



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON:

THE LAND CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 39 OF 2023)

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TABLED BY:	Hon. Owen Banya, MP Deputy leader of majority
CLEARANCE TWO-TABLE:	Chibet Kaseki

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 - (b) Institution of Surveyors of Kenya
 - (c) Land Development and Governance Institute

CHAIRPERSON'S FOREWORD

The principal object of the Bill is to repeal and replace the Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.

The Bill proposes the establishment of Land Control Committees in each constituency to replace the Land Control Boards. The Land control committees are to comprise persons drawn from within the locality they serve who are conversant with the traditions, customs, and way of life of the community in the area. This would enable each proposed transaction to be reviewed soberly with a view of ensuring proper utilization of agricultural land for the benefit of all. It is additionally proposed that the land control Committees develop the use of alternative dispute resolution mechanisms in their operations and that they undertake evidence gathering and fact finding on the request of parties or the courts in matters relating to land and land use.

The Bill was read a First Time in the House on 4th October 2023 and thereafter committed to the Departmental Committee on Lands for review and repowering to the House in line with National Assembly Standing Order 127.

Article 118 (1b) of the Constitution of Kenya and National Assembly Standing Order 127 (3) require Parliament and its Committees to facilitate public participation and involvement in the law-making process. In fulfilment of this requirement, the Committee published an advertisement in the print media on 6th October 2023, inviting the public to submit memoranda on the Bill.

By close of business on Monday, 23rd October, 2023, the Committee had received submissions from the State Department for Lands and Physical Planning, the Institution of Surveyors of Kenya and Land Development and Governance Institute all of which are contained in this Report. The Committee thereafter considered the Report of the Bill and made various observations and recommendations as indicated in this Report.

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

On behalf of the Departmental Committee on Lands, it is my pleasure, pursuant to Standing Order 127(4) of the National Assembly Standing Orders, to table the report on its consideration of the National Land Control Bill (National Assembly Bill No. 39 of 2023).

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

PART I

1.0 PREFACE

1.1 Introduction

1.2 Legal Provision on Public Participation

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

a) Methodology used by the Committee in Public Participation

8. The Bill further proposes the establishment of Land Control Appeals Committees to handle any appeals emanating from the land control committees.
9. The Bill was read a First Time in the House on 4th October 2023 and thereafter committed to the Departmental Committee on Lands for review and repowering to the House in line with National Assembly Standing Order 127(1).
10. Article 118 (1b) of the Constitution of Kenya and National Assembly Standing Order 127 (3) require Parliament and its Committees for facilitate public participation and involvement in the law-making process. In fulfilment of this requirement, the Committee put in an advertisement in the print media on 6th October 2023, inviting the public to submit memoranda on the Bill.
11. By close of business on Monday, 23rd October, 2023, the Committee had received submissions from the State Department for Lands and Physical Planning, the Institution of Surveyors of Kenya and Land Development and Governance Institute all of which are contained in this Report. The Committee thereafter considered the Report on the Bill and made various observations and recommendations as is contained in this Report.

b) Mandate of the Committee

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

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

c. Subjects under the Committee

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

d. Membership of the Committee

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

Chairperson

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

UDA

Vice-Chairperson

Hon. Jayne Kihara, MP
Naivasha Constituency

UDA

Hon. Rachael Kaki Nyamai, MP
Kitui South Constituency

Jubilee

Hon. Joseph Hamish Dena, MP
Nominated

ANC

Hon. Gideon Ochanda, MP
Bondo Constituency
ODM

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

Hon. Mathias Robi Nyambabe, MP
Kuria West Constituency
UDA

Hon. Ali Wario Guyo, MP
Garsen Constituency
ODM

Hon. George Koimburi, MP
Juja Constituency
UDA

Hon. Omar Mwinyi, MP
Changamwe Constituency
ODM

Hon. Paul Katana, MP
Kaloleni Constituency
ODM

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

Hon. Josses Lelmengit, MP
Emgwen Constituency
UDA

Hon. Anthony Kenga Mupe, MP
Rabai Constituency
PAA

Hon. Gachoki Gitari, MP
Kirinyaga Central Constituency
UDA

e. Committee Secretariat

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

Mr. Joshua Ondari
Clerk Assistant I/ Lead Clerk

Mr. Binensa Mabungu
Clerk Assistant III

Mr. Sidney Lugaga
Senior Legal Counsel

Ms. Noelle Chelagat
Media Relations Officer

Ms. Nancy Chamunga
Fiscal Analyst III

Ms. Brenda Michira
Research Assistant III

Mr. Yeziel Jillo
Serjeant-at-Arms

PART II

2.0 OVERVIEW OF THE BILL

13. The Land Control Bill, 2023 is a private Member's Bill, sponsored by Hon. Wilberforce Oundo, MP. The Bill was published on 28th July, 2023 and read a First Time in the House on 4th October 2023 and thereafter committed to the Departmental Committee on Lands for consideration and reporting to the House.

Object of the Bill

14. The principal objective of the Bill is to repeal and replace Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.
15. The Bill proposes the establishment of Land Control Committees in each constituency to replace the existing Land Control Boards. The land control committees are to comprise persons drawn within the locality they serve who are conversant with the traditions, customs, and way of life of the community in the area. This would enable each proposed transaction to be reviewed soberly with a view of ensuring proper utilization of agricultural land for the benefit of all. It is additionally proposed that the land control committees develop the use of alternative dispute resolution mechanisms in their operations and that they undertake evidence-gathering and fact finding on the request of parties or the courts in matters relating to land and land use.
16. Part I (clause 1-3) of the Bill contains preliminary provisions.
17. Part II (clause 4-9) of the Bill contains provisions establishing and capacitating Land Control Committees in each constituency.
18. Part III (clause 10-15) of the Bill contains provisions outlining the transactions that are subject to review and the considerations to be made by land control committees before the grant or refusal of consent.
19. Part IV (clause 16-18) of the Bill contains miscellaneous provisions.
20. Part V (clause) of the Bill contains provisions granting the Cabinet Secretary for lands powers to make subsidiary legislation.
21. Part VI (clause 20-21) of the Bill contains transitional, saving and repeal provisions.

PART III

3 SUBMISSIONS BY STAKEHOLDERS ON THE LAND CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 39 OF 2023)

3.1 Submission by the State Department for Land and Physical Planning

The State Department for Lands and Physical Planning and submitted as follows-

Upon review of the Bill, we make the following observations;

21. Introduction - the Bill seeks to repeal the Land Control Act Cap 302 laws of Kenya. In the 12th Parliament, they made representations on the Bill during the pre-Publication stage and also during the public participation stage where they expressed their position about the Bill. We reiterate the same here by stating that this Ministry is in the process of amending the Land Control Act through the Land Laws (Amendment) Bill, 2023 which Bill is awaiting second reading.
22. Preamble Of The Bill - As opposed to the Land Control Act which its preamble is to *provide for controlling transactions in agricultural land*, this Bill sets out the preamble *to regulate certain transactions in land for connected purposes*. This means that this Bill is not express on which category of land it should apply. The purpose of the Land Control Act, and to a large extent the Land Control Bill, is to control transactions in respect of agricultural land. The manner in which the preamble of the Bill is structured is erroneous and at cross-purpose to the content and intent of the Bill.
23. Designation Of The Land Control Areas - Clause 3(2) of the Bill states that the Cabinet Secretary may in consultation with the National Land Commission and approval of the National Assembly designate specific land control areas and transactions to be subject to the provisions of the Bill. It was their view that the land control function is the mandate of the Cabinet Secretary and to introduce other players in the process would be counterproductive to occasion unnecessary delay in designation of such land control areas. This mandate as contained in the Land Control Act should not be interfered with.
24. Establishment of The Land Control Committees - Clause 4 of the Bill establishes Land Control Committees in every constituency, which are appointed by the Chief Land registrar, in the official Gazette. The basis of every land control area established under section 3 of the Land control Act (and presumably clause 3(2) of the Bill, is to designate an area where the Land Control Act/the Bill will apply and by extension in respect of which land control boards/land control committees will be appointed. However, clause 4(1) of the Bill mandates the Chief Land Registrar to appoint

a land Control committee in respect of each constituency. This means that the designation of a control area under clause 3(2) is given through one hand and the same being taken away by another hand through clause 4(1) where a control area (constituency) is already determined for the Cabinet Secretary.

