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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE NATIONAL RATING BILL (NATIONAL ASSEMBLY BILL NO.55 OF
2022)

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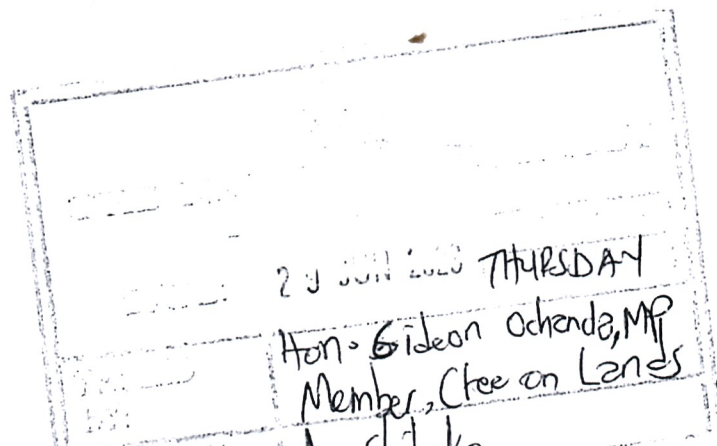


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EXECUTIVE SUMMARY

The National Rating Bill seeks to regulate the imposition of rates on land and buildings in Kenya and the process of valuing land for the purpose of rates and to regulate the process of a county governments to impose land rates. The principal object of the Bill is (a) to provide a comprehensive framework for imposition of rates on land and buildings by county governments; (b) to provide for the valuation of rateable property; (c) to provide for the appointment and powers of valuers; and (d) to provide for the establishment, powers and functions of the National Rating Tribunal.

The need for county governments to have reliable revenue is a key principle of Kenya's devolution, contained in Article 175 (b) of the Constitution. Article 209(3) (a) of the Constitution empowers county governments to impose property rates as a source of revenue.

Currently, levying of property rates in Kenya relies on the Valuation for Rating Act (Cap 266) and Rating Act (Cap 267). These Acts, which were enacted in 1956 and 1964 respectively are outdated and lack a clear legal framework to guide county governments in achieving optimal property rates collection as they are not aligned to the Constitution and the devolved system of governance. Outdated property legislations imply low coverage by valuation rolls and tax base of properties that are rateable which further undermines the property rates.

In 2018, the National Treasury with the assistance of the World Bank, commissioned a study by Adam Smith International on Own-Source Revenue Potential and Tax Gap Study of Kenya's County Governments. Among the key objectives of the study was to map out counties' local revenue potential and base. The study established a substantial unrealized county revenue potential ranging between Ksh.55 billion and Ksh.173 billion compared to Ksh.35 billion that the counties were collecting then. Property rates was identified as the revenue stream for the county governments with the highest revenue potential. Unfortunately, this is not the case currently in our counties. In most instances, property related revenues falls below revenues from health facility operations, business permits and vehicle parking fees. The study recommended establishing a National Legislation for property rates.

The said Bill was first read on Wednesday 8th March, 2023 and it was subjected to public participation in accordance to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders, having been placed an advert in the print media on Thursday 16th March 2023, inviting the public to submit memoranda on the Bill.

By close of business on Tuesday 21st March, 2023, the Committee had received submissions from the National Land Commission, the State Department for Lands and Physical Planning, the National Treasury and the Council of Governors, 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 discussing the Bill by the office of the Clerk and the participation of the Honorable Members of the Committee. This Report represents an analysis of the Bill pursuant to Standing Order 127.

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

PART I

1.0 PREFACE

1.1 Introduction

1.2 Legal Provision on Public Participation

1. Article 118 (1) (b) of the Constitution of Kenya provides as follows —

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

2. Standing Order 127(3) provides that –

“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

- (a) inviting submission of memoranda;
- (b) holding public hearings;
- (c) consulting relevant stakeholders in a sector; and
- (d) Consulting experts on technical subjects.

3. Standing Order 127(3A) further provides that—

“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

a) Methodology used by the Committee in Public Participation

4. The National Rating Bill National Assembly Bill No. 55 of 2022 was committed to the Departmental Committee on Lands for consideration having been read a First Time on Wednesday 16th February 2023.
5. Pursuant to the provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Thursday, 16th March, 2023 published an advertisement inviting the public to submit memoranda. Further, in a letter dated Thursday 3rd March, 2023, the Committee invited various stakeholders including to submit memorandum on the Bill.
6. By close of business 21st March, 2023, the Committee received submissions from the following institutions: National Land Commission, State Department Lands and Physical Planning and the Council of Governors’
7. The Report contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.

b) Mandate of the Committee.

8. The Departmental Committee on Lands is one of the Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programmer 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 Muggiano Constituency

UDA

Vice-Chairperson

Hon. Jayne Kihara, MP
Naivasha Constituency

UDA

Members

Hon. Rachael Kaki Nyamai, MP
Kitui South Constituency

Jubilee

Hon. Joseph Hamisi Dena, MP
Nominated

ANC

Hon. Gideon Ochanda, MP
Bondo Constituency

ODM

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

ODM

Hon. Mathias Robi Nyamabe, MP
Kuria West Constituency
UDA

Hon. Ali Wario Guyo, MP
Garsen Constituency
ODM

Hon. George Koimhuri, MP
Juja Constituency
UDA

Hon. Omar Mwinyi, MP
Changamwe Constituency
ODM

Hon. Paul Katana, MP
Kaloleni Constituency
ODM

Hon. Thuddeus 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;

Ms. Angeline Naserian Lotuai
Clerk Assistant II/ Lead Clerk

Mr. Binensa Mabungu
Clerk Assistant III

Mr. Sidney Lugaga
Senior Legal Counsel

Dr. Benjamin Ngimor
Senior Fiscal Analyst

Ms. Audrey Ogutu
Legal Counsel II

Mr. Collins Namulen
Fiscal Analyst III

Mr. Salat Abdi
Senior Serjeant-at-Arms

Ms. Noelle Chelagat
Media Relations Officer II

Mr. Eugene Apaa
Research Officer II

Ms. Lydia Shalom
Research Officer III

Ms. Brenda Michira
Research Assistant III

Ms. Yasmin Hassan
Serjeant-at-Arms

PART II
2.0 BRIEFING BY THE DIRECTORATE OF LEGAL SERVICES ON THE NATIONAL RATING BILL (NATIONAL ASSMEBLY BILL NO.55 OF 2022)

17. The Committee was briefed by the Directorate of Legal Services that the proposals include:
18. The National Rating Act, 2022 is a government Bill, sponsored by Hon Kimani Ichungwa, Leader of Majority. The Bill was published on 15th November, 2022, read for the first time on Wednesday 8th March 2023 and committed to the Departmental Committees on Lands for consideration.

Object of the Bill

19. The Bill seeks to provide for regulation of: (a) the framework for levying of rates by county governments; (b) the valuation of rateables property; (c) the appointment and powers of valuers; and (d) the establishment, powers and functions of the National Rating Valuation Tribunal.
20. The Bill seeks to give effect to Articles 190(2) and 209(3) of the Constitution by providing: (1) a uniform legislative framework; and (2) mechanisms on how the county governments shall undertake.
21. **Article 190(2)** of the Constitution provides that County governments *shall operate financial management systems that comply with any requirements prescribed by national legislation.*
22. **Article 209(3)** of the Constitution provides that a county may *impose property rates and any other tax that it is authorized to impose* by an Act of Parliament.
23. The Bill seeks to repeal the **Valuation for Rating Act, Cap 266** and the **Rating Act, Cap 267** to provide for a uniform legislative framework to regulate the National Government and county governments in imposing rates and valuing property in the manner contemplated in the Constitution.
24. The **Valuation for Rating Act, Cap 266** was enacted on 29th October, 1964. the Valuation for Rating Act is an Act of Parliament *to empower local government authorities to value land for the purpose of rates.* The **Valuation for Rating Act, Cap 266** applies to *any area of a local authority in respect of which any rate on the valuation of land, other than a rate on the annual value of agricultural land, in the area has been imposed by or under any law.* The Constitution of Kenya, 2010 established county governments and therefore there is a need to harmonize the legislation regulating *to value land for the purpose of rates* by county governments as proposed under the National Rating Bill, 2022.

25. The **Rating Act, Cap 267** was enacted on 29th October, 1964. *The Rating Act is an Act of Parliament to provide for the imposition of rates on land and buildings in Kenya.* To that end, the National Rating Bill seeks to regulate the imposition of rates on land and buildings in Kenya and the process of value land for the purpose of rates and to regulate the process of a county government may value land for the purpose of imposing rates.
26. The Bill seeks to provide for enhancement, certainty, uniformity and fairness in levying of property rates by the counties.

Analysis of Clauses

27. **PART I** contains detailed provisions regulating **Preliminary** provisions including: the short title, interpretation, purpose and objects of the act, guiding principles, application of the act, and the use of technology.
28. **Clause 3** of the Bill provides the *objects and purpose* of Bill are to: (a) give effect to Articles 190(1) and 209 (3) (a) of the Constitution by providing: (i) for a uniform legislative framework; and (ii) mechanisms on how the county governments shall undertake valuation for rating and imposition of rates on rateable property; (b) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes; and (c) provide for the role of the Chief Government Valuer in respect to collation of all valuation rolls prepared and deposited by any county government.
29. **Clause 4** of the Bill for the *guiding principles* of the Bill. The Clause provides that each county government shall, in implementing the provisions of the Bill: (1) adhere to the national values and principles of governance set out under Article 10 of the Constitution; (2) ensure conformity to the values and principles of public service set out under Article 232 of the Constitution; and (3) conform to the principles of public finance set out under Article 210 of the Constitution.
30. In addition, **clause 4** of the Bill provides that a county government shall—(1) ensure fair and equal treatment to all rateable owners; (2) ensure that the burden of property rating is shared fairly amongst the rate payers; (3) take cognizance of the needs of the county and promote imposition of rates to boost social and economic development in the respective county; (4) conduct effective public participation and conduct create public awareness of the importance of imposition of rates and, its impact on delivery of services within the county; (5) determine the criteria to be applied that property rating is fair, objective, reasonable and just by—(a) applying different forms of rating for different categories of rateable properties; (b) identifying exemptions for certain uses of rateable properties from payment of rates; (c) specifying circumstances applicable when

considering interest on defaulters, discount, remission and waiver; and (d) increasing rates tax bases.

31. Furthermore, **Clause 4** of the Bill provides that a county government shall provide: (1) the criteria for the determination of categories of rateable properties for purposes of levying of different rates; and (2) exempt rateable property uses: (a) taking into account the effect of imposition of rates on specific group of persons within the county; and (b) taking into account the effect of tax rates on public property held on behalf by the National Government on all public rateable property within the respective county; and (c) ensuring prudent and responsible use of funds collected for the purposes of this Act to enhance service delivery in the county.
32. **Clause 5** of the Bill regulates the *application of the Bill*. and provides that the Act shall apply to all rateable property within the respective county government.
33. **Clause 6** of the Bill *use of technology* and provides that each county government shall establish or employ appropriate technological system in the preparation and implementation of the valuation roll or the supplementary valuation rolls.
34. **PART II (Clause 7-20)** contains detailed provisions regulating *rating* including: duty to levy rates, forms of rating, notices of rating, publication of a rating area, annual rental value rating, area rating, setting of a rate struck, the notice of rate, payment of rates, remission of rates, discounts and waivers, enforcement of payment of rates, and contribution in lieu of rates.
35. **Clause 7** of the Bill regulates duty to levy rates and provides that a County government may levy rates on land and buildings in accordance with the provisions of the Bill and any county legislation in compliance with the Bill. Additionally, each county government shall ensure that expenditure of the revenue collected under the Bill adheres with—(1) the principles of public finance set out in Chapter Twelve of the Constitution of Kenya; (2) the national values and principles set out in Article 232 of the Constitution; and (3) the fiscal responsibility principles provided in section 107 of the Public Finance Management Act, 2012.
36. **Clause 8** of the bill defines a *rateable owner* and provides that for the purposes of the Bill, a rateable owner means –(1) *in relation to property in land*, a person who holds whether freehold or leasehold where the unexpired residue of the term is not less than twenty-one years and there is an intention to confer ownership; (2) *in relation to an interest* in the rateable property registered in favor of another, means the name of the person registered against that interest; (3) *in case of succession*, the executor, executrix or appointed administrator in accordance to the Law of Succession Act;(4) *in the case of the trust property*, the appointed and registered trustees including the public trustee in accordance to the Trustees Act, Trustees (Perpetual succession)

Act, or the Public Trustees Act; (5) *in case of bankruptcy or insolvency*, the person appointed as administrator or liquidator in accordance with the Insolvency Act, 2015; (6) *in relation to sectional properties*, a holder of a sectional property under the Sectional Properties Act, 2020; (7) *an occupier* of the rateable property; or (8) *a beneficial owner* who is receiving profits and rent from the rateable property.

