDERS AND THE GENERAL PUBLIC ON THE** **PHYSICAL PLANNING BILL**

- **NEMA,**

NEMA was represented by the Legal Officer and made his presentations to the Committee. (*Memoranda attached*).

- **Green Peace Africa,**

They informed the Committee that the Bill needs to consider communities and indigenous people and also include them in the consultative forums. (*Memoranda attached*).

- **Town Planners Association of Kenya,**

They advocated for changing of the Title, look at the Constitutional standing of the title, matters touching on the National Land Commission, areas conflicting with the urban Areas and Cities Act and the qualifications of the Director's minimum qualifications. (*Memoranda attached*).

- **Kenya Institute of Planners,**

They were concerned with the Title of the Bill & how we define terms, Structure of the Bill, mandates and responsibilities, role of the Cabinet Secretary as far as overstepping into the mandate that is given to counties, planning functions & the Director General's position, Some Plans and that they shouldn't go to Parliament and the County Assemblies for approvals, overlaps between agencies, role of the planning associations, powers of the County Planning Authority, registered persons & preparation of plans and the department of Land Use Planning. (*Memoranda attached*).

- **Architectural Association of Kenya**

They were concerned with the definition of terms in the Bill, principles of planning, role of the governments at the various levels, consultative forum and that it is too bureaucratic at the top and the frameworks for preparation of the Plans. (*Memoranda attached*).

- **Chemorogong Community**

The Community which originates from Baringo and consider themselves forest dwellers was also able to give the presentations to the Committee. In their presentation they informed the Committee that they were moved to the hill side, some leave at water towers. They informed the Committee that they have tried seeking address to their situation from the National Land Commission. The Committee resolved to address their plight in detail at depth. (*Memoranda attached*).

- **Kenya Young Planners Association**

The Committee began by commending the Youth for also participating in the Bill, as the youth constitutes a large population of the consumers of the Bill eventually. They

raised concerns with the title of the Bill among other concerns. (*Memoranda attached*).


The Committee noted that from the meeting there was a suggestion of amendment of Section 110 of the County Governments Act.

MINUTE SEN/SCLNR/124/2018: ANY OTHER BUSINESS;

The Committee acceded to the invitation for a meeting with Gatsby Africa to sensitize the Committee on their work with the Ministry of Environment as they partner together in implementing a long-term programme of support targeting competitive and inclusive growth of Kenya's commercial forestry sector. This programme is referred to as the Kenya Commercial Forestry Programme (KCFP).

MINUTE SEN/SCLNR/125/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.35 am and the date of the next meeting was scheduled for Tuesday, 26th June, 2018.

SIGNATURE.....*for*.......... DATE.....*22/6/18*.....

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

MINUTES OF THE 20TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 19TH JUNE, 2018 IN COMMITTEE ROOM 10, NEW WING, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Mwaruma Johnes, M.P.
4. Sen. George Khaniri, MGH, M.P.

PRESENT

- Chairperson
- Vice Chairperson
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Halaké Abshiro, M.P. - Member
2. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
3. Sen. Slyvia Kasanga, M.P. - Member
4. Sen. Boy Issa Juma, M.P. - Member
5. Sen. Godana Hargura, M.P. - Member

IN ATTENDANCE

1. Sen. Faki Mohamed, MP.

SENATORS

- Senator, Mombasa County

MINISTRY OF LANDS

1. Ms. Fariday Karoney, OGW - Cabinet Secretary
2. Hon. Gideon M. Mungaro - CAS
3. Mr. Alfred Mwanzia - Physical Planner
4. Ms. Eunice Kamunga - Physical Planning Department
5. Ms. Nancy Auma - Physical Planner
6. Mr. Brian Ndelena - Physical Planner
7. Mr. Paul Ndungu - Ag. AD
8. Mr. Eustace N. Kithumbi - SADLAS
9. Mr. Owino Jacob Cattwright - SLRO
10. Mr. Martin Oloo - Legal Advisor
11. Dr. Herbert Musoga - Director
12. Mr. Paul Ndung'u - Ag. Ass. Director

NATIONAL LAND COMMISSION

1. Prof. Muhammad Swazuri - Chairperson, NLC
2. Dr. Rose Musyoka - Commissioner, NLC
3. Mr. Charles Otieno - Director
4. Ms. Fatuma Abdi - Land Use Planning
5. Ms. Melody Lijoodi - Land Use Planner
6. Ms. Rose Kitur - Land Use Planner

MINISTRY OF ROADS, TRANSPORT, INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT

1. Mr. Moses Gatana - D/D Housing
2. Mr. Enoch Onyango - Sec. Urban & Metropolitan Dvp't

SENATE SECRETARIAT

1. Mr. Victor Bett - Committee Clerk
2. Mr. Mitchell Otoro - Legal Counsel
3. Mr. Wilson Bosumet - Seargent at arms
4. Ms. Joyce Chelang'at - Audio Officer

MINUTE SEN/SCLNENR/111/2018: PRELIMINARIES

The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNENR/112/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Prengi Victor, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Remarks by the Chairperson*
2. Adoption of the agenda;
3. **Meeting with Stakeholders on the Physical Planning Bill, 2017**
 - **The National Land Commission, Ministry of Lands, Ministry of Transport, Infrastructure, Housing & Urban Development, Council of Governors and National Construction Authority**
4. Any other Business;
5. Date of the next meeting.
6. Adjournment

MINUTE SEN/SCLNENR/113/2018:

MEETING WITH STAKEHOLDERS ON THE PHYSICAL PLANNING BILL

- **Ministry of Lands,**

The Committee was informed by the CS Lands that the Bill is way behind schedule and the Committee is well placed in ensuring that the Bill passes at the earliest opportunity.

The Director physical planning then took over and was able to take the Committee through the suggested areas of amendment by the Ministry.

Among the areas for intervention highlighted were; The Title of the Bill, Constitutional Threshold and matters touching on the National Land Commission. (*Memoranda attached*).

- **The National Land Commission,**

The Committee was informed by the Chairperson that the uptake of planning in the country is very low and that the Bill will step in and address some of the raising concerns.

Among the Areas the Commission had amendments were; the Title of the Bill, roles touching on the National Land Commission among others. (*Memoranda attached*).

- **Ministry of Transport, Infrastructure, Housing & Urban Development,**

The Committee heard from the Ministry of Transport department of Urban Planning, on the concerns concerning the Bill and they had a number of matters similar to the issues raised by the National Land Commission. (*Memoranda attached*).

MINUTE SEN/SCLNR/114/2018: ANY OTHER BUSINESS;

There was no other business discussed at the meeting.

MINUTE SEN/SCLNR/115/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.35 am and the date of the next meeting was scheduled for Wednesday, 20th June, 2018.

SIGNATURE.....for. ..... DATE.....12/9/18.....

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