25. Suffice to say that designation of the constituency as a land control area does not sit well as a standard to establish a land control area. This approach would not apply in cases where a constituency is too big or small. This therefore means that the mandate of the Cabinet secretary to establish Land Control Areas as set out under Sections 3, 4 and 5 of the Land Control Act is well structured and allows the Cabinet Secretary latitude to establish them as may be dictated by necessity. For this reason, we are opposed to how clause 3(2) and 4 are structured.
26. Appointment of Land Control Committees - Clause 4(1) of the Bill seeks to give the Chief Land Registrar power to appoint the Land Control Committee in every constituency, as opposed the Land Control Act where such power is vest in the Cabinet Secretary. Under the Land Control Act, the chief Land Registrar does not play any role in the exercise of the control function in respect to agricultural land. The land Administration directorate has always served as the secretariat to the Land Control Board deliberately so to avoid conflict of interest. The Land Registration Act binds the registrar not to register any instrument touching on agricultural land unless there is a land control board consent. This means that the registrar is a consumer of the final product of the Land Control boards/committees. The Bill is therefore likely to put the registrar in a position of conflict of interest if at all the power to appoint the land control committees is vest in that office. The same applies to the appointment of a selection panel for filling any vacancy in the land Control Committee under clause 6 of the Bill. The Bill therefore assigns a role which the chief land registrar is functionally ill-equipped to handle. Suffice to say that the issuing of consents is a development control function which, for the purpose clear assignment of roles, is exercised by the directorate of Land Administration. For this reason, clause 4 of the Bill is not proper.
27. Changing the Name to The Land Control Committees - The land Control Boards established under the Land Control Act is being re-named the Land Control Committees. This organ has existed since the Land Control Act was enacted and looking at how the proposed Land Control Committee is structured and the role played by it does not in itself provide a basis to change what is akin to a household name in Kenya.
28. Constitution of The Land Control Committees - The constitution of the Land Control committee, as evident under clause 4(2), does not have any representation of the Cabinet

Secretary. Even though, the Deputy County Commissioner who is a member of the committee also serves as the secretary to the committee. The person who plays the role of the secretary to any board or committee is the person who has the advantage of being exposed, on a day to day basis, to the activities in respect of which the committee exercises control, including the keeping of records. The matter at hand touch on the issuing of land control consents in the sector where the Cabinet Secretary is in charge including the keeping of records. The representative of the Cabinet Secretary or an officer under the Cabinet Secretary should be the one well-placed to be the secretary to the Committee. The committee therefore as constituted under clause 4(2) of the Bill is functionally not capable of discharging its mandate.

29. Selection Panel - Clause 6 of the Bill seeks to give power to the Chief Land Registrar to appoint the selection panel to select members of the Land control committee where the Deputy County Commissioner serves as chair of the selection committee. It is instructive to note that the Deputy County Commissioner is a member of the Land Control Committee and secretary thereof. It is not morally right for the Deputy County Commissioner to oversee the selection process of Land Control Committee where he will eventually serve as secretary to the Committee. This is a classic case of conflict of interest.
30. Functions of The Land Control Committee - Clause 9 of the Bill inter alia sets out the functions of the land control committee to-
 - (a) Review any other dealings in land referred to it by the chief land registrar
 - (b) Resolve any dispute over general boundaries within their jurisdiction
 - (c) Settle any land dispute referred to it by willing parties pursuant to Article 60(1)(g) and 159(2)(c) of the Constitution
 - (d) Handle any matter referred to the committee in pursuance of section 20 of the Environment and Land court Act, 2012
 - (e) Undertake fact-finding and evidence-gathering in matters covered under the law of Succession Act, the Environment and Land Court Act 2011, the Land Registration Act, 2012, the National Land Commission Act, 2012 upon request of parties or the courts.
31. It is their considered view that the land control committee is not well-suited to handle disputes relating to land. Exercising the land control function should not be mixed with other duties that are not related to it. Moreover, this is likely to set the committee on a course of conflict of interest. It is also not clear on what happens on similar powers created under the Land Registration Act such as the power to resolve boundary disputes given to the Chief Land Registrar.

32. Supporting Documents to The Application for Consent - Under clause 11 of the Bill, some of the documents an applicant is required to attach seems to be onerous and unnecessary for granting of a land control consent. Requirement for the applicant to attach a cadastral map and details of the acreage of land held by each party within the geographical area may be too much to ask for from applicants. There are very minimal areas covered by a cadastre in Kenya. You then wonder the law is futuristic or seeks to handle current situations as they are. It is also not possible to provide acreage of each owner of land within the area of jurisdiction of the Land Control Committee. Suffice to say that the information being sought from the members of the public is ordinarily within the knowledge or control of the Cabinet Secretary, if only the cabinet secretary or her representative is a member of the Land Control committee.
33. Publication of Notice - Clause 12 of the Bill inter alia requires that the public be notified of the list of applications for land control consent 14 days to the date of hearing, at the office of the Chief Land Registrar; at the constituency office; at the Chief's office and on the sub-county website for any member of the public to see and for the purpose of filing an objection by any member of the public.
34. The control function relates to transactions in land which to a large extent are private and therefore requirement to have them publicized will defeat the essence of the role played by the Land Control Committees. This will unnecessarily expose the parties to the land transaction in many ways including their personal security.
35. Appeals Committee - Clause 15 of the Bill mandates the Cabinet Secretary to appoint appeals committee as may be appropriate to comprise a chairman qualified to be appointed High Court judge and other four members who shall possess a minimum qualification of a degree holder. It is not specific in respect of which area/regions or administrative areas such appeals committees shall be appointed. It is also not a consideration by the Bill that there are areas where persons with such academic qualifications may be lacking and therefore make the Bill a mere academic exercise that is incapable of application.

3.2 Submission by the Institution of Surveyors of Kenya (ISK)

The Institution of Surveyors of Kenya submitted their written Memorandum vide a letter REF/ISK/COU/RM/23/46 dated 11th October 2023, and submitted as follows:-

36. In their Memorandum, the Institution of Surveyors of Kenya submitted that it firmly objects to the proposed Land Control Bill, 2023 which was set to be read for the first time in the National Assembly. They asserted that despite the need to amend the current Land Control Act, the proposed Bill Would not cure the deficiencies of the existing Act.

37. The Institution noted that the object of land control boards was to deal with dispositions such as subdivisions and transfers which is a land administration aspect and not a registration aspect as the proposed Bill instigates. They also assert that the philosophy behind the Land Act was to reduce statutes regulating land management, the proposal grossly negates the National Land Policy, Sessional Paper No.3 of 2009 philosophy and objectives.
38. The Institution of Surveyors submitted that the rationale for their objection includes;
- a) The bill proposes that the Land Registrar be the appointing authority for the Land Control Committee, yet, the Land Registrar is one of the parties to be involved in the land control activities.
 - b) Under clause 5(1)(a) the Bill proposes that the Deputy County Commissioner be the chair of the selection panel that appoints members of the Land Control Committees yet under clause 4(2)(b) the same Deputy County Commissioner is proposed as the secretary of the Land Control Committee which amounts to conflict of interest.
 - c) The proposed Land Control Committee provided under clause 9(i) has no capacity to undertake fact-finding and evidence-gathering in matters under the Succession Act, the Environment and Land Court Act, the Land Registration Act and the Land Act.
 - d) Under clause 9(b) the proposed Land Control Committee lacks the capacity to grant consent for the combination of land whereas the idea behind the Land Control Act was to deal with land subdivision and not the combination of land.
 - e) Under clause 9(f) regarding the resolution of boundary disputes under general boundaries, the Bill seems to usurp the power of the Land Registrar which is already provided for under the Land Registration Act, 2012 in sections 18, 20 and 21. Section 18(2) of the Land Registration Act stipulates that not even the court is allowed to entertain any action or proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with the Land Registration Act.
 - f) Under clause 11(3)(b) the Bill states that any application for grant of consent shall be accompanied by a copy of the cadastral map of the land affected by the transaction but,

there lacks a clear provision within the Bill for the retention of a land surveyor for specialized interpretation of cadastral plans in relation to agricultural sites.

g) Under clause 11(3)(e) the requirement for one to provide details of acreage of land held by each party within the geographical area of the Committee's jurisdiction seems to imply that there is a minimum or maximum holding of land which has been defined which is not the case.

h) Clause 13 (2)(b)(vi) refers to a purchase price being related to the Land Value Index. However, the land value index is meant for mass acquisition and thus does not sufficiently cater for specific land transactions being dealt with by the Land Control Act.

3.3 Submission by the Land Development and Governance Institute

The Land Development and Governance Institute (hereinafter referred to as "the Institute") submitted their written Memorandum vide a letter dated 23rd October 2023, and submitted as follows:-

39. Preamble - In the preamble, the Bill provides for *An Act of Parliament to regulate certain transactions in land for connected purposes*. The Institute submitted that this was unclear on what type of land was being referred to.

Recommendation: The Institute recommended that the introduction needed to be specific "... transactions in agricultural land."

40. Clause 2 - Interpretation of Agricultural Land

The Bill defines agricultural land as *an area not designated as a city or urban area under the Urban Areas and Cities Act, 2011*.

The Institute submitted that the definition was too wide and failed to acknowledge other statutory classifications of land such as public land (forests, National Game Parks and Game Reserves and Protected Areas).