37. **Clause 11** of the bill defines *forms of rating* and provides that Rates shall be levied by the county government of each county. A county government may, adopt any of the following forms of rating for purposes of levying property rates— (1) *annual rental value rating*; (2) *area rating*; (3) *unimproved site value rating*; or (4) *a site value rating in combination with an improvement rating*. Where any of the forms of rating is adopted in respect of a rating area, no other form of rating shall be adopted in respect of the same area during the validity of the rating method adopted earlier.
38. **Clause 9** of the bill regulates *publication of rating area* and provides that where a county government adopts any form of rating for purposes of rating in a county, the County Executive Committee member shall publish a notice in the *Gazette* demarcating on a county spatial plan showing different forms of rating to be applied in different areas.
39. **Clause 9** of the bill regulates *annual rental value rating* and provides that a county government shall consider the annual rental value in determining the value of the rateable property in respect of area rating and, shall take into account the different categories of properties for purposes of payment of rates including— residential properties; commercial properties; mineral lands that do not fall under industrial lands; agricultural properties; or any other category of properties as may be prescribed by legislation enacted by the respective county. In addition, the Cabinet Secretary may, in consultation with the National Land Commission, prescribe guidelines on the royalties' payable on natural resources, forestry land and its products for purposes of rating, and may make Regulations for the effective implementation of this section.
40. **PART III (Clause 21 – 25)** contains detailed provisions regulating *appointment and powers of valuers* including: the criteria to be a valuer; appointment of valuer; responsibilities of a valuer; powers of valuer; and responsibilities of the Chief Government Valuer.
41. **Clause 21** provides that a valuer must be registered by the Valuers Registration Board in accordance with the Valuers Act and have a minimum of seven years' experience in valuation from their date of registration by the Valuers Registration Board. **Clause 22** of the bill regulates *appointment of valuer* and provides that a county government shall appoint a valuer to undertake valuation, and prepare a main valuation roll or supplementary roll for the county government at

the appointed time of valuation. Furthermore, the county government shall adhere to the provisions set out in the Public Procurement and Asset Disposal Act, 2015 where it appoints a private valuer.

42. **Clause 22** of the Bill outlines the *responsibilities of a valuer* and provides that a valuer is appointed under section 22, the valuer shall be responsible for — (1) valuing all rateable properties using the recommended form of rating within the county government; (2) preparing a valuation roll of all the rateable properties recommended for valuation within the county government; (3) signing and certifying the valuation roll; (4) preparing a supplementary valuation roll, where necessary; (5) providing a conclusive well documented basis of valuation report accompanied by the maps and plans and any other documentation to the county government; and (6) upon request, advising the county government on rating matters or on the implementation of the valuation roll; and (7) if summoned, appearing as a witness in the proceedings before the Tribunal.
43. **PART IV (Clause 26-36)** contains detailed provisions regulating **Valuation for Rating** including: general basis of valuation; declaration of rateable areas; methods of valuation; preparation of valuation rolls and supplementary valuation rolls; contents of draft valuation roll and draft supplementary valuation roll; alterations of the valuation roll and supplementary valuation roll; deposit of draft valuation roll and draft supplementary valuation roll; publication of the roll; objections; uncontested draft valuation rolls and draft supplementary valuation rolls; and exemptions.
44. **Clause 26** of the Bill explains the *general basis of valuation* and provides that: (1) for the purposes of a valuation roll or supplementary valuation roll, the basis of valuation shall be the market value of a rateable property; (2) A valuer may for purposes of arriving at the value of land, adopt any suitable method of valuation that conforms to the local valuation standards, international valuation standards and consider existing physical and land use plans; and (3) Where a valuation roll or supplementary valuation roll includes the value of the unimproved land, the value of any improvements and the value of the land, the value of improvements thereon shall not exceed the amount arrived at by deducting the value of the unimproved land from the value of the land.
45. **Clause 36** of the Bill regulates *exemptions* and provides that a County Executive Committee member shall not charge rates for land that is used exclusively for public purposes. Valuation for purposes of rating shall not be conducted with respect to any land that is used for purposes of — (1) public religious worship; or (2) cemeteries, crematoria, burial grounds or grounds for burning

of the dead; (3) public health facilities; (4) public educational institutions and libraries; (5) dams; (6) way leaves; (7) museums and national monuments; or (8) public outdoor sports. However, the parcels of land subject to payment of rates under this Act shall include—(a) places of public religious worship with profit earning ventures whereby only the place of worship will remain exempt from taxation; and (b) rateable property leased for purposes of foreign embassies and missions and property is still registered under the rateable owner.

46. **PART V (Clause 37-53)** contains detailed provisions regulating **National Rating Tribunal** contains detailed provisions regulating: establishment of National Rating Tribunal; composition of the Tribunal; Jurisdiction of the Tribunal; Proceedings of the Tribunal; oath of office; quorum; disclosure of interest; tenure; technical advice; arrangement of business; powers of the tribunal; remuneration of members of the tribunal; staff of the Tribunal; vacancy of the Tribunal; Evidence; and: penalty for failure to comply with Tribunal’s lawful order and appeals. Clause 37 of the bill establishes the National Rating Tribunal.
47. **Clause 36** of the Bill regulates *Composition of the Tribunal* and provides that the Tribunal shall consist of not more than fifteen members appointed by the Judicial Service Commission who shall consist of— the Chairperson; and fourteen other persons possessing knowledge, skills and experience in—law; valuation and rating; physical planning; land surveying; information technology; economics; finance; or public administration. A person qualifies as the Chairperson or member of the Tribunal, where—in case of the Chairperson, the person is qualified for appointment as a judge of the Environment and Land Court; and in case of a member of the Tribunal, the person satisfies the requirements of Chapter Six of the Constitution.
48. **Clause 39** of the Bill describes the *Jurisdiction of the Tribunal* and provides that the Tribunal shall have jurisdiction to hear and determine all matters arising under this Act and shall in particular— (1) hear and determine appeals or any other matter brought before the Committee for determination under this Act; (2) review decisions made by any county government with respect to any matter under this Act or any county legislation including, enforcement for purposes of payment or recovery of rates; (3) hear and determine all objections made under this Act by rateable persons or the County Executive Committee member of the respective county; (4) appeals arising against the decisions of the County Executive Committee member with respect to rating; and (5) hear and determine disputes referred to it by the County Executive Committee member of the respective county.
49. **Clause 40** of the Bill describes the *Jurisdiction of the Tribunal* and provides that the Tribunal shall determine all matters lodged before it within six months from the date of lodging. The

Tribunal is not be bound by the strict rules of the Evidence in the process of determining the matters.

50. **PART VI (Clause 37- 53)** contains detailed provisions regulating **miscellaneous** including notices and repeal. **PART VII (Clause 54- 55)** contains detailed provisions on **Delegated Legislation (Clause 56-57)** including: regulations and savings and transition. The First Schedule contains detailed provisions regulating application for remission of the whole or part of the rate payable by the owner a rateable property. First Schedule contains detailed provisions regulating Contribution in lieu of rates forms. Third Schedule contains the Rates Objection Form. Third Schedule contains the oath or solemn affirmation of allegiance of the chairperson/member of the Tribunal.
51. The Bill delegates legislative power to the Cabinet Secretary to make regulations. The Bill does not limit any fundamental rights or freedoms. The enactment of this Bill may occasion additional expenditure of public funds. This Bill is a Bill concerning county governments within the meaning of Article 110 of the Constitution and the Fourth schedule to the Constitution.

PART III

3.0 SUBMISSIONS BY KEY STAKEHOLDERS ON THE NATIONAL RATING BILL (NATIONAL ASSEMBLY BILL NO.55 OF 2022)

3.1 THE NATIONAL TREASURY

Having appeared before the Committee on 1st April,2023 the Legal Officer from the National Treasury made the following submission:

52. The need for County Governments to have a reliable revenue is a key principle of Kenya's devolution as provided for in Article 175 (b) of the Constitution of Kenya, 2010. Article 209 (3) (a) empowers counties to impose property rates as a source of revenue while Article 210 (1) states the need to have a legislation enacted to allow counties to impose, waive or vary any form of tax including property rates or licensing. Counties in implementing this power, some have enacted their own county legislations but refer to the existing Acts i.e. the Rating Act and Valuation for Rating Act to levy rates while others are using the existing Acts to realize revenue in their respective counties.
53. The existing legislations have undergone minimal amendments/revisions but the same are not consistent with the current Constitution. The existing Acts lack a clear legal framework to guide Counties in their achievement of optimal collection of property rates. Poor enforcement mechanisms as well inadequate compliance. Previous studies further pointed out the inadequacy of existing pieces of legislation to facilitate preparation of valuation rolls and implementation. Potential of property rates generating between 15 and 21 per cent of own source revenue through property rates.

54. Preliminary stakeholder engagements further reinforced the need for a new law that is to merge and repeal existing rating laws - Valuation for Rating Act and Rating Act, and come up with one legislation to mirror the intended objective which is enhancing county own source of revenue. Some of the objectives that guided the drafting of the bills were: reviewing the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267); identifying any existing legislation that require to be aligned with the proposed National Rating Legislation; providing recommendations on rating of public lands; and providing guidelines to county governments on rating legislation in line with Article 210. The methodology applied in order to achieve the set objectives were: Consultations/Participation with the client and various Key stakeholders with expertise in matters of valuation and rating; reviewing of all the existing relevant literature and legislation, as well as other documents relating to property tax, both local and international; key Informant Interviews with specific stakeholders from various organisations including—National Treasury, Kenya Revenue Authority, State Department for Devolution, State Department for Lands and Physical Planning, the National Land Commission, and the Council of Governors.
55. The Committee was informed that the opportunities or gaps that led to legislation of the said Bill. The Acts of 1956 and 1964 have never been amended but only reviewed with the latest done in 2012 with minimal changes. The Acts contributed to low coverage by valuation rolls as well as low tax base (fewer number of rateable properties) thus undermining the ability of county governments to enhance own source revenue. Use of two pieces of legislation for the same function is both cumbersome and tedious. The existing Acts have not facilitated counties to undertake preparation of valuation rolls efficiently or legally thus currently only 10 out of the 47 counties have updated their valuation rolls also only 12 counties have rolls that are new but facing challenges in implementation. The existing Acts currently are not clear on who rating authorities are in the context of devolution.
56. Contribution in Lieu of Rates (CILOR) the procedure to claim for CILOR is currently claim lodged with PS Ministry of Lands who evaluates and recommend for payment to PS Ministry of Finance.
57. Forms of rating have been expanded to include - Annual Rental Value Rating, the introduction of the Chief Government Valuer and its role for purposes of quality control, intercounty valuation rolls for centres that stride more one urban area.
58. Methods of valuation in consideration of international standards as well as appointment and powers of valuers and their qualification to be in accordance with the Public Procurement and Asset Disposal Act and principles of Data Protection Act respectively.
59. The Bill seeks to introduce the Valuation Court with a Tribunal namely National Rating Tribunal with a membership of not more than 15 and appointment be undertaken by Judicial Service Commission (JSC).
60. The Bill also specifies the roles of national and county governments as specified in the Regulation with the guiding principles with the objective to raise revenue in principle and not arbitrarily.
61. There is inadequate legal framework/inconsistency in the existing acts that the existing Acts lack a clear framework to reflect the power intended under Article 209 (3) (a) for counties to impose property rates. The existing Acts also are not in tandem with the current trends of legal reforms, that is. national values and principles, principles of public finance etc and the National objective of economic planning.