Recommendation: The Institute recommended that the Bill needs a clear and specific definition of the term "agricultural land."

41. Clause 3 - Application of the Act

Clause 3(1) of the Bill only addresses transactions relating to the sale/transfer of land and is mute on other transactions such as subdivision where there is no disposition or how the Act will relate with the issue of change of user.

Section 3(2) provides that the Cabinet Secretary may, in consultation with the National Land Commission and with the approval of the National Assembly, designate specific land control areas.

The Institute asserted that this ignores the planning function and the role of the County Governments. It was equally stated that by virtue of Schedule 4 of the Constitution, the County Governments are in charge of matters concerning agriculture.

Recommendation: The Institute recommended that the Bill needs to address all land transactions and that this function needed to be done in consultation with the affected County Governments.

42. Clause 4(1) - Establishment of Committees

Clause 4(1) of the Bill provides that *the Chief Land Registrar shall by notice in the Gazette appoint a Land Control Committee in each constituency.*

The Institute submitted that clause 4(1) gave the Chief Land Registrar powers to appoint the Land Control Committee despite being the officer in charge of registration as provided in the Land Registration Act, 2012. This will therefore result in a conflict of interest.

In addition, the Institute submitted that the clause provided that the appointment be done per Constituency. It was stated that this may not be representative since some constituencies have more than one sub-county and that this would also result in political interference.

Recommendation: The Institute recommended that this clause be amended to have the Land Control Committee appointed by the Cabinet Secretary responsible for matters relating to land in consultation with the County Governments.

The Institute also recommended that the appointment should be per sub-county and not per constituency as indicated in the Bill as the focus should be on administrative and not electoral boundaries.

43. Clause 4(2) - Members of the Land Control Committee

Clause 4(2)(b) of the Bill provides that the Deputy County Commissioner appointed under section 15 (2)(b) of the National Government Co-ordination Act be assigned the role of the Secretary to the Committee. The Institute averred that this designation is not supported by any fundamental law or functional mandate.

Clause 4(2)(c) of the Bill provides that the sub-county administrator appointed under section 50 of the County Government's Act, 2012 should be a member of the committee. The Institute averred that there should be an additional representative from the County Government with expertise in agriculture, land use planning and survey as these are mandates of the County Government and the technical officers in charge of these functions should be automatic members of the Committee.

Clause 4(2)(d) of the Bill gives the age limit of 60 and above for the man and woman to be appointed. The Institute asserted that this limits the scope since there are resourceful people who are below 60 years and there is also no indication of their qualification for the man and woman.

Clause 4(2)(e) of the Bill provides that two persons, one being a youth have knowledge and experience in land law, surveying, land administration, or dispute resolution. The Institute submitted that this qualification failed to include planning discipline on the list which is very crucial.

Recommendation: The Institute recommended that the Bill needed to indicate the specific qualifications for all members of the committee. It was stated that it was fundamental to have persons with expertise in agriculture, planning and surveying from the county department of agriculture in the Committee. Equally, the Institute recommended that clause 4(2)(d) be amended to include, "aged less than 60 years" and also include their qualification. Additionally, clause 4(2)(e) be amended to include the planning discipline as part of the required skills. Further, there was need to ensure gender balance in line with the two-third gender rule.

44. Clause 5 - Qualification for appointment

Clause 5 (1), (2) of the Bill provides that a member shall qualify if he has demonstrated knowledge on culture, traditions and dispute resolution mechanisms. The Institute submitted that the qualifications cited do not relate to land administration, planning, agriculture or environment which are useful in land control transactions.

Additionally, the Institute submitted that in clause 5 of the Bill, there is no provision requiring the chairperson or member to be residents within the geographical area.

Recommendation: The Institute recommended that there was no need to indicate that for one to qualify for appointment as chairperson or member of a committee they must have lived within the geographical area for not less than 20 years except the automatic national or county government officials. In addition, there was need to have people with professional expertise and skill in the committee.

45. Clause 6 - Procedure of appointing committee members - Selection Panel

Clause 6(1) of the Bill provides that the Deputy County Commissioner shall be the chair of the selection panel. The Institute asserted that this would amount to a conflict of interest as the Deputy County Commissioner will serve as the secretary of the Committee.

The Institute submitted that the selection panel that had been proposed has some gaps as it leaves out the County Government which is the key planning arm of government with constitutional mandate over agriculture, planning and surveying.

In addition, the Institute submitted that there was no representative from the community instead, there were only representatives of the business community which had nothing to do with agricultural land. It was also stated that the representative from the constituency office may lead to political interference.

Recommendation: The Institute recommended that clause 5 be amended to have the Selection Panel comprising of;

- (a) National Government representative from the Ministry of Interior*
- (b) National Land Commission*
- (c) County Government representatives (Chief Officers - agriculture, planning, survey, environment)*
- (d) Ministry of Lands representative*
- (e) A community representative/farmer*

46. Clause 9 - Functions of a land control committee

Clause 9(f) of the Bill provides that the function of the committee is to resolve any dispute over general boundaries within their jurisdiction. The Institute asserted that this contradicts the functions of the Land Registrar.

The Institute posited that the function of resolving general boundary disputes had been assigned to the Registrar and the authority/office in charge of survey under sections 16, 18, 19, 20 and 21 of the Land Registration Act, 2012. It was also stated that the members appointed had no skills to handle the function since they lacked the expertise in surveying and land administration.

In regard to Clause 9(i) of the Bill, the Institute submitted that the provision grants unlimited jurisdiction (undertaking fact-finding & evidence-gathering) to a committee whose members do not possess the requisite skills. It was stated that the matters being handled under other statutes should remain as addressed by those statutes.

Recommendation: The Institute recommended that clause 9(f) be deleted. In regard to clause 9(i), the Institute recommended that the clause also be deleted as the matters go beyond the purpose and intent of the Act.

47. Clause 12 - Notice and attendance to review meetings

Clause 12(1)(b) provides for the land control committee to publish a list of applications at the constituency office. Clause 12(4) provides that a notice of 48 hours ought to be made for a person to appear before the committee. On the other hand, clause 12(5) provides that a notice

of 24 hours need to made to enter upon and inspect any land. The Institute averred that the time frame provided was too short.

Recommendation: The Institute recommended that the notices should be made at the National and County administration offices. In relation to clauses 12(4) and 12(5), the Institute recommended that they be amended to provide for a notice of at least 7 days.

48. Clause 13 - Grant or refusal of consent

Clause 13(1)(c) provides that in reviewing an application the committee shall consider the prescribed minimum and maximum land-holding acreages with respect to private land. The Institute submitted that there is no existing provision on minimum and maximum land holding.

Clause 13(2)(b)(vi) provides that consent may be refused where the purchase price of the land does not accord with the value of the land calculated based on the land value index under section 107A of the Land Act, 2012.

The Institute averred that Section 107A relates to compulsory acquisition of land yet the committee lacked the expertise to undertake this function. It was stated that the index may not be up to date and that the functions of the committee should not be tied to parameters guiding forced transactions.

The Institute also asserted that matters concerning agricultural land transactions are based on a free market where there are willing parties.

In relation to clause 13(2)(c)(iii), the Institute submitted that the provision referred to the Land (Group Representatives) Act which had already been repealed.

Recommendation: In regard to clause 13(1)(c), the Institute recommended that the provision be deleted and replaced with a provision that refers to the zoning regulations on plot/parcel sizes set out under the physical and land use plans set by the counties under the Physical and Land Use Planning Act, 2019 and the County Government Act

In respect to clause 13(2)(b)(vi), the Institute recommended that the provision be deleted and that matters relating to land value should be left to valuers or the market. The Institute also recommended that clause 13(2)(c)(iii) should be deleted too.

49. Clause 15 - Appointment of appeal committees

Clause 15(2)(b) of the Bill provides that the four persons who can be considered for appointment to the appeals committee have knowledge and expertise in land management,

law, community service, dispute resolution or physical planning. The institute submitted that this provision should also allow for persons qualified in survey.

Recommendation: The Institute recommended that the clause should add “survey” as part of the knowledge and expertise.

4 COMMITTEE OBSERVATIONS

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

50. The Committee observed that the objective of the Bill is very sound and well thought as it aims to repeal and replace Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.
51. The Committee supports proposal under the bill for establishment of Land Control Committees in each constituency to replace the existing Land Control Boards, and observed that the land control committees are to comprise persons drawn within the locality they serve and who are conversant with the traditions, customs, and way of life of the community in the area. This would enable each proposed transaction to be reviewed soberly with a view of ensuring proper utilization of agricultural land for the benefit of all.
52. The Committee observed that the proposal to empower land control committees to develop the use of alternative dispute resolution mechanisms in their operations including undertaking evidence-gathering and fact finding on the request of parties or the courts in matters relating to land and land use, was a progressive as it would result in efficient management of transactions in land.
53. The Committee observed that the Institution of Surveyors of Kenya, and the Land Development and Governance Institute supported the Bill and submitted amendments for consideration of the Committee.
54. The Committee observed that the State Department for Lands and Physical Planning does not support the Bill in its entirety. The State Department notes that the long title to the Land Control Act provides that it is an Act to *provide for controlling transactions in agricultural land*, while the Land Control Bill aim *to regulate certain transactions in land for connected purposes*. This means that this Bill is not express on which category of land it should apply.
55. The Committee observed that Bill does not intend to address a mischief related to controlling transactions in agricultural land and therefore, the Bill does not provide justification for repeal of the Land Control Act, Cap. 302.
56. **On designation of the land control areas, the Committee observed that proposal under Clause 3(2) of the Bill that provides that the Cabinet Secretary may in consultation with the National Land Commission and approval of the National Assembly designate specific land control areas and transactions to be subject to the provisions of the Bill may complicate the**

process of designating land control areas by introducing a multiple number of players despite the good intentions of the proposal.

57. **On establishment of the Land Control Committees proposed under** Clause 4 of the Bill establishing Land Control Committees in every constituency may present challenges in administration as it does not take into account that designation of the constituency as a land control area may not sit well as a standard to establish a land control area as opposed to the current situation under Sections 3, 4 and 5 of the Land Control Act that empowers the Cabinet Secretary to establish Land Control Committees to be established as may be dictated by necessity.
58. **On appointment of land control committees, under** Clause 4(1) of the Bill the committee supports the proposal providing for the appointment of a Land Control Committee in every constituency.
59. **On functions of the Land Control Committee** under Clause 9 of the Bill, the Committee observed that the State Department of Lands and Physical Planning submitted that the proposal to assign functions dispute resolution in addition to land control contradicts the main purpose of the Bill and contravenes the provisions of Article 169(2) and Environment and Land Court Act 19 of 2011 that establishes the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title, to land.
60. **On supporting documents to the application for consent, under** clause 11 of the Bill that the Committee observed that State Department of Lands and Physical Planning submitted that the proposal to attach certain documents by an applicant appears onerous and unnecessary for granting of a land control consent. For instance, the requirement for the applicant to attach a cadastral map and details of the acreage of land held by each party within the geographical area may be unreasonable, in light of the fact that there are very minimal areas covered by a cadastre in Kenya. It is also not possible to provide acreage of each owner of land within the area of jurisdiction of the Land Control Committee. Consequently, the information being sought from the members of the public is ordinarily knowledge within the control of the State Department for Lands and Physical Planning.
61. The Bill proposes that the Land Registrar be the appointing authority for the Land Control Committee, yet, the Land Registrar is one of the parties to be involved in the land control activities.
62. Under clause 5(1)(a), the Bill proposes that the Deputy County Commissioner be the chair of the selection panel that appoints members of the Land Control Committees yet under

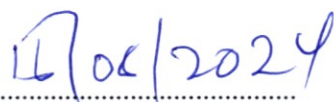
clause 4(2)(b) of the Bill, the same Deputy County Commissioner is proposed as the secretary of the Land Control Committee which amounts to conflict of interest.

63. The Land Control Committee as provided under clause 9(i) of the Bill has no capacity to undertake fact-finding and evidence-gathering in matters under the Succession Act, the Environment and Land Court Act, the Land Registration Act and the Land Act and therefore the powers would be exercised in futility.
64. Under clause 9(b) of the Bill, the proposed Land Control Committee lacks the capacity to grant consent for the combination of land whereas the idea behind the Land Control Act was to deal with land subdivision and not the combination of land.
65. Under clause 9(f) of the Bill that concerns the resolution of boundary disputes under general boundaries, the Bill seems to usurp the power of the Land Registrar which is already provided for under the Land Registration Act, 2012 in sections 18, 20 and 21. Section 18(2) of the Land Registration Act stipulates that not even the court is allowed to entertain any action or proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with the Land Registration Act.
66. Under clause 11(3)(b), the Bill states that any application for grant of consent shall be accompanied by a copy of the cadastral map of the land affected by the transaction but, there lacks a clear provision within the Bill for the retention of a land surveyor for specialized interpretation of cadastral plans in relation to agricultural sites.
67. Under clause 11(3)(e), the requirement for one to provide details of acreage of land held by each party within the geographical area of the jurisdiction of the Committee seems to imply that there is a minimum or maximum holding of land which has been defined which is not the case.
68. Clause 13 (2)(b)(vi) of the Bill refers to a purchase price being related to the Land Value Index. However, the land value index is meant for mass acquisition and thus does not sufficiently cater for specific land transactions being dealt with by the Land Control Act.
69. The Committee noted that despite the inconsistencies pointed out by the State Department for Lands and Physical Planning, the Bill contained some positive proposals. To that the end, the Committee noted that Land Laws (Amendment) Bill, no.2 of 2023, there are proposal that seek to amend the Land Control Act to reconstitute and align land control boards according to the new governance structure of the Constitution of Kenya, 2010 and to enable granting consents to transact in agricultural land.
70. The Committee observed, from the submissions from the stakeholders, that the Bill did not intend to address a mischief related *to controlling transactions in agricultural land*, the Bill sought to repeal the Land Control Act, Cap. 302, the Bill amorphously expands *its application*

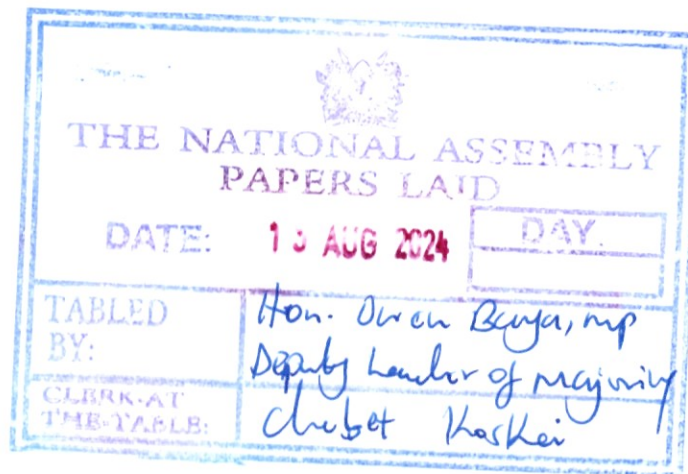
to the management of certain transactions in land that are not defined within the Bill. Consequently, the Bill would leave a vacuum and create confusion in the administration and control of transactions in agricultural land and should therefore be rejected.

5. COMMITTEE RECOMMENDATION

70. The Committee, having considered and taken into account the views and recommendations of the public including relevant stakeholders, recommends that the Bill be REJECTED.

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

Fa.





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT-SECOND SESSION 2023

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE TRIBUNALS BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2023)
2. THE PRESERVATION OF PUBLIC SECURITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2023)
3. THE LEGAL AID (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 53 OF 2023)
4. THE PRISONS BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2023)
5. THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2023)
6. THE LAND CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 39 OF 2023)
7. THE NATIONAL TRANSPORT AND SAFETY AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2023)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Tribunals Bill (National Assembly Bill No. 45 of 2023) and the Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023), were read a First Time on **Tuesday, 26th September 2023**, the Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023), the Prisons Bill (National Assembly Bill No. 54 of 2023) and the Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023) were read a First Time on **Tuesday, 3rd October 2023** while the Land Control Bill (National Assembly Bill No. 39 of 2023) and the National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023) were read a First Time on **Wednesday, 4th October 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Tribunals Bill (National Assembly Bill No. 45 of 2023)** is a Bill sponsored by the **Leader of the Majority Party (The Hon. Kimani Ichung'uwa, MP)** with the principal object being to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1), and 169 of the Constitution in relation to governance and administrative framework of Tribunals in Kenya.
The Bill also seeks to reform the Tribunal system in Kenya by *inter alia*, rationalizing and regulating the administration and functions of Tribunals, establishing the Tribunals Registry, and providing for the structure, membership and administration of Tribunals.
2. **The Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wanyai, MP)** with the principal object being to abolish the death penalty and the imposition of a death sentence in relation to offences related to the preservation of public security. Abolishing the death penalty is aimed at preserving the fundamental right to life as guaranteed under Article 26 of the Constitution of Kenya, 2010.
3. **The Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wanyai, MP)** with the principal object being to amend the Legal Aid Act, No. 6 of 2016 in order to abolish the death penalty in order to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasions by the enforcement of the death penalty.
The Bill further seeks to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to the abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruatetu and another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.
The Bill also seeks to amend section 43 by deleting subsection 4 of the Legal Aid Act, 2013 which provides for the provision of legal representation for accused persons charged with the offences punishable by death.
4. **The Prisons Bill (National Assembly Bill No. 54 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wanyai, MP)** with the principal object being to amend the Penal Code Cap 90 Laws of Kenya in order to abolish the death penalty and the manner of its execution.
The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasions by the enforcement of the death penalty.
Further the Bill seeks to stop the psychological trauma brought about by the death sentence and to reflect Kenya's international commitment to abolition of the death penalty through ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.
The Bill seeks to repeal section 69 of the Prisons Act which contains provisions regulating the manner of execution of persons sentenced to death.
5. **The Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wanyai, MP)** with the principal object being to amend the Penal Code Cap 63 Laws of Kenya in order to abolish the death penalty.
The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasions by the enforcement of the death penalty, to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruatetu & another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.
6. **The Land Control Bill (National Assembly Bill No. 39 of 2023)** is a Bill sponsored by **Hon. Wilberforce Oundo, MP** and seeks to repeal and replace the Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.
The Bill further seeks to establish Land Control Committees in each constituency to replace the current Land Control Boards. The Land Control Committees are to comprise persons drawn from within the locality they serve and who are conversant with the traditions, customs, and way of life of the community in the area.
The Bill also seeks to establish Land Control Appeals Committees to handle any appeals arising from the Land Control Committees.
7. **The National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023)** is a Bill sponsored by **Hon. Didmus Wekesa Barasa, MP** and seeks to amend the National Transport and Safety Authority Act No. 33 of 2012 to introduce a new section which provides for the development of policy guidelines to regulate fares payable by passengers in the public service vehicles within the country and for the involvement of relevant stakeholders in the development of such policy guidelines.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and stakeholders to submit memoranda on the Bills as follows:

SCHEDULE

S/ NO.	BILL	COMMITTEE
1.	The Tribunals Bill (National Assembly Bill No. 45 of 2023)	Justice and Legal Affairs
2.	The Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023)	Justice and Legal Affairs
3.	The Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023)	Justice and Legal Affairs
4.	The Prisons Bill (National Assembly Bill No. 54 of 2023)	Justice and Legal Affairs
5.	The Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023)	Justice and Legal Affairs
6.	The Land Control Bill (National Assembly Bill No. 39 of 2023)	Lands
7.	The National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023)	Transport and Infrastructure

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Monday 23rd October, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

6th October 2023



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – THIRD SESSION, 2024

DEPARTMENTAL COMMITTEE ON LANDS

MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD AT THE COMMITTEE ROOM 11, 2ND FLOOR BUNGE TOWER, ON THURSDAY, 1ST AUGUST 2024 AT 10:00 AM.

PRESENT

- | | |
|---------------------------------------|---------------------|
| 1. Hon. Nyamoko Joash Nyamache, M.P. | <i>-Chairperson</i> |
| 2. Hon. Rachael Kaki Nyamai, CBS, M.P | |
| 3. Hon. Ogolla Gideon Ochanda, M.P. | |
| 4. Hon. Shimbwa Omar Mwinyi, M.P. | |
| 5. Hon. Gitari Joseph Gachoki, M.P. | |
| 6. Hon. Robi Mathias Nyamabe M.P | |
| 7. Hon. Passaris Esther Muthoni, M.P. | |
| 8. Hon. Guyo Ali Wario, M.P. | |
| 9. Hon. Katana Paul Kahindi, M.P. | |

ABSENT WITH APOLOGIES

- | | |
|--|---------------------------|
| 1. Hon. Kihara Jayne Wanjiru Njeri, M.P. | <i>- Vice Chairperson</i> |
| 2. Hon. Nzambia Thuddeus Kithua, M.P. | |
| 3. Hon. Ndung'u George Koimburi, M.P. | |
| 4. Hon. Mupe Anthony Kenga, M.P. | |
| 5. Hon. Joseph Hamisi Dena, M.P. | |
| 6. Hon. Lelmengit Josses Kiptoo Kosgey, M.P. | |

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|-----------------------------------|
| 1. Mr. Joshua Ondari | - | Clerk Assistant I |
| 2. Mr. Binensa Mabungu | - | Clerk Assistant III |
| 3. Mr. Sidney Lugaga | - | Senior Legal Counsel |
| 4. Ms. Brenda Michira | - | Research Officer III |
| 5. Mr. Cosmas Akhonya | - | Audio Officer III |
| 6. Ms. Mary Kamande | - | Public Communications Officer III |
| 7. Mr. Yeziel Jillo | - | Sergeant at Arms |

MIN/NO./NA/DC-LANDS/2024/207: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten o'clock with a word of prayer by Hon. Rachael Kaki Nyamai, CBS, M.P.

MIN/NO./NA/DC-LANDS/2024/208:

CONFIRMATION OF MINUTES

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

MIN/NO./NA/DC-LANDS/2024/209:

MATTERS ARISING

There were no matters arising.

MIN/NO./NA/DC-LANDS/2024/210:

ADOPTION OF THE AGENDA

AGENDA

1. Prayers
2. Preliminaries;
3. Confirmation of Minutes.
4. Matters Arising;
5. **Meeting:**

- i) **Consideration and Adoption of the Report on The Land Control Bill (National Assembly Bill No. 39 of 2023)**

6. Any Other Business
7. Adjournment

The agenda of the meeting was adopted after it was proposed by Hon. Guyo Ali Wario, M.P. and seconded by Hon. Robi Mathias Nyamabe, M.P.

MIN/NO.NA/DC-LANDS/2024/211:

**CONSIDERATION AND
ADOPTION OF THE REPORT ON
THE LAND CONTROL BILL
(NATIONAL ASSEMBLY BILL NO.
39 OF 2023)**

The Committee Clerk guided the Committee through the draft report with emphasis on the following;

COMMITTEE OBSERVATIONS

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

1. The Committee observed that the State Department for Lands and Physical Planning does not support the Bill in its entirety. The State Department notes that the long title to the Land Control Act provides that it is an Act to *provide for controlling transactions in agricultural land*, while the Land Control Bill aim *to regulate certain transactions in land for connected purposes*. This means that this Bill is not express on which category of land it should apply.

2. The Committee observed that Bill does not intend to address a mischief related to controlling transactions in agricultural land and therefore, the Bill does not provide justification for repeal of the Land Control Act, Cap. 302.
3. **On designation of the land control areas, the Committee observed that proposal under** Clause 3(2) of the Bill that provides that the Cabinet Secretary may in consultation with the National Land Commission and approval of the National Assembly designate specific land control areas and transactions to be subject to the provisions of the Bill may complicate the process of designating land control areas by introducing a multiple number of players despite the good intentions of the proposal.
4. **On establishment of the Land Control Committees proposed under** Clause 4 of the Bill establishing Land Control Committees in every constituency may present challenges in administration as it does not take into account that designation of the constituency as a land control area may not sit well as a standard to establish a land control area as opposed to the current situation under Sections 3, 4 and 5 of the Land Control Act that empowers the Cabinet Secretary to establish Land Control Committees to be established as may be dictated by necessity.
5. **On appointment of land control committees, under** Clause 4(1) of the Bill the committee supports the proposal providing for the appointment of a Land Control Committee in every constituency.
6. **On functions of the Land Control Committee** under Clause 9 of the Bill, the Committee observed that the State Department of Lands and Physical Planning submitted that the proposal to assign functions dispute resolution in addition to land control contradicts the main purpose of the Bill and contravenes the provisions of Article 169(2) and Environment and Land Court Act 19 of 2011 that establishes the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title, to land.
7. **On supporting documents to the application for consent, under** clause 11 of the Bill that the Committee observed that State Departments of Lands and Physical Planning submitted that the proposal to attach certain documents by an applicant appears onerous and unnecessary for granting of a land control consent. For instance, the requirement for the applicant to attach a cadastral map and details of the acreage of land held by each party within the geographical area may be unreasonable, in light of the fact that there are very minimal areas covered by a cadastre in Kenya. It is also not possible to provide acreage of each owner of land within the area of jurisdiction of

the Land Control Committee. Consequently, the information being sought from the members of the public is ordinarily knowledge within the control of the State Department for Lands and Physical Planning.

8. The bill proposes that the Land Registrar be the appointing authority for the Land Control Committee, yet, the Land Registrar is one of the parties to be involved in the land control activities.

9. Under clause 5(1)(a) the Bill proposes that the Deputy County Commissioner be the chair of the selection panel that appoints members of the Land Control Committees yet under clause 4(2)(b) the same Deputy County Commissioner is proposed as the secretary of the Land Control Committee which amounts to conflict of interest.

10. The proposed Land Control Committee provided under clause 9(i) has no capacity to undertake fact-finding and evidence-gathering in matters under the Succession Act, the Environment and Land Court Act, the Land Registration Act and the Land Act.

11. Under clause 9(b) the proposed Land Control Committee lacks the capacity to grant consent for the combination of land whereas the idea behind the Land Control Act was to deal with land subdivision and not the combination of land.