62. The proposed changes are as follows.

- i. To consolidate the two existing acts into one and referred as the National Rating Act. valuation is one form of rating and thus the name to be National Rating Act.
 - ii. Identify thematic terms used in the existing Acts and provide for current definition reflecting the current practice for the time of valuation, basis of valuation, CILOR.
 - iii. Identify role of counties in exercising their power to raise revenue by providing a framework to enable them to come up with their own rating legislations etc.
63. The Committee was informed that the role of Counties was not clearly defined in the existing Acts since the existing Acts only identifies the role of County Assembly which was under councils to approve the prepared draft valuation rolls. That there is insufficient role of the County Assembly which undermines the principle of devolution as intended under Chapter 11 of the Constitution on Devolved Government. The existing Acts lack a clear framework to reflect the power intended under Article 209(3)(a) for counties to impose property rates.

64. The proposed changes are as follows.

The Bill has specifically identified the role of counties for the implementation of the objects of the Act which include:

- i. Tabling of prepared draft valuation rolls for its effect within provided timelines;
 - ii. Provide for guidelines of the rate struck appropriate in their respective counties;
 - iii. Approve appointment of valuer to undertake preparation of valuation rolls;
 - iv. Public Participation has been emphasized; and
 - v. To set out circumstances that are to be considered when one applies for remission, and discounts, waivers.
65. The lack of updated valuation rolls and the time of valuation is too long. A valuation roll is a register of rateable properties showing information such as the rateable owner and key information to be featured in the roll. The Roll forms basis of property rates payable. Under existing Acts, valuation rolls should be prepared or updated every 10 years, this has never been achieved with most counties running multiple rolls while those that have prepared valuation rolls, implementation have been challenged. From studies, only Kenya runs a valuation roll cycle of 10 years. This has been linked to cost implications involved thus the failure to update the rolls.

66. The proposed changes on the valuation rolls are as follows.

- i. The Bill proposes valuation cycle of 5 years with provision that the County Assemblies can extend the period for a maximum of 2 years.
 - ii. The Bill has also introduced alteration of the rolls to be considered during the time the roll are in force.
67. The forms of Rating to be used are no longer viable in most jurisdiction. Under Section 4 of the Rating Act, identifies agricultural rental value rate as a form of rating. Studies have shown that this form of rating is not applicable anywhere else in the world. These forms are easy and efficient to assist counties in levying of rates.

68. The proposed changes on the forms of rating.

The Bill has proposed four forms of rating, namely—

- i. annual rental value rate;
- ii. area rate;
- iii. unimproved site value rate;
- iv. a site value rate in combination with an improvement rate.

69. The lack of quality control to ensure Rolls are prepared in uniformity. The existing Acts lack the forum to allow rating authorities to have reference of quality prepared rolls to achieve a national objective of economic principle.

70. **The proposed changes on uniformity of rolls:** The Bill has introduced the Chief Government Valuer and has provided for its role including providing minimum considerations when undertaking preparation of the valuation rolls.

71. The lack of clarity on basis of Valuation, the content under the general basis of valuation is too wordy and further provides that basis is pegged on market value of the unimproved land and/or improvements and land. This method has led to inequitable taxation process.

72. **The proposed changes on clarity of valuation:** The Bill has provided for the basis to be market value to be the estimated amount for which a rateable property should exchange on the valuation date between a willing buyer and a willing seller in arm's length transaction, after proper marketing and where the party had each acted knowledgeably, prudently, and without compulsion and free from encumbrances.

73. The available method of Dispute Resolution is insufficient and not in tandem with the principles set out in Chapter 10 of the Constitution (Judiciary). The Valuation for Rating Act provides the rating authority shall appoint a Valuation Court to resolve objections made from the Acts. This goes against the provision under Chapter 10 which sets out courts are to be established by legislation and its jurisdiction provided, therefore.

74. **The proposed changes on dispute resolution mechanism:** Establish a Tribunal i.e. the National Rating Tribunal to hear and determine objections and related disputes in the Act. Tribunal lies within the mandate of JSC.

75. Non-compliance remedies were few and ineffective: The existing Acts provided the option to institute a suit and recover arrears from tenants and occupiers which is not enough to aid counties enforce payment.

76. **The proposed changes on the non-compliance remedies:** The Act has introduced an avenue of options including levy of penalties, denying certain county services, appointment of a receiver to collect rent to offset the incurred debts, institute a suit and lastly auction the property.

77. Lack of procedures in remissions, waivers, discounts, exemptions: The existing Acts lacked enough procedures and circumstances to implement this objective. The Rating Act only referred to

the Exemptions provided under the Valuation for Rating Act with no circumstances on how the decision can be arrived at.

78. **The Proposed changes on procedures and remissions:** The Act has intended to provide minimum consideration for remissions, discounts, and waivers. On exemptions the Act has provided the CS shall provide the criteria for one to be considered for exemptions which is lacking in the Acts.
79. Lack of existence of the National values and principles.

3.2 THE NATIONAL LAND COMMISSION

80. The National Land Commission appeared before the Committee on Saturday 1st April ,2023 and made the following submission.
81. **Clause 3 on Purpose and objects of the Act** (1) The objects and purpose of this Act are to-
- (a) Give effects to Articles 190 (1) and 209(3) of the Constitution by providing
 - (i) for a uniform legislative framework; and
 - (ii) mechanisms on how the county governments shall undertake for rating and imposition of rates on ratable property
 - (b) Enhance use of appropriate technology in undertaking valuation for rating and rating related purposes;
 - (c) provide for the role of the Chief Government in respect to collation of all valuation rolls prepared and deposited by any county government
82. **Proposed changes on purpose and objects of the Bill:** This section has not defined the role of the National Land Commission pursuant to Article 67 (2) (g) of the Constitution. (1) The objects and purpose of this Act are to—
- (a) give effects to Articles 190 (1), 209(3) & **(Insert) “67 (2) (g)”** of the Constitution by providing for a uniform legislative framework;
 - (b) provide the role of the National Land Commission to assess tax on land and premium on immovable property on any area designated by law pursuant to Article 67 (2) (g) of the Constitution;**
 - (c) provide for delegated authority to the county governments by the National Land Commission to assess rates on land pursuant to Article 67 (2) (g) of the Constitution, the National Land Act (5) (g) & (17) and the County Government Act (118),
 - (d) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes;
83. **Clause 4(2)(h) Guiding principles.** Considering the effect of tax rates on public property held on behalf by the National Government on all public ratable property within the respective county.
84. **Proposed changes on the guiding principles:** To consider the effect of tax rates on public property held on behalf by the National Government on all public ratable property within the respective county in consultation with the National Land Commission pursuant to Article 67 (2) (a) of the Constitution.

85. **Clause 12(3)** reads the Cabinet Secretary may, in consultation with the National Land Commission, prescribe guidelines on the royalties' payable on natural resources, forestry land and its products for purposes of rating.
86. **Proposed changes on clause 12(3)** The National Land Commission in consultation with the Cabinet Secretary shall prescribe guidelines on the royalties' payable on natural resources, forestry land and its products for purposes of rating.

Justification

87. This section also fails to recognize the role of the National Land Commission in management and administration of public land on behalf of county and national governments pursuant to Article 67 (2) (a) of the Constitution.
88. **Clause 12(4) Annual rental value rating:** The Cabinet Secretary may make regulations for the effective implementation of this section.
89. **Proposed changes on Annual Rental Value Rating :**The National Land Commission in consultation with the Cabinet Secretary shall, make regulations for the effective implementation of this section.

Justification

90. This section also fails to recognize the role of the National Land Commission in assessment of tax on lands and premiums on immovable properties pursuant to Act 67 (2) (g) of the Constitution. Additionally, the National Land Commission is directly involved in assessment for Annual Rental Value during alienation and lease renewals.
91. **Clause 20 Contribution in lieu of rates (1)** Where any land for which rates are due is public land held by a National Government entity and is located within the jurisdiction of any county government, the county government shall for purposes of assessing the contribution in lieu of rates payable to the county government in respect of that parcel of land, cause the valuer to either prepare a draft valuation roll, assess the rental value rate or any other form of rating on the rateables property in the area of the county government.

92. Proposed changes on contribution in lieu of rates:

Clause 20(1) For purposes of assessing contributions in lieu of rates payable for public lands within the jurisdiction of any county government the National Land Commission shall in consultation with the Cabinet Secretary make regulations to prescribe for –

- a) All public land that should be included in the valuation roll;
- b) All public land excluded from appearing on the valuation roll for rating purposes: and
- c) All public land exempted for purposes of appearing on the valuation roll
- d) Filing, Hearing & Determination of objections regarding **Public** Valuation Rolls

Clause 20(2) (a) of the Constitution provides for the assessment of tax on lands and premiums on immovable properties pursuant to Act 67 (2) (g) of the Constitution.

93. This section contradicts Sec.25 (1) on the party responsible for causing a valuation to be undertaken for the respective County Government. It also fails to fully recognize the role of the National Land Commission in management and administration of public land on behalf of county and national governments pursuant to Article 67.
94. **Clause 25 Responsibilities of Chief Government Valuer:**

1. The Chief Government Valuer may upon request by the county government cause a valuation to be undertaken for the respective county government
2. The Chief Government Valuer shall from time to time develop guidelines with respect to standardization and harmonization on preparation and implementation of valuation rolls.
3. The Chief Government Valuer shall upon request by any person, advise on preparation of valuation rolls for rating areas.
4. The Chief Government Valuer shall maintain a depository and record of all valuation rolls prepared by each county government.
5. For purposes of ensuring harmonized and standardized valuation rolls and rating on rateable areas across the counties, the Cabinet Secretary, in consultation with the Chief Government Valuer shall develop regulations thereto.
6. The regulations contemplated under subsection (5) shall provide for intergovernmental rating and valuation standards and procedures in accordance with the requirements of the Intergovernmental Relations Act, 2012.

95. Proposed Changes on Clause 25 : Rename section to “Standardization and depository of valuation rolls and supplementary valuation rolls’

1. To ensure harmonized and standardized valuation rolls across the counties, the National Land Commission in consultation with the Cabinet Secretary may from time to time develop guidelines with respect to preparation and implementation of valuation rolls.
2. The regulations contemplated under subsection (1) shall provide for intergovernmental rating and valuation standards and procedures in accordance with the requirements of the Intergovernmental Relations Act, 2012.
3. The county government shall upon request by any person, advise on preparation of valuation rolls for rating areas within its jurisdiction. Rating is a function of the Counties which should not be interfered with.
4. The Cabinet Secretary shall maintain a depository and record of all valuation rolls prepared by each county government. This should only apply to private land Valuation Rolls.
5. The National Land Commission in line with its mandate on management of public land on behalf of the National and County Government should be the Custodian of all public land Valuation Rolls.

96. The National Rating Tribunal: Clause 37.

97. There is established a Tribunal known as the National Rating Tribunal to hear and determine all matters relating to valuation or rating referred to it under this Act or any other written law.

98. The Tribunal may sit at such times and, in such place as it may appoint to ensure reasonable and equitable access to the services of the Tribunal by the public.

99. Proposed new Clause 37.

1. There is established a Tribunal known as the County Rating Tribunal to hear and determine all matters relating to valuation or rating referred to it under this Act or any other written law.

2. The Tribunal may sit at such times and, in such place as it may appoint to ensure reasonable and equitable access to the services of the Tribunal by the public.