12. Under clause 9(f) regarding the resolution of boundary disputes under general boundaries, the Bill seems to usurp the power of the Land Registrar which is already provided for under the Land Registration Act, 2012 in sections 18, 20 and 21. Section 18(2) of the Land Registration Act stipulates that not even the court is allowed to entertain any action or proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with the Land Registration Act.

13. Under clause 11(3)(b) the Bill states that any application for grant of consent shall be accompanied by a copy of the cadastral map of the land affected by the transaction but, there lacks a clear provision within the Bill for the retention of a land surveyor for specialized interpretation of cadastral plans in relation to agricultural sites.

14. Under clause 11(3)(e) the requirement for one to provide details of acreage of land held by each party within the geographical area of the Committee's jurisdiction seems to imply that there is a minimum or maximum holding of land which has been defined which is not the case.

15. Clause 13 (2)(b)(vi) refers to a purchase price being related to the Land Value Index. However, the land value index is meant for mass acquisition and thus does not

sufficiently cater for specific land transactions being dealt with by the Land Control Act.

16. The Committee observed that the Institution of Surveyors of Kenya, and the Land Development and Governance Institute supported the Bill and submitted amendments for consideration of the Committee.
17. The Committee observed that from the submissions from the stakeholders that the Bill did not intend to address a mischief related *to controlling transactions in agricultural land*, the bill sought to repeal the Land Control Act, Cap. 302, amorphously expand *its application to the management of certain transactions in land that are not defined within the Bill*. The Bill would leave a vacuum and create confusion in the administration and control of *transactions in agricultural land* and should therefore be rejected.

COMMITTEE RECOMMENDATION

The Committee, having considered and taken into account the views and recommendations of the public including relevant stakeholders, recommends that the Bill be REJECTED.

ADOPTION OF THE REPORT

The Report on The Land Control Bill (National Assembly Bill No. 39 of 2023) was adopted having been proposed by The Hon. Dr. Ogolla Gideon Ochanda, MP and seconded by The Hon. Robi Mathias Nyamabe, MP.

MIN/NO.NA/DC-LANDS/2024/212:

ANY OTHER BUSINESS

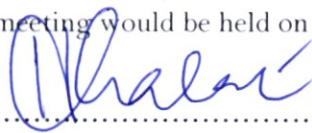
There was no other business.

MIN/NO.NA/DC-LANDS/2024/213:

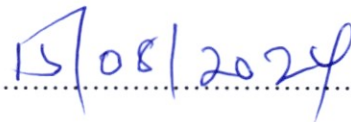
ADJOURNMENT

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

SIGNED.....



DATE.....



HON. JOASH NYAMACHE NYAMOKO, MP
(CHAIRPERSON)



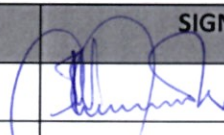
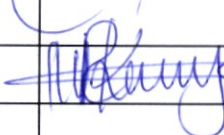
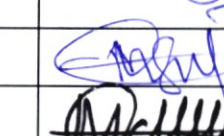
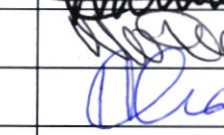
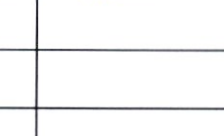
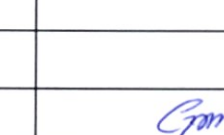
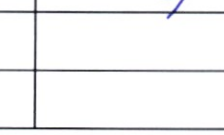
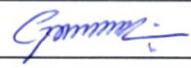


THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT (THIRD SESSION) 2024

DEPARTMENTAL COMMITTEE ON LANDS – MEMBERS ATTENDANCE SCHEDULE

AGENDA ADOPTION LIST - LAND CONTROL BILL, 2023
VENUE S.O 216 (S) (C) DATE 01/08/2024 TIME

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

Forwarded By:

Signed:

Date:

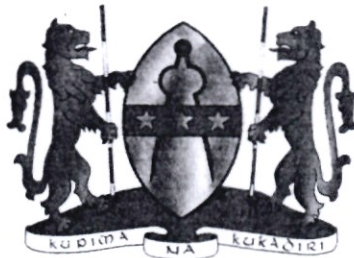
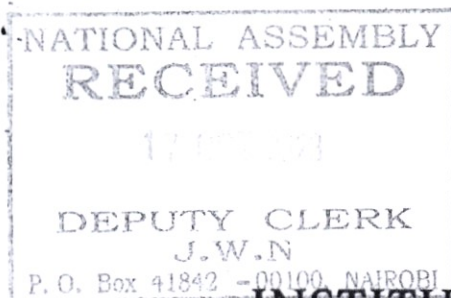
Name of Committee Clerk:

Approved By:

Signed:

Date:

Mr. Peter Chemweno- Director, Directorate of Departmental Committees



CNA
Deal
SNA
17/10/23

INSTITUTION OF SURVEYORS OF KENYA

11th October 2023

REF/ISK/COU/RM/23/46

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

Joshua Ondari
to facilitate
17/10/23

DDC-11-001
8
17/10

Dear Mr. Nyegenye

RE: Institution of Surveyors of Kenya's position on the Proposed Land Control Bill, 2023

The Institution of Surveyors of Kenya (ISK) firmly objects to the proposed Land Control Bill, 2023. The Bill which is set to go for the first reading in the National Assembly. While we agree that there is need to amend the current Land Control Act, CAP 302, the direction taken by the proposed bill will not cure what is addressed by the existing Act. Our objection is due to the following facts:

- The bill is proposing that the Land Registrar to be the appointing authority for the Land Control Committee yet the Land Registrar is one of the parties who needs to be involved in the land control activities;
- Under section 6(1)(a), the bill is proposing that the Deputy County Commissioner be the chair of a selection panel to appoint members of the Land Control Committee yet under section 4(2)(b) the Deputy County Commissioner is proposed as the secretary of the Land Control Committee which amounts to conflict of interest;
- The proposed Land Control Committee under section 9(i) has no capacity to undertake fact finding and evidence gathering in matters under: Succession Act; Environment and Land Court Act; Land Registration Act; or the Land Act;
- Under section 9(b), the proposed Land Control Committee has no mandate to grant consents for Combinations of Land. The idea behind the Land Control Act was to deal with subdivision of land not to deal with combination of land;
- Under section 9(f), on resolution of boundary disputes under general boundaries, the bill seems to usurp the power of the Land Registrar which is already provided under land registration act, 2012 section 18, 20 and 2021. Section 18(2) of the Land Registration Act stipulates that not even the court is allowed to entertain any action or proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with the Land Registration Act.

DIRECTOR

17 OCT 2023

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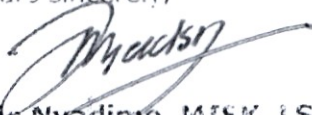
- f) Under section 11(3)(b), the bill States that any application for grant of consent shall be accompanied with a copy of the cadastral map of the land affected by the transaction. But there is no clear provision within the bill for retention of a land surveyor for specialized interpretation of cadastral plans in relation to agricultural sites.
- g) Under section 11(3)(e) the requirement for one to provide details of acreage of land held by each party within the geographical area of the committee's jurisdiction seems to imply that there is a minimum or maximum holding of land which has been defined which is not the case;
- h) Section 13(2)(b)(vi) refers to purchase price being related to the Land Value Index however the land value index is meant for mass acquisition and thus does not cater sufficiently to specific land under transactions being dealt with by the Land Control Act.

ISK notes that the object of land control boards was to deal with dispositions such as subdivisions and transfers which is a land administration aspect and not a registration aspect as the proposed bill instigates. The philosophy behind the Land Act was to reduce statutes regulating land management, thus the proposal grossly negates the land policy session paper 3 of 2009 philosophy and objectives.

ISK encourages further dialogue and collaboration to ensure that any amendments to the Land Control Act align with the interests of all stakeholders and serve the best interests of Kenya's land control framework. In conclusion the proposals outlined in the bill contradict the provisions set forth in the Land Registration Act and the Land Act. The Bill as currently proposed is flawed and should be withdrawn.

We look forward to consideration of our concerns.

Yours sincerely,



Eric Nyadimo, MISK, LS(K)
President

CC.