100. Clause 38 (1) The Tribunal shall consist of three members appointed by the Judicial Service Commission who shall consist of –

- a) The Chairperson; and
- b) Two other persons possessing knowledge, skills and experience in-
- c) valuation and rating;
- d) physically planning;
- e) land surveying;
- f) information;
- g) technology;
- h) economics;
- i) finance; or
- j) public administration

Justification

101. The tribunal should be county based since the size of the tribunal should be trimmed in to Three (3) members like the Land Acquisition Tribunal as outlined in the Land Value (Amendment) Act of 2019. The National Land Commission should be represented on the tribunal owing to its critical role in matters rating and its role pursuant to Article 67 (2) (a) & (g) of the Constitution.

102. **Proposed new 38 (1)** The Tribunal shall consist of not more than fifteen members appointed by the Judicial Service Commission who shall consist of –

- (a) the chairperson; and
- (b) fourteen other persons possessing knowledge, skills and experience in-
 - (i) law.
 - (ii) valuation and rating;
 - (iii) physically planning;
 - (iv) land surveying;
 - (v) information;
 - (vi) technology;
 - (vii) economics;
 - (viii) finance; or

- (ix) public administration

103. Provisions on Delegated Legislation 56.

1. The Cabinet Secretary may make regulations generally for the better carrying into effect the provisions and purposes of the Act.
2. Without prejudice to the generality of subsection (1) the Cabinet Secretary may make regulations on-
 - a) Preparation of valuation rolls and supplementary valuation rolls
 - b) Property exempted from payment of rates
 - c) Timelines to be considered in implementation of this Act
 - d) Penalties of interest rates
 - e) Annual rental value rate
 - f) Valuation for intercounty ratable properties; and
 - g) Tax rate to ensure its compliance with Article 299(5) of the constitution
3. The National Land Commission shall make Regulations for valuation of public land for purposes of paying contribution in lieu of rates.
4. Each County Government shall enact their respective county legislation and regulations for the better implementation for provision of this Act.
5. Provided that the county legislation and regulation made under this subsection shall be consistent with the Act in Regulations made under subsections (2) and (3).
6. Without prejudice to the generality of subsection (4), a County Government shall make regulations on the following:
 - a. the use of appropriate technology in the implementation of this Act;
 - b. circumstances under which discounts, waivers and remissions may apply.
 - c. procedures when considering auction of ratable property;
 - d. procedure on issuance of agency notices.
 - e. county services to be denied upon default;
 - f. procedure on transmission and tabling of the prepared draft valuation roll and draft valuation roll; and
 - g. setting their rate struck.

104. Proposed new 56.

1. The National Land Commission in consultation with the Cabinet Secretary may make regulations generally for the better carrying into effect the provisions and purposes of the Act.
2. Without prejudice to the generality of subsection (1) the National Land Commission in consultation with the Cabinet Secretary may make regulations on-
 - a. preparation of valuation rolls and supplementary valuation rolls;
 - b. property exempted from payment of rates;

- c. timelines to be considered in implementation of this Act;
 - d. penalties of interest rates;
 - e. annual rental value rate;
 - f. valuation for intercounty ratable properties;
 - g. tax rate to ensure its compliance with article 299(5) of the Constitution; and
 - h. valuation of public land for purposes of paying contribution in lieu of rates.
105. Each County Government shall enact their respective county legislation and regulations for the better implementation for provision of this Act. Provided that the county legislation and regulation made under this subsection shall be consistent with the Act in Regulations made under subsections (1) and (2).
106. Without prejudice to the generality of subsection (3), a County Government shall make regulations on-
- a. the use of appropriate technology in the implementation of this Act;
 - b. circumstances under which discounts, waivers and remissions may apply;
 - c. procedures when considering auction of ratable property;
 - d. procedure on issuance of agency notices;
 - e. county services to be denied upon default;
 - f. procedure on transmission and tabling of the prepared draft valuation roll and draft valuation roll; and
 - g. setting their rate struck.

Justification

107. This part should explicitly align with other sections of the bill to minimize ambiguity and contradiction. For instance, the roles of the Cabinet Secretary, the County Government and the National Land Commission should be consistent all through.

3.3 STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING

108. The Principal Secretary for the State Department for Lands and Physical Planning made the following submission to the Committee on 2nd April,2023.
109. **Clause 2 on interpretation:** "contribution in lieu of rates" means the amount of rates payable to a county government by the National Government in respect of all public land held by the National Government within the county;
110. **Proposed new change on Clause 2 :** The definition of contribution in lieu of rates (CILOR) should be changed so as to include land that is owned by other semi-autonomous government agencies (SAGAS) like Kenya Railways Corporation, Kenya Ports Authority etc. as well.

This is so **unless** the intention of the Bill is to transfer these entities to the private land category, a major departure from the current law.

111. **Clause 2 on interpretation** “Improved site value’ is defined in this section but an examination of the Bill does not seem to indicate where this is used. Consider deleting it altogether.
112. **Proposed new change on clause is deletion since its nit used in the bill**
113. Clause 2 (interpretation) Under the definition of **premises** correct ‘lands’ to **land** subject of correction.
114. Clause 4 (1) – Guiding Principles: Each county government shall, in implementing the **provision** of this Act.
115. **Proposed new change on clause 4:** Each county government shall, in implementing the **provisions** of this Act,(a typographical error).
116. **Clause 4 (2)(d):** conduct effective public participation and conduct create public awareness of the importance of imposition of rates and, its impact on delivery of services within the county; No proposed new changes.
117. **Clause 8 (1)(a)** Rateable owner: In relation to property in land, a person who holds whether freehold or leasehold where the unexpired residue of the term is not less than twenty-one years and there is an intention to confer ownership.
118. **Proposed new change on clause 8:** In relation to property in land, a person who holds either freehold or a leasehold of twenty-one years or more and there is an intention to confer ownership. *Justification:* for clarity and to remove the ambiguity apparent in the section as currently drafted.
119. **Clause 12(1)** A county government shall consider the annual rental value in determining the value of the rateable property in respect of area rating.
120. **Proposed new Clause 12(1)** A county government may also consider the annual rental value in determining the value of the rateable property in respect of area rating. *Justification* to ensure flow of the sections this is to remove the mandatory implication of the term ‘shall’ that is not technical possible always.
121. **Clause 1(2) and (3) - Setting of rate struck:**
- (2) In setting up the rate struck, the County Executive Committee member shall take into consideration the values and use of rateable property and prevailing economic situation.
- (3) The County Executive Committee member shall provide grounds and circumstances informing the determination of the rate struck for the applicable financial year.
122. **Proposed new clause :**
- (2) In setting up the rate struck, the County Executive Committee member **in charge of Finance** shall take into consideration the values and use of rateable property and prevailing economic situation.

- (3) The County Executive Committee member **in charge of Finance** shall provide grounds and circumstances informing the determination of the rate struck for the applicable financial year.

Justification

123. This is necessary to eliminate sibling rivalry between CECM Lands and Finance at the county of this section. during implementation.

124. **Clause 15 (2) & (3) and this also applies to Sec. 16(1), (2) & (3):**

(2) Where any rate is due for payment, the rate shall become payable on such day in the same financial year as may be appointed by the County Executive Committee member.

(3) Where the County Executive Committee member appoints the day for payment of rates and the amount of rate payable, the County Executive Committee member shall publish a notice in the Gazette to that effect at least sixty days prior to the due date.

125. **Proposed new Clause 15(2) and (3) :**

(2) Where any rate is due for payment, the rate shall become payable on such day in the same financial year as may be appointed by the County Executive Committee member **in charge of Finance**.

(3) Where the County Executive Committee member appoints the day for payment of rates and the amount of rate payable, the County Executive Committee member **in charge of Finance** shall publish a notice in the Gazette to that effect at least sixty days prior to the due date.

Justification

126. This is necessary to eliminate sibling rivalry between CECM Lands and Finance at the county of this section. during implementation.

127. **Clause 19 (2) & (3):**

(2) Where any person having been properly served with demand defaults in paying the rates, the county government may —

- (a) levy a penalty at the prevailing Central Bank rate;
- (b) deny certain county services;
- (c) institute a suit against the defaulter;
- (d) create a charge against the rateable property by notifying the Registrar in charge of land; or
- (e) apply any methods to recover rates as specified under this Act or any other method as authorized by any other law

(3) Where any rate or any part thereof remains unpaid after the day on which the same became payable and the rateable owner has been notified to make payment and defaults at the lapse of the notice period, the county government may, for the purpose of recovering the rates due —

- (a) appoint a receiver on the rateable property to recover rent from tenants and occupiers;
- (b) in case of a matter involving succession under the Law of Succession Act and where the property is yet to be transferred to beneficiaries, apply to be considered as a beneficiary;
- (c) attachment of debts; or
- (d) auction the rateable property at the current market value in accordance to the provided procedures to recover the rates due.

128. **Proposed new changes on clause 19 (3) (f)** appoint a receiver on the rateable property to recover rent from tenants and occupiers.

Justification

129. To align it to section 56(5)(d) as one of the remedies available to the County Government to recover rates from perennial defaulters there is need to clarify entities that make contribution in lieu of rates (CILOR) or refer to an expected regulation.
130. **Clause 20(2):** The National Land Commission shall, in consultation with the Cabinet Secretary, make Regulations to prescribe for.
131. **Proposed new clause 20(2):** “The Cabinet Secretary in consultation with the National Land Commission, shall make regulations to prescribe.

Justification

132. Cabinet Secretary (CS) to lead the process of making regulations to align it with the rest of the Bill.
133. **Clause 20(3)** The National Government entity responsible for the payments of rates which may be due in respect of any public land held by the National Government **shall** remit to the county government, an annual contribution in lieu of rates levied under this Act for every financial year.
134. **Proposed Changes to clause 20(3)** The National Government entity responsible for the payments of rates which may be due in respect of any public land held by the National Government **will** remit to the county government, an annual contribution in lieu of rates levied under this Act for every financial year.

Justification

135. This is necessary to shield entities that pay CILOR from punitive sanctions in the event of budgetary limitations due to revenue collection challenges.
136. **Clause 25(1):** Responsibilities of the Chief Government Valuer: The Chief Government Valuer may upon request by a county government cause a valuation to be undertaken for the respective county government.
137. **Proposed new changes to Clause 25(1) :** The Chief Government Valuer may, upon request by a county government, undertake valuation for rating for that county”.

Justification

138. The phrase “cause a valuation to be undertaken” used in the bill carries an erroneous connotation.
139. **Clause 25(3):** The Chief Government Valuer shall upon request by **any person**, advise on preparation of valuation rolls for rating areas.
140. **Proposed new change 25(3):** The Chief Government Valuer shall upon request by **any County Government**, advise on preparation of valuation rolls for rating areas.

Justification

141. County governments are the rating authorities.
142. **Clause 25(5)** For purposes of ensuring harmonized and standardized valuation rolls and rating on rateable areas across the counties, the Cabinet Secretary, in consultation with the Chief Government Valuer shall develop Regulations thereto.
143. **Proposed new Clause 25(5)** For purposes of ensuring harmonized and standardized valuation rolls and rating across the counties, the Cabinet Secretary shall develop Regulations thereto.

Justification

144. Regulations envisaged in this section to be made by the Cabinet Secretary will invariably be made in consultation with the Chief Government Valuer, the latter being an officer in the same ministry.
145. **Clause 30(1) Contents of draft valuation roll and draft supplementary valuation roll:** Every valuer shall prepare a draft valuation roll or draft supplementary valuation roll listing all properties within the county in such a manner as to show to the best of knowledge and opinion in respect of every rateable property.
146. **Proposed new clause 30(1) on contents of draft valuation and draft supplementary valuation:** Every valuer shall prepare a draft valuation roll or draft supplementary valuation roll listing all properties within the county in such a manner as to show to the best of his knowledge.

Justification

147. The valuation roll need not contain all properties, as some will be rated using other forms of rating like area rates.
148. **Clause 30(2)(e) and 30(2)(f)** the assessment for the improvement rate and any other necessary information regarding that property.
149. **Proposed new Clause 30(2)(e) and 30(2)(f)** the assessment for the improvement rate where applicable and(f) any other necessary information regarding that property that the valuer may deem necessary.

Justification

150. There may be scenarios where a County Government may opt not to rate improvements to allow the valuer a window of discretion on what will deem useful to be included in a valuation roll.
151. **Clause 30(3)** Where the county government has reason to believe that a supplementary valuation roll needs to be prepared, the county government shall cause a supplementary valuation roll to be prepared where necessary.
152. **Proposed new Clause 30(3)** A county government can cause a supplementary valuation roll to be prepared in any area within its jurisdiction.

Justification

153. The bill as currently phrased in the bill is too wordy and lacks clarity.
154. **Clause 30(5)** A supplementary valuation roll shall include only those alterations and additions to the valuation roll which are permitted by this section.
155. **Proposed new clause 30(5)** Define Valuation Roll and Supplementary valuation Roll in clause 2. Its not defined in the bill.
156. **A new Clause 31:** For avoidance of doubt, a county government cannot alter the contents of a valuation roll pertaining to value and acreage, except in situations where the valuation roll was prepared by a valuer in its employment”.

Justification

157. This is to ensure that the county government does not tamper with aspects value determination and land sizes/acreage as these are a preserve of the land registrar as the custodian of land records.

3.4 THE COUNCIL OF GOVERNORS

158. The Council of Governors tabled the following submission to the Committee summarized in the following matrix.

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Title	AN ACT of Parliament to provide for the framework for levying of rates by county governments; provide for the valuation of rateable property; provide for the appointment and powers of valuers; provide for the establishment, powers and functions of the National Rating Valuation Tribunal; and for connected purposes.	AN ACT of Parliament to give effect to Article 209 (3) (a) of the Constitution; to provide for levying of property rates by county governments; provide for the valuation of rateable property and for connected purposes.	This is to ensure that the Bill captures the constitutional provision to which the bill seeks to operationalize
	“county executive committee member” means the county executive committee member responsible for matters relating to land in the respective county;	Replace ‘physical and land use’ with Land to read; “County executive committee member” means the county executive committee member responsible for matters relating to property valuation and rating in the respective county	This is to align the bill with the County Government Act 2021
Objects of this Act.	3. (1) The objects of this Act are to— (a) provide for a uniform legislative framework in accordance with Article 209 (3) (a) in which the rating authorities shall undertake valuation for rating and imposition of rates on rateable property; (b) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes; (c) to provide for the role of the Chief Government valuer in respect to collation of all valuation roll prepared and deposited by the rating authority in their respective	Amend to read 2. (1) The objects of this Act are to— (a) provide for a standard legislative framework in accordance with Article 209 (3) (a) in which the rating authorities shall undertake valuation for rating and imposition of rates on rateable property; (b) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes; (c) to provide for the role of each level of Government in respect to matters property valuation and rating; (d) to ensure rating authority legislations enacted on and valuation	Clear provision of the role of each level of Government is critical. Section 2 (c) as captured currently purports to introduce a role that is not envisaged in the Constitution of Kenya 2010. The National Government’s role (represented by the Chief Government Valuer) is restricted to development of norms and standards.

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
	counties; (d) to ensure rating authority legislations enacted on and valuation for rating laws are in conformity with Article 190(1) and 209(5) of the Constitution; and	for rating laws are in conformity with Article 190(1) and 209(5) of the Constitution and 210 (1) of the Constitution	
Use of technology.	6. Each County Government shall identify or create an appropriate technological system for preparation and implementation of the roll.	Amend to read 6. Each County Government shall ensure that all valuation rolls prepared are GIS based	County Governments are obligated by the County Government Act to prepare GIS based spatial plans which form the basis for valuation and thus GIS based valuation rolls will enhance efficiency of the rating authorities
Annual rental value rate	12.(1) The valuer when determining the rate in respect of area rating shall consider the annual rental value rate. (2) Subject to subsection (1), the rating authority shall take into account the different categories of properties for purposes of payment of rates which include but not limited to— (i) residential properties; (ii) commercial properties; (iii) Mineral Lands that do not fall under industrial Lands (iv) agricultural properties; (v) any other category of properties as may be prescribed by legislation enacted by the respective county (3) The Cabinet Secretary may in consultation with the National Land Commission provide guidelines on royalties paid on forestry land and its products for purposes of rating. (4) The Cabinet Secretary may	Amend to read 12.(1) The valuer when determining the rate in respect of area rating shall consider the annual rental value rate. (2) Subject to subsection (1), the rating authority shall take into account the different land uses as provided by the existing physical and land use plan for purposes of payment of rates which include but not limited to— (i) residential properties; (ii) commercial properties; (iii) Mineral Lands that do not fall under industrial Lands (iv) agricultural properties; (v) any other category of properties as may be prescribed by County Plan, Policy or legislation enacted by the respective county (3) The Cabinet Secretary may in consultation and agreement with County Governments and the National	Physical and Land Use Plans are the instruments for assignment of uses and as such the valuer must consult those plans to identify the various uses in line with the Physical and Land Use Planning Act 2019 and the urban areas and cities act. Further in developing the guidelines on royalties paid on forestry land and its products, there should be consensus between the two levels of Government through the intergovernmental structures established in the Intergovernmental Relations Act of 2012.

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
	make rules to guide the implementation of this Section.	Land Commission provide guidelines on royalties paid on forestry land and its products for purposes of rating. (4) The Cabinet Secretary may in consultation with the County Governments make rules to guide the implementation of this Section.	
Contribution in lieu of rates	<p>20 (1) Where any land for which rates are due is public land held by National Government entity and is located within the jurisdiction of a county Government, the county government shall for purposes of assessing the contributions in lieu of rates payable to the County Government in respect of the parcel of land, cause the valuer to either prepare a draft valuation roll , assess rate or any other form of rating on the rateable property in the area of the County Government the rental value</p> <p>(2) The National Land Commission in consultation with the cabinet secretary shall make regulations to provide for .</p> <p>(a) all public land that should be included in the valuation rolls;</p> <p>(b) all public land excluded from appearing on the valuation roll for rating purposes;</p> <p>(c) all public land exempted for purposes of appearing on the valuation roll.</p>	<p>20 (1) Where any land for which rates are due is public land held by National Government entity and is located within the jurisdiction of a county Government, the county government shall for purposes of assessing the contributions in lieu of rates payable to the County Government in respect of the parcel of land ,cause the valuer to either prepare a draft valuation roll , assess rate or any other form of rating on the rateable property in the area of the County Government the rental value</p> <p>(2) The National Land Commission in consultation and agreement with the County Governments and the cabinet secretary shall make regulations to provide for .</p> <p>(d) all public land that should be included in the valuation rolls;</p> <p>(e) all public land excluded from appearing on the valuation roll for rating purposes;</p> <p>(f) all public land exempted for purposes of appearing on the valuation roll.</p> <p>Section 4 should read: (4) For purposes of claiming rates under this section, the County Governments shall in</p>	<p>The already developed regulations will ensure that the valuer has a basis for determining the contribution in lieu of public land and any necessary exemptions and therefore the principal secretary in charge of lands has no role whatsoever.</p> <p>In formulating the above regulations, there should be consensus between the two levels of government through the established intergovernmental structures under the intergovernmental relations act 2012.</p> <p>There is no need introduce bureaucracy in the lodge of claims by counties since the standards have been set. .</p>

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
		three months before the rates fall due lodge a claim to the National Treasury as the Contribution In lieu of Rates Delete section 6	
Chief Government Valuer.	Section 25 : Functions of the chief Government Valuer	Restrict the functions to National Policy development, norms and standards on property valuation and capacity building of counties, advise to the national government on matters property valuation and rating Dispute resolution institution at the County Level <ul style="list-style-type: none"> • Create a dispute resolution institution at the County Level 	This is in line with schedule 4 of the constitution
Objections. Section 33	Provides for the role of Chief Officers	Replace the Chief Offer with the County Executive Committee Member	The Authority to prepare the roll is vested with the County Executive Committee Member as per our proposal and therefore any objections should be filled with the Authority

4.0 COMMITTEE OBSERVATIONS

159. The Committee considered provisions of the Bill, evaluated submissions tabled and made the following observations.
160. *Submissions from the National Treasury*
161. The Bill seeks: (1) to consolidate the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) into one and referred as the National Rating Act; (2) to identify thematic terms used in the existing Acts and provide for current definition reflecting the current practice-for the time of valuation, basis of valuation, contribution in lieu of rates; and; to identify the role of counties in exercising their power to raise revenue by providing a framework to enable them to come up with their own rating legislations to address the fact that there is inadequate legal framework and inconsistency in the existing Acts that lack a clear framework to reflect the power intended under Article 209 (3) (a) for counties to impose property rates.

162. The Bill has specifically identified the role of counties for the implementation of the objects of the Act which include: (1) tabling of prepared draft valuation rolls for its effect within provided timelines; (2) provide for guidelines of the rate struck appropriate in their respective counties; (3) approve appointment of valuer to undertake preparation of valuation rolls; (4) public participation has been emphasized; and (5) to set out circumstances that are to be considered when one applies for remission, and discounts, waivers. This addresses the fact that the role of Counties is not clearly defined in Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) since the existing Acts only identify the role of County Assembly which was previously under *Councils* to approve the prepared draft valuation rolls.
163. The Bill proposes to introduce: (1) a valuation cycle of 5 years with provision that the County Assemblies can extend the period for a maximum of 2 years and (2) the alteration of the rolls to be considered during the time the roll are in force. The latter address the fact that the lack of updated valuation rolls and the time of valuation is too long to the extent that valuation rolls should be prepared or updated every 10 years, this has never been achieved with most counties running multiple rolls.
164. The Bill proposes to introduce four forms of rating. These are: annual rental value rate; area rate; unimproved site value rate; and a site value rate in combination with an improvement rate. These forms rating address the fact that: the forms of Rating to be used are no longer viable in most jurisdiction, for instance, Under Section 4 of the Rating Act, identifies agricultural rental value rate as a form of rating.
165. The Bill has introduced the office of the Chief Government Valuer and has provided for its role including providing minimum considerations when undertaking preparation of the valuation rolls to address the fact that there is lack of quality control in ensuring Rolls are prepared in uniformity under the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267)
166. The Bill has provided for the basis to be market value to be the estimated amount for which a rateable property should exchange on the valuation date between a willing buyer and a willing seller in arm's length transaction, after proper marketing and where the party had each acted knowledgeably, prudently, and without compulsion and free from encumbrances.
167. The Bill has established the National Rating Tribunal to hear and determine objections and related disputes in the Act to address the fact that the available method of Dispute Resolution is insufficient and not in tandem with the principles set out in Chapter 10 of the Constitution for instance the Valuation for Rating Act provides that the rating authority shall appoint a

Valuation Court to resolve objections made from the Acts contrary to Article 159(1) of the Constitution that provides that Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

168. The Bill proposes to introduce a n avenue of options including levy of penalties, denying certain county services, appointment of a receiver to collect rent to offset the incurred debts, institute a suit and lastly auction the property to address the fact the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) only provide for the option to institute a suit and recover arrears from tenants and occupiers which is not enough to aid counties enforce payment.
169. The Bill proposes to introduce a minimum set of considerations for remissions, discounts, and waivers to address the fact that under the lack procedures and circumstances to implement the power to exempt for instance, the Rating Act only refers to the Exemptions provided under the Valuation for Rating Act with no circumstances on how the decision can be arrived at.
170. *Submissions from the National Land Commission*
171. The proposal to amend Clause 3 on Purpose and objects of the Act to provide the role of the National Land Commission to assess tax on land and premium on immovable property on any area designated by law pursuant to Article 67 (2) (g) of the Constitution was not adopted as the function is provided for under section 5(1) (g) of the National Land Commission Act
172. The proposal to amend Clause 4(2)(h) on Guiding principles was not adopted as it is not guided by the limitations prescribed under Article 209(5) that provides that the taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies.
173. The proposal to amend Clause 12(3)(4) was not adopted as it is contrary to Article 67(2) that limits the powers of the role of the National Land Commission to assessing tax on land and premiums on immovable property in any area designated by law.
174. The proposal to amend Clause 20 on Contribution in lieu of rates (1) was not adopted as it creates confusion as far as preparation of a draft roll to enable a county to assess tax.
175. The proposal to amend on Clause 25 to rename section to “Standardization and depository of valuation rolls and supplementary valuation rolls’ and redraft the clause was not adopted as it creates confusion by deleting the proposed role of the Chief Government Valuer undertaking a valuation to be undertaken for the respective county government