- ✓ Speaker, National Assembly
- Speaker, The Senate
- Clerk, The Senate
- Cabinet Secretary, Ministry of Lands, Public Works, Housing & Urban Development
- Attorney General
- CEO, Council of Governors
- CEO, Kenya Law Reform Commission
- Hon. Wilberforce Oundo, Member of Parliament, Funyula Constituency



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DD c. 11/00
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23/110

23rd October 2023

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

Joshua Ondari
to facilitate
w. w. w.
24/10/23

Dear Sir,

RE: SUBMISSION OF MEMORANDA ON LAND CONTROL BILL (NATIONAL ASSEMBLY BILL No. 39 of 2023)

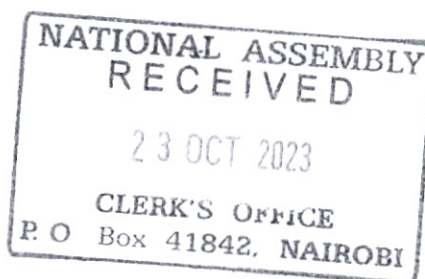
Reference is made to the notice published by the Clerk of National Assembly on 6th October 2023 inviting members of the public to submit memoranda on the above Bill.

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

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

Yours Sincerely,

Dr. Mwenda Makathimo
Executive Director



24 OCT 2023





Empowering Society

REVIEW OF LAND CONTROL BILL (NATIONAL ASSEMBLY BILL No. 39 of 2023)

BY

LAND DEVELOPMENT AND GOVERNANCE INSTITUTE

Detailed Review of the Land Control Bill, 2023

Section	Provision	Commentary	Recommendations
Preamble	An ACT of Parliament to regulate certain transactions in land for connected purposes	This is unclear on what type of land is being referred to	This introduction needs to be specific “.....transactions in agricultural land”
2	Preliminary – Interpretation of “Agricultural land” <i>a)an area not designated as a city or urban area under the Urban Areas and Cities Act, 2011</i>	The definition is too wide and fails to acknowledge other statutory classifications of land such as public land (forests, National and Game parks, Game reserves, protected areas) and community land	The definition of the term “ <i>agricultural land</i> ” needs to be clear and specific
3	Application of the Act	1. Section 3(1) only addresses transactions relating to sale/transfer of land and is mute on other transactions such as on subdivision where there is no disposition or how the Act will relate with issue of change of use/user 2. Section 3(2) provides that the Cabinet Secretary may, in consultation with National Land Commission and approval of the National Assembly, designate specific land control areas. This ignores the planning function and the role of the County Government. By virtue of Schedule 4 of the Constitution the County Government are in charge of Agriculture	1. The Bill needs to address all land transactions 2. This function should be done in consultation with the affected County Government
4(1)	Establishment of committees <i>The chief Land Registrar shall by notice in the</i>	1. Section 4(1) gives the Chief Land Registrar powers to appoint land control committee despite being the officer in charge of registration as per Land Registration Act, 2012 (Revised 2016). This will lead to a conflict of interest	1. Amend the section to have the Land Control committee appointed by the Cabinet Secretary responsible for land matters in consultation with County Government

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	<i>Gazette, appoint a land control Committee in each constituency</i>	2. The section also provides that the appointment be done per Constituency. This may not be representative since some constituencies have more than one sub-county and will also lead to political interference	2. The appointment should be per sub-county not per constituency as indicated by the bill. The focus should be on administrative not electoral boundaries.
4(2)	Members of land control committee	1. Section 4(2)(b) provides that the Deputy County Commissioner appointed under section 15(2)(b) of the National Government Co-ordination Act be assigned the role of Secretary to the committee. This designation is not supported by any fundamental law or functional mandate. 2. Section 4(2)(c) provides for the sub-county administrator appointed under section 50 of the County Governments Act, 2012 to be a member of the committee. There should be an additional representative from the County Government with expertise in agriculture, land use planning and survey. These are mandates of the County Government and the technical officers in charge of these functions should be automatic members of the committee. 3. Section 4(2)(d) gives the age limit of 60 and above for the man and woman to be appointed. This limits scope since there are resourceful people who are below 60 years. There is also no indication of their qualification for the man and woman 4. Section 4(2)(e) provides that two persons, one being youth to have knowledge and experience land law, surveying, land administration or dispute resolutions. The qualification fails to include planning discipline on the list which is very useful	1. The Bill needs to indicate the specific qualifications for all members of the committee. 2. It is fundamental to have persons with expertise in agriculture, planning and surveying from the county department of agriculture in the committee 3. Amend section 4(2)(d), "aged <i>less than 60 years</i>" and also indicate their qualification 4. Amend section 4(2)(e) to include the planning discipline as part of required skills 5. There is need to ensure gender balance in line with the two third gender rule

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5	Qualifications for appointment	1. There is no provision under section 5 (1), (2) requiring the chairperson or member to be residents within the geographical area. 2. Section 5(1), (2) provides that a member shall qualify if has demonstrated knowledge on culture, traditions and dispute resolution mechanisms. The qualification cited do not relate to land administration, planning, agriculture or environment which are useful in land control transactions	1. There is need to indicate that for one to qualify for appointment as chairperson or member of a committee must have lived within the geographical area for not less than 20 years except the automatic national or county government officials. 2. There is need to have people with professional expertise and skill in the committee
6	Procedure of appointing committee members - Selection Panel	1. Section 6(1) provides that the Deputy County Commissioner shall be the chair of the selection panel. This is conflict of interest as the Deputy County Commissioner will serve as the Secretary of the committee 2. The selection panel proposed has gaps. It leaves out County Government which is the key planning arm of government with constitutional mandate over agriculture, planning and surveying. There is no representative from the community. Instead there are representatives of the business community. Business community has nothing to do with agricultural land. The representative from the constituency office may lead to political interference.	Amend the section to have, the Selection panel comprising of; i. National Government representative from the Ministry of Interior, ii. National Land Commission iii. County Government representative (Chief Officer- agriculture, planning, survey, environment) iv. Ministry of Lands Representative v. A community representative/farmer
9	Functions of a land control committee	1. Section 9(f) provides the function of the committee as to resolve any dispute over general boundaries within their jurisdiction. This contradicts with the functions of the land Registrar. The function of resolving general boundary disputes is assigned to the Registrar and the authority/ office in charge of survey under Sections 16, 18,19,20 and 21 of the Land Registration Act, 2012 (Revised 2016). The members appointed have no skills to handle the function	1. Section 9 (f) should be deleted. 2. Section 9(i) should be deleted since the matters go beyond the purpose and intent of the Act

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		since they lack expertise in surveying and land administration. 2. Section 9(i) grants unlimited jurisdiction (undertaking fact-finding & evidence gathering) to a committee whose members do not possess the requisite skills. The matters being handled under other statutes should remain as addressed by those statutes	
12	Notice and attendance to review meetings	1. Section 12 (1)(b) provides for the land control committee to publish, a list of applications at the constituency office. 2. Section 12 (4) provides for a notice of 48 hours for a person to appear before the committee. This timeframe is not sufficient in case the person is away and has to travel to appear and produce documents 3. Section 12 (5) provides for a notice of 24 hours to enter upon and inspect any land. This timeframe is too short.	1. The notices should be made at the National and County administration offices 2. Amend Section 12 (4) to provide for a notice of at least 7 days 3. Amend Section 12 (5) to provide for a notice of at least 7 days.
13	Grant or refusal of consent	1. Section 13(1)(c) provides that in reviewing an application the committee shall consider the prescribed minimum and maximum land holding acreages in respect to private land. This minimum and maximum land holding does not exist 2. Section 13 (2) (b) (vi) provides that consent may be refused where the purchase price of the land does not accord with the value of the land calculated based on the land value index under section 107A of the Land Act, 2012. The mentioned section relates to compulsory acquisition of land yet the committee lacks the expertise to undertake this function. The Index may not be up to date. The functions of the committee should not be tied to parameters guiding forced transactions. Matters or agricultural land	1. Section 13(1)(c) should be deleted. Instead it should refer to the zoning regulations, plot/ parcel sizes set under physical and land use plans set by the counties under Physical and Land Use planning Act 2019 and the County Government Act. 2. Section 13 (2) (b) (vi) should be deleted. The matter of value should be left to valuers or the market. 3. Section 13 (2) (C) (III) should be deleted



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		transactions are based on a free market where there are willing parties. 3. Section 13 (2) (c) (iii) refers to the Land (Group Representatives) Act. This law was repealed	
15	Appointment of appeal committees	1. Section 15 (2) (b) provides for four persons who can be considered for appointment into the appeals committee to have knowledge and expertise in land management, law, community service, dispute resolution or physical planning. This should also allow for persons qualified in survey	1. Section 15 (2) (b) add the "survey" as part of the knowledge and expertise

Summary of findings

1. There is need for a clear definition of agricultural land
2. The application of the Act should cover all land transactions not just disposition
3. The Bill vests the power to appoint land control committee to Chief Land Registrar which will lead to conflict of interest
4. There is need for separation on power between the appointing authority and the officers in charge of implementation
5. The Bill fails to recognize the role of County Government as a key institution in charge of agriculture, planning and survey as provided for under schedule 4 of the Constitution of Kenya 2010
6. The qualifications provided by the bill for the land control committee are inadequate. There is lack professional expertise to handle matters relating to land administration, surveying, planning, environment, dispute resolution or agriculture
7. The bill assigns the committee functions for boundary dispute resolution yet this is a technical function assigned to the Registrar and the Office/ Authority in charge of surveying by law (Land Registration Act 2012 and Survey Act)
8. The bill introduces political interference of the committee by having representatives from the constituency office
9. The Bill should focus on administrative boundaries where Deputy County Commissioners are stationed
10. The bill refers to already repealed laws for instance the Land (Group Representatives) Act or nonexistent laws such as the minimum and maximum land holding acreages

Dated: 23rd October 2023



REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT

Office of the Cabinet Secretary

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Nairobi, KENYA

Ref. No.