176. The proposal to establish the County Rating Tribunal to hear and determine all matters relating to valuation or rating referred to it was not adopted as it contradicts Article 159(2)(b) that provides justice shall not be delayed as the proposal provides for a tier of bureaucracy whose decision may be appealed three or four times especially if a person is dissatisfied with a decision of the County.
177. The proposal to amend clause 56 is superfluous and was not adopted as it proposes rearrangement of clauses and does not present substantive amendment.
178. *Submissions from the State Department of Lands and Physical Planning*
179. The proposal to delete the term 'improved site value' under Clause 2 on interpretation was adopted as the term is not used in the Bill.
180. The proposal to amend the definition of premises correct 'lands' under Clause 2 was not adopted as the term is used six times under different contexts.
181. The proposal to amend the typographical error under Clause 4 (1) was adopted.
182. The proposal to amend Clause 8 (1)(a) on the Rateable owner was not adopted as it created a new meaning contrary to the definition used in the Bill.
183. The proposal to amend Clause 12(1) of the Bill to remove the mandatory obligation for a county government to consider the annual rental value in determining the value of the rateable property in respect of area rating was not adopted as it negated the purpose of the Bill.
184. The proposal to amend Clause 1(2) and (3) of the Bill was not adopted as clause 2 of the Bill defines the County Executive Committee member to mean the county executive committee member for the time being responsible for matters relating to land in a county.
185. The proposal to amend Clause 15(2) and (3) of the Bill was not adopted as clause 2 of the Bill defines the County Executive Committee member to mean the county executive committee member for the time being responsible for matters relating to land in a county.
186. The proposal to amend Clause 19 (2) & (3) was not adopted as it was not very clear in the mischief it sought to address.
187. The proposal to amend Clause 20(2) to provide "The Cabinet Secretary in consultation with the National Land Commission, shall make regulations to prescribe..." was not adopted as it contradicts Article 67(2) of the Constitution that provides that the National Land Commission

- shall assess tax on land and premiums on immovable property in any area designated by law.
188. The proposal to amend Clause 25(1) of the Bill was not adopted as the Chief Government Valuer is an office with custody of the valuation process and not an employee of the Cabinet Secretary.
189. The proposal to amend Clause 30(1) of the Bill on Contents of draft valuation roll and draft supplementary valuation roll was not adopted as it contradicts the objectives of the Bill.
190. ***Submissions from the Council of Governors***
191. The proposal to amend the long title was not adopted as it departs from the objects and purpose of this Act are to give effect to Articles 190(1) and 209 (3)(a) of the Constitution.
192. The proposal to amend the definition of the county executive committee member was not adopted as the proposal to separate rating from management of land was contrary to the objectives of the Bill.
193. The proposal to amend clause 3 to alter ***purpose and objects of the Bill*** was not adopted as it departs from the objects and purpose of this Act are to give effect to Articles 190(1) and 209 (3)(a) of the Constitution.
194. The proposal to amend clause 6 to alter ***use of technology*** was not adopted as it departs from the objects and purpose of this Act by limiting the use of technology to GIS based valuation roles.
195. The proposal to amend clause 12 on ***annual rental value rate*** was not adopted as the proposal Article 69(1) of Constitution vest the role of ensuring establishment of guidelines on royalties paid on forestry land in the National Government .
196. The proposal to amend clause 20 on ***contribution in lieu of rates*** was not adopted as it departs from the objects and purpose of this Act are to give effect to Articles 67(2), 190(1) and 209 (3)(a) of the Constitution by attempting to fetter the jurisdiction of the National Land Commission to assess tax on land and premiums on immovable property in any area designated by law.
197. The proposal to amend clause 25 on ***the Chief Government Valuer was*** not adopted as the proposal was not clear on the mischief sought to be addressed.
198. The proposal to amend clause 33 on ***objections section*** was not adopted as the proposal as clause 33 contains provisions regulating ***Publication of the Roll***.

199. *General observation*

200. The Bill has typographical mistakes and the Committee shall propose amendments during the committee stage.

5.0 COMMITTEE RECOMMENDATION

201. The Committee, having considered and taken into account the views and recommendations of the public including relevant stakeholders, recommends that the Bill proceeds for Second Reading. The Committee further recommends that the following Committee stage amendments be considered:

CLAUSE 2

THAT the Bill be amended in clause 2—

(a) by deleting the definition of “improved site value”

Justification

The term is defined but is not used in the Bill.

(b) "by deleting the definition of “improvement value”

Justification

The term is defined but is not used in the Bill.

(c) by deleting the definition of “exclusion”

Justification

The term is defined but is not used in the Bill.

CLAUSE 12

THAT clause 12 of the Bill be amended by deleting subsection (3) and substituting the following new subsection—

“(3) The Cabinet Secretary may, in consultation with the National Land Commission, prescribe guidelines on the royalties to be paid on natural resources, forestry land and products obtained from natural resources and forestry land for purposes of rating.”

Justification

The clause has been redrafted to provide clarity.

CLAUSE 18

THAT clause 17 of the Bill be amended by deleting subsection (8) and substituting the following new subsection—

“(8)(1) A county government shall enact legislation and make regulations prescribing rates payable under this section.

(2) A county government that acts in accordance with subsection (1) shall consider –

- (a) the percentages of remission to be offered;
- (b) instances where remission of a percentage of the rates payable may be granted; and
- (c) instances where remission of the whole of the rates payable may be granted.”

Justification

The clause has been redrafted to provide clarity.

CLAUSE 18

THAT clause 18 of the Bill be amended

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

“(1) Each county government shall prescribe criteria for grant of discounts and waivers on partial or whole of the payable interest and penalty rates due to it by the rateable owner through legislation.

(b) by deleting subsection (2) and substituting the following new subsection—

(2) A county government that acts in accordance with subsection (1) shall consider –

- (a) rateable owners who make timely payment and are consistent;
- (b) the specification on the maximum percentage of rates that may be discounted or waived;
- (c) the period in relation to which the discount or waiver is to be considered for;
- (d) the circumstances to be considered; and
- (e) the procedure to be applicable for one to seek for a discount or waiver.

Justification

The clause has been redrafted to provide clarity.

CLAUSE 21

THAT clause 18 of the Bill be amended by paragraph (b) and substituting the following new paragraph under subsection (2)—

“(b) have a minimum experience of seven years in valuation from the date the person was registered by the Valuers Registration Board.”

Justification

The clause has been redrafted to provide clarity.

CLAUSE 24

THAT clause 24 of the Bill be amended—

(a) by deleting subclause (1) and substituting the following new subclause:

“A valuer who is preparing a draft valuation roll or a draft supplementary valuation roll, shall have the power —

- (a) to enter into or upon any rateable property at all reasonable time between eight o'clock in the forenoon and five o'clock in the afternoon for purposes of inspecting any land within the area of the county government in respect of which a rate on the value of the land is, or is to be, imposed;
- (b) to inspect and make extracts from all land registers and other records or any deeds or instruments belonging to or in the custody or possession of any public officer or any other person in which are contained particulars of any land, whether that person is or is not interested in the land;
- (c) to inquire from an occupier of a rateable property questions on matters that may be necessary to enable the valuer to correctly value that property; and
- (d) to require, by notice in writing, the rateable owner or occupier of any land to provide the valuer with information regarding the rateable property which the valuer reasonably requires for purposes of valuing the property.”

Justification

The clause has been redrafted to provide clarity.

(b) by deleting subclause (2).

(c) by deleting subclause (3).

Justification

The clause has been deleted and will be accommodated as a general offence through a proposal to amend clause 53.

(d) In subclause (4), by deleting the word “particulars” and substituting therefor the word “information” :

Justification

The clause has been redrafted to provide clarity.

CLAUSE 25

THAT clause 2 of the Bill be amended—

(a) by deleting the word “Guidelines” and substituting therefor the word “guidelines” in appearing subclause (2);

(b) by deleting subclause (5) and substituting the following new subclause:

“(5) The Cabinet Secretary shall, in consultation under the intergovernmental mechanism, make regulations for—

(a) harmonizing and standardizing valuation rolls and rating on rateable areas across counties;

(b) intergovernmental rating and valuation standards and procedures.”

(c) by deleting subclause (6).

Justification

The clause has been redrafted to provide clarity.

CLAUSE 31

THAT clause 31 of the Bill be amended by deleting subclause (1) and substituting the following new subclause:

Alterations of the valuation roll and supplementary valuation roll.

- 31.** A county government may alter a valuation roll or supplementary roll—
- (a) to correct a clerical error or omission not affecting the rateable value;
 - (b) to correct an error as to, or recording a change in the name of an occupier or rateable owner; or
 - (c) to correct an error in the description or address of a rateable property.

CLAUSE 32

THAT clause 32 of the Bill deleted and substituted by the following new clause:


Deposit of draft valuation roll and draft supplementary valuation roll.

- 32.(1)** A valuer who prepares a draft valuation roll or draft supplementary valuation roll shall —
- (a) sign and enter the date on the roll; and
 - (b) transmit the roll accompanied by relevant maps and plans and summarized basis of valuation report depending on the method of appraisal used, to the County Executive Committee Member for tabling before the County Assembly.
- (2)** A summarized valuation report shall contain the following information—
- (a) the valuation methodology used;
 - (b) the basis for the valuation of the rateable property;
 - (c) the date of the valuation of the rateable property;
 - (d) any other relevant information obtained by the valuer during the valuation of the rateable property; and

- (e) the signature and seal of the valuer.
- (3) The County Executive Committee Member shall forward a copy of the draft valuation roll or draft supplementary valuation roll to the Chief Government Valuer for purposes.
- (4) The Chief Government Valuer shall submit a written report to the County Executive Committee Member within thirty days of the receipt of the draft valuation roll or draft supplementary valuation roll.
- (5) The County Executive Committee Member shall—
 - (a) conduct public participation for comments on the draft valuation roll or draft supplementary valuation roll; and
 - (b) make a draft valuation roll or a supplementary valuation roll available for inspection and copying by any person at a prescribed fee.
- (6) The County Executive Committee Member submit the written report under subsection (4), the draft valuation roll and draft supplementary valuation roll and accompanying documents to the County Assembly for tabling.

Justification

The clause has been redrafted to provide clarity.

Signed.....  Date: 15/06/2023.....
 Hon. Joash Nyamoko Nyamache, HSC, M.P
 (CHAIRPERSON)

Signed -



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION, 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD AT THE WALNUT ROOM, PANARI HOTEL NAIROBI, ON 15TH
JUNE 2023 AT 9:00 AM

MEMBERS PRESENT

1. Hon. Nyamoko Joash Nyamache, M.P.-Chairperson
2. Hon. Kihara Jayne Wanjiru Njeri, M.P.- Vice Chairperson
3. Hon. Rachel Kaki Nyamai, CBS, M.P
4. Hon. Shimbwa Omar Mwinyi, M.P.
5. Hon. Passaris Esther Muthoni, M.P.
6. Hon. Ogolla Gideon Ochanda, M.P.
7. Hon. Robi Mathias Nyamabe, M.P.
8. Hon. Gitari Joseph Gachoki, M.P.
9. Hon. Guyo Ali Wario, M.P.
10. Hon. Nzambia Thuddeus Kithua, M.P.
11. Hon. Katana Paul Kahindi, M.P.
12. Hon. Mupe Anthony Kenga, M.P.
13. Hon. Lelmengit Josses Kiptoo Kosgey, M.P.

APOLOGIES

1. Hon. Ndung'u George Koimburi, M.P.
2. Hon. Joseph Hamisi Dena, M.P.

IN ATTENDANCE

- | | | |
|--------------------------|---|--|
| 1. Mr. Gerishon Otachi | - | Chairperson, National Land Commission |
| 2. Prof. James K. Tuitok | - | Commissioner, National Land Commission |
| 3. Ms. Kabale Tache | - | CEO, National Land Commission |
| 4. Mr. Bernard Cherutich | - | DFCP, National Land Commission |
| 5. Ms. Joycelyn Makena | - | D-V&T, National Land Commission |
| 6. Mr. Daniel Mwakio | - | PFO, National Land Commission |
| 7. Mr. Brian Ikol | - | DLA& DR, National Land Commission |

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|------------------------|
| 1. Ms. Naserian Lotuai | - | Second Clerk assistant |
|------------------------|---|------------------------|

- | | | |
|------------------------|---|----------------------|
| 3. Mr. Sidney Lugaga | - | Senior Legal Counsel |
| 4. Ms. Audrey Ogutu | - | Legal Counsel II |
| 5. Ms. Brenda Michira | - | Research Officer III |
| 6. Ms. Lydia Shallom | - | Research Officer III |
| 7. Mr. Danton Kimutai | - | Audio Officer III |
| 8. Mr. Pauline Njuguna | - | Hansard Reporter III |

AGENDA

1. Prayers
2. Preliminaries;
3. Confirmation of Minutes.
4. Matters Arising;
5. **Meeting with Representatives from the National Land Commission and the Kenya Railways Corporation on the status of Compensation for the Meter Gauge Railway Project and the Standard Gauge Railway Project.**
6. Any Other Business
7. Adjournment

MIN/NO./NA/DC-LANDS/2022/153: PRELIMINARIES

The meeting was called to order at fifty five minutes past nine o'clock and prayers said by Hon. Kihara Jayne Wanjiru Njeri, M.P. The Agenda of the meeting was adopted after it was proposed by Hon. Nzambia Thuddeus Kithua, M.P. and seconded by Hon. Robi Mathias Nyamabe, M.P.

MIN/NO./NA/DC-LANDS/2022/154: CONFIRMATION OF MINUTES

The Confirmation of Minutes of the previous meeting was deferred.

MIN/NO./NA/DC-LANDS/2022/155: MATTERS ARISING

There were no matters arising.

MIN/NO./NA/DC-LANDS/2022/156: MEETING WITH REPRESENTATIVES FROM THE NATIONAL LAND COMMISSION AND THE KENYA RAILWAYS CORPORATION ON THE STATUS OF COMPENSATION FOR THE METER GAUGE RAILWAY PROJECT AND THE STANDARD GAUGE RAILWAY PROJECT.

The Committee Clerk notified the Committee Members of the letter from the Managing Director of the Kenya Railways Corporation, dated June 14, 2023, outlining his reasons for being unable to attend the meeting.

The Committee noted that the Kenya Railways Corporation's Managing Director had missed a scheduled meeting with the Departmental Committee on Lands for the second time. Thus, it was instructed for the Committee Secretariat to later invite the Managing Director to a meeting with the Committee.

In order to provide input on the current state of compensation for the Standard Gauge Railway and Meter Gauge Railway Projects, the Chairperson of the National Land Commission was invited to do so. He said that through making land available through forced land acquisition in accordance with Part VIII of the Land Act 2012, the National Land Commission had continued to assist the Ministries, Departments, and Agencies in the realization of public purpose projects. The Standard Gauge Railway and Meter Gauge Railway projects assisted a long list of Project Affected Persons (PAPs), according to the National Land Commission. The Committee was informed of the total money received from the Railways Development Levy for PAP compensation as well as the outstanding balance payable to the Commission.

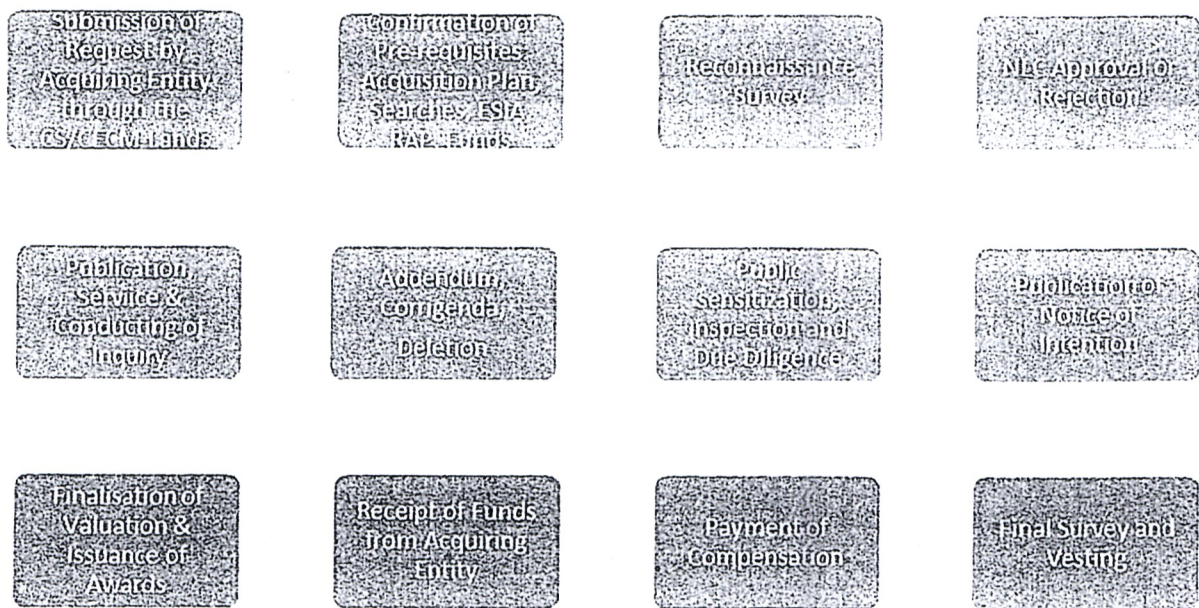
- Disputes on the properties,
- Land succession cases,
- Ongoing court cases, and
- Incomplete/unavailable documentations relating to the affected parcels and/or persons.

The table below detail the total amount of funds that have been received from Kenya Railways for compensation of PAPs from Railways Development Levy, the amounts disbursed to PAPs and the balance still owed to the Commission by Kenya Railways.

**SUMMARY OF THE PROJECT COSTS, AMOUNT RECEIVED, DISBURSED AND
OWED BY KRC**

PROJECT NAME	PROJECT COST	AMOUNT RECIEVED	AMOUNT PAID BY NLC	AMOUNT PAID BY KR	TOTAL PAYMENTS	AMOUNT OWED BY KRC
SGR PHASE I	27,267,857,665.07	9,055,193,371.00	7,696,627,660.37	12,050,028,007.88	19,746,655,666.25	7,521,201,998.82
SGR PHASE 2A	20,154,711,766.43	17,745,404,778.45	18,095,636,040.46	0	18,095,636,040.46	2,059,075,725.72
ICD	1,251,767,262.00	0.00	974,463,311.00	0	974,463,311.00	277,303,951.00
PASSENGER LINE	98,127,862.00	0.00	30,601,764.00	0	30,601,764.00	67,526,098.00
	=48,772,464,555.5	=26,800,598,149.45	26,797,393,775.83	12,050,028,007.88	=38,847,356,781.71	=9,925,107,773.54

The Committee was further briefed that the National Land Commission had shared the land acquisition policy with the Committee on 3rd May 2023. The Diagram below illustrates the statutory process of land acquisition.



In brief, the compulsory land acquisition process was quoted as follows:

- i. Compulsory land acquisition is initiated by acquiring agency through the Cabinet Secretary in charge of the function for which the land is required, or the County Executive in charge of Lands. The Commission undertakes a preliminary examination of documents and a reconnaissance survey to ensure that the request meets the threshold of Section 107(2) and elaborated in guidelines to acquiring authorities.
- ii. Where public interest has been determined and the requirements provided, the Commission approves publication of a Notice of Intention to acquire the affected land parcels. Gazetted notices of intention to acquire are served on persons affected by the acquisition. Notices are also served on the respective Area Chief and Land Registrar.
- iii. Public sensitization on the project, the procedures, expectations and responsibilities of stakeholders in the land acquisition process is done prior to property inspections.
- iv. Inspection of the affected properties for valuation purposes is done to collect data on the land and improvements affected by the project. Section 107(A) Land Act provides damages to be admitted and the valuation and aspects to be disregarded.
- v. Following inspection, a date(s) for Inquiry are published as required under Sec.112 of the Land Act. The Inquiry aims to establish legal and financial claims of persons interested in the land. Assessment of Value is finalized after Inquiry.
- vi. Addendums, corrigenda or deletions occasioned by findings during property inspections are published in the Kenya Gazette with the authority of the acquiring authority.
- vii. Assessment of value involves application of technical and professional skills of the value based on inspection of the property and consideration of physical, legal, permitted

use and other aspects of the property. Value is market-based as provided under the Land (Assessment of Value) Rules, 2017.

- viii. Awards are issued to each project affected person based on signed valuation reports and schedules adopted by the Commission.
- ix. Accepted Awards together with acceptance forms, required personal identification and title documents are forwarded to Finance Directorate for disbursement of payments. Compensation funds are requested from acquiring bodies based on valuation reports and schedules.
- x. Payment documents are scrutinized for authenticity and completeness, and a Compensation Schedule prepared for approval of payments.
- xi. Notices of taking possession are issued upon payment. However, if land is required prior to payments, Early Entry notices are issued to project affected persons in compliance with Sec. 120 of the Land Act.
- xii. Final survey and vesting is carried out in liaison with the acquiring authority.
- xiii. Disputes resulting from the land acquisition process are subjected to alternative dispute resolution mechanisms including mediation and may be escalated to the Environment and Land Court pending the constitution of the Land Acquisition Tribunal.

Committee observations

The Committee noted that some property parcels had been purchased for the construction of the Standard Gauge Railway Project and that the same land parcels might also be compensated for the construction of the Meter Gauge Railway Project.

Committee recommendations

The Committee resolved to go to Miritini, Mombasa County, for a site visit at a later date in order to determine the person affected projects that had received Ksh.1.4 billion released by Kenya Ports Authority.

MIN/NO./NA/DC-LANDS/2022/157: ADOPTION OF THE REPORT ON THE NATIONAL RATING BILL NATIONAL ASSEMBLY BILL NO. 55 OF 2022

The Committee was guided through the report on the National rating Bill by the Legal Counsel. During the Committee's deliberations it was observed that the Bill sought to consolidate the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) into one and referred as the National Rating Act; Identify thematic terms used in the existing Acts and provide for current definition reflecting the current practice for the time of valuation, basis of valuation, Contribution in Lieu of Rates and; Identify role of counties in exercising their power to raise revenue by providing a framework to enable them to come up with their own rating legislations

that the existing Acts lack a clear framework to reflect the power intended under Article 209 (3) (a) for counties to impose property rates.

It was further observed that the Bill had specifically identified the role of counties for the implementation of the objects of the Act which include: tabling of prepared draft valuation rolls for its effect within provided timelines; provide for guidelines of the rate struck appropriate in their respective counties; approve appointment of valuer to undertake preparation of valuation rolls; public participation has been emphasized; and to set out circumstances that are to be considered when one applies for remission, and discounts, waivers. This addresses the fact that the role of Counties is not clearly defined in Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) since the existing Acts only identifies the role of County Assembly which was under councils to approve the prepared draft valuation rolls.

The Bill proposed to introduce: (1) a valuation cycle of 5 years with provision that the County Assemblies can extend the period for a maximum of 2 years and (2) the alteration of the rolls to be considered during the time the roll are in force. The latter address the fact that the lack of updated valuation rolls and the time of valuation is too long to the extent that valuation rolls should be prepared or updated every 10 years, this has never been achieved with most counties running multiple rolls.

The Bill proposes to introduce four forms of rating. These are: annual rental value rate; area rate; unimproved site value rate; and a site value rate in combination with an improvement rate. These forms rating address the fact that: the forms of Rating to be used are no longer viable in most jurisdiction, for instance, Under Section 4 of the Rating Act, identifies agricultural rental value rate as a form of rating.