12th April, 2024

Clerk Of the National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Dear

REPRESENTATIONS ON THE LAND CONTROL BILL, 2023 (NATIONAL ASSEMBLY
BILLS NO. 39

Upon review of the Bill, we make the following observations;

1. Introduction

This Bill seeks to repeal the Land Control Act Cap 302 laws of Kenya. In the last Parliament, we made representations on the Bill during the pre-Publication stage and also during the public participation stage where we expressed our position about the Bill. We reiterate the same here by stating that this Ministry is in the process of amending the Land Control Act through the Land Laws (Amendment) Bill, 2023 which Bill is awaiting second reading.

The legislative proposals in this Bill, in our humble view, should be rejected so as to allow the Land Laws (Amendment) Bill, 2023 take precedence. However, the following are our representations in respect of specific clauses in the Bill.

1. Preamble Of The Bill

As opposed to the Land Control Act which its preamble is to *provide for controlling transactions in agricultural land*, this Bill sets out the preamble to *regulate certain transactions in land for connected purposes*. This means that this

Bill is not express on which category of land it should apply. The purpose of the Land Control Act, and to a large extent the Land Control Bill, is to control transactions in respect of agricultural land. The manner in which the preamble of the Bill is structured is erroneous and at cross-purpose to the content and intent of the Bill.

2. Designation Of The Land Control Areas

Clause 3(2) of the Bill states that the Cabinet Secretary may in consultation with the National Land Commission and approval of the National Assembly designate specific land control areas and transactions to be subject to the provisions of the Bill. It is our view that the land control function is the mandate of the Cabinet Secretary and to introduce other players in the process will be counterproductive to occasion unnecessary delay in designation of such land control areas. This mandate as contained in the Land Control Act should not be interfered with.

3. Establishment of The Land Control Committees

Clause 4 of the Bill establishes Land Control Committees in every constituency, which are appointed by the Chief Land registrar, in the official Gazette.

The basis of every land control area established under section 3 of the Land control Act (and presumably clause 3(2) of the Bill, is to designate an area where the Land Control Act/the Bill will apply and by extension in respect of which land control boards/land control committees will be appointed. However, clause 4(1) of the Bill mandates the Chief Land Registrar to appoint a land Control committee in respect of each constituency. This means that the designation of a control area under clause 3(2) is given through one hand and the same being taken away by another hand through clause 4(1) where a control area (constituency) is already determined for the Cabinet Secretary.

Suffice to say that designation of the constituency as a land control area does not sit well as a standard to establish a land control area. This approach will not apply in cases where a constituency is too big or small. This therefore means that the mandate of the Cabinet secretary to establish Land Control Areas as set out under Sections 3, 4 and 5 of the Land Control Act is well structured and allows the Cabinet Secretary latitude to establish them as may be dictated by necessity. For this reason, we are opposed to how clause 3(2) and 4 are structured.

4. Appointment of Land Control Committees

Clause 4(1) of the Bill seeks to give the Chief Land Registrar power to appoint the Land Control Committee in every constituency, as opposed the Land Control Act where such power is vest in the Cabinet Secretary. Under the Land Control Act, the chief Land Registrar does not play any role in the exercise of the control

function in respect to agricultural land. The land Administration directorate has always served as the secretariat to the Land Control Board deliberately so to avoid conflict of interest. The Land Registration Act binds the registrar not to register any instrument touching on agricultural land unless there is a land control board consent. This means that the registrar is a consumer of the final product of the Land Control boards/committees. The Bill is therefore likely to put the registrar in a position of conflict of interest if at all the power to appoint the land control committees is vest in that office. The same applies to the appointment of a selection panel for filling any vacancy in the land Control Committee under clause 6 of the Bill. The Bill therefore assigns a role which the chief land registrar is functionally ill-equipped to handle. Suffice to say that the issuing of consents is a development control function which, for the purpose clear assignment of roles, is exercised by the directorate of Land Administration.

For this reason, clause 4 of the Bill is not proper.

5. Changing the Name to The Land Control Committees.

The land Control Boards established under the Land Control Act is being re-named the Land Control Committees. This organ has existed since the Land Control Act was enacted and looking at how the proposed Land Control Committee is structured and the role played by it does not in itself provide a basis to change what is akin to a household name in Kenya.

6. Constitution of The Land Control Committees

The constitution of the Land Control committee, as evident under clause 4(2), does not have any representation of the Cabinet Secretary. Even though, the Deputy County Commissioner who is a member of the committee also serves as the secretary to the committee. The person who plays the role of the secretary to any board or committee is the person who has the advantage of being exposed, on a day to day basis, to the activities in respect of which the committee exercises control, including the keeping of records. The matter at hand touch on the issuing of land control consents in the sector where the Cabinet Secretary is in charge including the keeping of records. The representative of the Cabinet Secretary or an officer under the Cabinet Secretary should be the one well-placed to be the secretary to the Committee. The committee therefore as constituted under clause 4(2) of the Bill is functionally not capable of discharging its mandate.

7. Selection Panel

Clause 6 of the Bill seeks to give power to the Chief Land Registrar to appoint the selection panel to select members of the Land control committee where the

Deputy County Commissioner serves as chair of the selection committee. It is instructive to note that the Deputy County Commissioner is a member of the Land Control Committee and secretary thereof. It is not morally right for the Deputy County Commissioner to oversee the selection process of Land Control Committee where he will eventually serve as secretary to the Committee. This is a classic case of conflict of interest.

8. Functions of The Land Control Committee

Clause 9 of the Bill inter alia sets out the functions of the land control committee to-

- (a) Review any other dealings in land referred to it by the chief land registrar
- (b) Resolve any dispute over general boundaries within their jurisdiction
- (c) Settle any land dispute referred to it by willing parties pursuant to Article 60(1)(g) and 159(2)(c) of the Constitution
- (d) Handle any matter referred to the committee in pursuance of section 20 of the Environment and Land court Act, 2012
- (e) Undertake fact-finding and evidence-gathering in matters covered under the law of Succession Act, the Environment and Land Court Act 2011, the Land Registration Act, 2012, the National Land Commission Act, 2012 upon request of parties or the courts.

It is our considered view that the land control committee is not well-suited to handle disputes relating to land. Exercising the land control function should not be mixed with other duties that are not related to it. Moreover, this is likely to set the committee on a course of conflict of interest.

It is also not clear on what happens on similar powers created under the Land Registration Act such as the power to resolve boundary disputes given to the Chief Land Registrar.

9. Supporting Documents to The Application for Consent

Under clause 11 of the Bill, some of the documents an applicant is required to attach seems to us to be onerous and unnecessary for granting of a land control consent. Requirement for the applicant to attach a cadastral map and details of the acreage of land held by each party within the geographical area may be too much to ask for from applicants. There are very minimal areas covered by a cadastre in Kenya. You then wonder the law is futuristic or seeks to handle current situations as they are. It is also not possible to provide acreage of each owner of land within the area of jurisdiction of the Land Control Committee. Suffice to say that the information being sought from the members of the public

is ordinarily within the knowledge or control of the Cabinet Secretary, if only the cabinet secretary or her representative is a member of the Land Control committee.

10. Publication of Notice

Clause 12 of the Bill inter alia requires that the public be notified of the list of applications for land control consent 14 days to the date of hearing, at the office of the Chief Land Registrar; at the constituency office; at the Chief's office and on the sub-county website for any member of the public to see and for the purpose of filing an objection by any member of the public.

The control function relates to transactions in land which to a large extent are private and therefore requirement to have them publicized will defeat the essence of the role played by the Land Control Committees. This will unnecessarily expose the parties to the land transaction in many ways including their personal security.

11. Appeals Committee

Clause 15 of the Bill mandates the Cabinet Secretary to appoint appeals committee as may be appropriate to comprise a chairman qualified to be appointed High Court judge and other four members who shall possess a minimum qualification of a degree holder. It is not specific in respect of which area/regions or administrative areas such appeals committees shall be appointed. It is also not a consideration by the Bill that there are areas where persons with such academic qualifications may be lacking and therefore make the Bill a mere academic exercise that is incapable of application.

Thank you for your continued support

Yours

Hon. Alice Wahome
CABINET SECRETARY

Encl