The Bill has introduced the office of the Chief Government Valuer and has provided for its role including providing minimum considerations when undertaking preparation of the valuation rolls to address the fact that there is lack of quality control in ensuring Rolls are prepared in uniformity under the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267)

The Bill has provided for the basis to be market value to be the estimated amount for which a rateable property should exchange on the valuation date between a willing buyer and a willing seller in arm's length transaction, after proper marketing and where the party had each acted knowledgeably, prudently, and without compulsion and free from encumbrances.

The Bill has established the National Rating Tribunal to hear and determine objections and related disputes in the Act to address the fact that the available method of Dispute Resolution is insufficient and not in tandem with the principles set out in Chapter 10 of the Constitution for instance the Valuation for Rating Act provides that the rating authority shall appoint a Valuation Court to resolve objections made from the Acts contrary to Article 159(1) of the Constitution that provides that Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

The Bill proposes to introduce a n avenue of options including levy of penalties, denying certain county services, appointment of a receiver to collect rent to offset the incurred debts, institute a suit and lastly auction the property to address the fact the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) only provide for the option to institute a suit and

recover arrears from tenants and occupiers which is not enough to aid counties enforce payment.

The Bill proposes to introduce a minimum set of considerations for remissions, discounts, and waivers to address the fact that under the lack procedures and circumstances to implement the power for instance, the Rating Act only refers to the Exemptions provided under the Valuation for Rating Act with no circumstances on how the decision can be arrived at.

Observations on Submissions from the National Land Commission

The proposal to amend Clause 3 on Purpose and objects of the Act to provide the role of the National Land Commission to assess tax on land and premium on immovable property on any area designated by law pursuant to Article 67 (2) (g) of the Constitution was not adopted as the function is provided for under section 5(1) (g) of the National Land Commission Act

The proposal to amend Clause 4(2)(h) on Guiding principles was not adopted as it is not guided by the limitations prescribed under Article 209(5) that provides that the taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies.

The proposal to amend Clause 12(3)(4) was not adopted as it is contrary to Article 67(2) that limits the powers of the role of the National Land Commission to assessing tax on land and premiums on immovable property in any area designated by law.

The proposal to amend Clause 20 on Contribution in lieu of rates (1) was not adopted as it creates confusion as far as preparation of a draft roll to enable a county to assess tax.

The proposal to amend on Clause 25 to rename section to "Standardization and depository of valuation rolls and supplementary valuation rolls" and redraft the clause was not adopted as it creates confusion by deleting the proposed role of the Chief Government Valuer undertaking a valuation to be undertaken for the respective county government

The proposal to establish the County Rating Tribunal to hear and determine all matters relating to valuation or rating referred to it was not adopted as it contradicts Article 159(2)(b) that provides justice shall not be delayed as the proposal provides for a tier of bureaucracy whose decision may be appealed three or four times especially if a person is dissatisfied with a decision of the County.

The proposal to amend clause 56 is superfluous and was not adopted as it proposes rearrangement of clauses and does not present substantive amendment.

Observations on Submissions from the State department of Lands and Physical planning

The proposal to delete the term 'improved site value' under Clause 2 on interpretation was adopted is appropriate as the term is not used in the Bill.

The proposal to amend the definition of premises correct 'lands' under Clause 2 was not adopted as the term is used six times under different contexts.

The proposal to amend the typographical error under Clause 4 (1) was adopted.

The proposal to amend Clause 8 (1)(a) on the Rateable owner was not adopted as it created a new meaning contrary to the definition used in the Bill.

The proposal to amend Clause 12(1) of the Bill to remove the mandatory obligation for a county government to consider the annual rental value in determining the value of the ratable property in respect of area rating was not adopted as it negated the purpose of the Bill.

The proposal to amend Clause 1(2) and (3) of the Bill was not adopted as clause 2 of the Bill defines the County Executive Committee member to mean the county executive committee member for the time being responsible for matters relating to land in a county.

The proposal to amend Clause 15(2) and (3) of the Bill was not adopted as clause 2 of the Bill defines the County Executive Committee member to mean the county executive committee

The proposal to amend Clause 19 (2) & (3) was not adopted as it was not very clear in the mischief it sought to address.

The proposal to amend Clause 20(2) to provide “The Cabinet Secretary in consultation with the National Land Commission, shall make regulations to prescribe...” was not

adopted as it contradicts Article 67(2) of the Constitution that provides that the National Land Commission shall assess tax on land and premiums on immovable property in any area designated by law.

The proposal to amend Clause 25(1) of the Bill was not adopted as the Chief Government Valuer is an office with custody of the valuation process and not an employee of the Cabinet Secretary.

The proposal to amend Clause 30(1) of the Bill on Contents of draft valuation roll and draft supplementary valuation roll was not adopted as it contradicts the objectives of the Bill.

Observations on Submissions from the Council of Governors

The proposal to amend the long title was not adopted as it departs from the objects and purpose of this Act are to give effect to Articles 190(1) and 209 (3)(a) of the Constitution.

The proposal to amend the definition of the county executive committee was not adopted as the proposal to separate rating from management of land was contrary to the objectives of the Bill.

The proposal to amend clause 3 to alter *purpose and objects of the Bill* was not adopted as it departs from the objects and purpose of this Act are to give effect to Articles 190(1) and 209 (3)(a) of the Constitution.

The proposal to amend clause 6 to alter *use of technology* was not adopted as it departs from the objects and purpose of this Act by limiting the use of technology to GIS based valuation roles.

The proposal to amend clause 12 on *annual rental value rate* was not adopted as the proposal is superfluous.

The proposal to amend clause 20 on *contribution in lieu of rates* was not adopted as it departs from the objects and purpose of this Act are to give effect to Articles 67(2), 190(1) and 209 (3)(a) of the Constitution by attempting to fetter the jurisdiction of the National Land Commission to assess tax on land and premiums on immovable property in any area designated by law.

The proposal to amend clause 25 on *the Chief Government Valuer* was not adopted as the proposal was not clear on the mischief sought to be addressed.

The proposal to amend clause 33 on *objections section* was not adopted as the proposal as clause 33 contains provisions regulating *Publication of the Roll*.

COMMITTEE RECOMMENDATION

The Committee having considered and taken into account the views and recommendations of the public including relevant stakeholders, resolves to recommend that the Bill proceed for second reading and that the Committee sponsors committee stage amendments to incorporate proposals in the manner observed under Chapter 4.0.

Adoption of the report on the on the National Rating Bill National Assembly Bill No. 55 of 2022

The report was adopted after it was proposed by Hon. Gitari Joseph Gachoki, MP, and seconded by Hon. Katana Paul Kahindi, MP, having taken into account the findings and recommendations of the report.

MIN/NO./NA/DC-LANDS/2022/158: ANY OTHER BUSINESS

There was no other business.

MIN/NO.NA/DC-LANDS/2022/159: ADJOURNMENT

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

Signed.....



THE HON. JOASH N. NYAMOKO, MP
(CHAIRPERSON)

Date.....

20/06/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Lands, have pursuant to Standing Order 127 (4), adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date: 15/06/2023

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	

ELINE COMPANY LIMITED
Premier Oil & Gas Company



KENYA PIPELINE
KPC
KENYA PIPELINE COMPANY LIMITED
P.O. BOX 73143-00100
NAIROBI, KENYA
TELEPHONE: 254 20 2046100
TELEFAX: 254 20 2046101
E-mail: info@kpc.co.ke

ADVERTISEMENT OF A VACANCY

eline Company (KPC) Limited is a State Corporation established under the (CAP 486) of the Laws of Kenya to provide efficient, reliable, safe and cost-effective of transporting quality oil and gas from source to the customer objective. The Company is seeking to recruit a highly motivated visionary, suits oriented candidate to fill the undermentioned vacant position

Table with 5 columns: Position, Job Ref No., Grade No., No. of Posts, Term of Appointment. Row 1: Manager (HR & Administration), KPC/ADVT/07/2023, 2, 1, 5-year Contract

EQUIREMENTS

andidates are requested to visit the KPC website www.kpc.co.ke under the titles section where the Job Description and Specification as well as the training instructions on how to apply for the position have been posted

Applications should be received not later than midnight EAT on 30th March 2023

Successful candidate offered employment shall be required to present the following clearance

- 1. Certificate of Good Conduct from the Directorate of Criminal Investigations
2. Clearance Certificate from Higher Education Loans Board (HELB)
3. Compliance Certificate from Kenya Revenue Authority (KRA)
4. Clearance from the Ethics & Anti-corruption Authority (EACC)
5. Report from an approved Credit Reference Bureau (CRB)

The Company is an equal opportunity employer committed to diversity and women and persons with disability are encouraged to apply. Only shortlisted candidates will be contacted. Any form of canvassing will be disallowed.

Kenya Pipeline Company Limited
P.O. Box 73143, Nairobi
Telephone: 254 20 2046100, Email: info@kpc.co.ke



COUNTY GOVERNMENT OF MURANG'A



TENDER NOTICE - COMMUNITY PROJECTS

Notice is hereby given that the County Government of Murang'a is seeking to procure the following community projects...

Table with 4 columns: No., Description, Estimated Value, and Status. Lists various community projects like road construction, water supply, and electricity projects.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
13th PARLIAMENT - SECOND SESSION

In the Matter of Article 118(1) (b) of the Constitution and

In the Matter of Consideration by the National Assembly of-

- 1. The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022);
2. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022);
3. The Public Service Internship Bill (National Assembly Bill No. 63 of 2022); and
4. The National Rating Bill (National Assembly Bill No. 55 of 2022)

And further
In the Matter of Articles 2(5) & (6) and 118 (1) (b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

And
In the Matter of Consideration by the National Assembly of the Minamata Convention on Mercury

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

A. BILLS

The Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bills listed below pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(2) of the National Assembly Standing Orders

- 1. The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) sponsored by Hon. David Gikoria, M.P. (Nakuru Town East).
2. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022) sponsored by Hon. Benjamin Gathiru Mejadork, M.P. (Embakasi Central).
3. The Public Service Internship Bill (National Assembly Bill No. 63 of 2022); Sponsored by Hon. Nakula Lesauwa, M.P. (Samburu West).
4. The National Rating Bill (National Assembly Bill No. 55 of 2022) sponsored by Hon. Kimani Ichung'uah, MP (Leader of the Majority Party).

This is a Bill for an Act of Parliament to make provision for imposition of rates on land and buildings by county governments; to provide for then valuation of retable property; to provide for the appointment and powers of valuers; to provide for the establishment, powers and functions of the National Rating Tribunal and for connected purposes.

The Bills were Read a First Time on Wednesday, 8th March, 2023 and Pursuant to Standing Order 127(1), committed to Departmental Committees of the National Assembly as set out in the schedule hereunder -

SCHEDULE

Table with 3 columns: No., Bill, and Committee. Lists the four bills and their respective committees: Justice and Legal Affairs, Finance and National Planning, Labour, and Lands.

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

B. CONVENTION

The Minamata Convention on Mercury was submitted to the National Assembly on 23rd February, 2023 and subsequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House in accordance with Section 8 of the Treaty Making and Ratification Act, 2012.

The Minamata Convention on Mercury seeks to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds.

Pursuant to Articles 2(5) & (6) and 118 (1)(b) of the Constitution, the Departmental Committee on Environment, Forestry and Mining invites members of the public and relevant stakeholders to submit memoranda they may have on the Minamata Convention on Mercury.

The full text of the Minamata Convention on Mercury and its accompanying Memorandum to Parliament may be accessed at www.parliament.go.ke

The memoranda should be addressed 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 cma@parliament.go.ke; to be received on or before Wednesday, 22nd March 2023 at 5:00 p.m.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
16th March, 2023

For the Welfare of Society and the Just Government of the People



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833

THE NATIONAL TREASURY
P O BOX 30007 – 00100
NAIROBI

Telephone: 2252299

When Replying Please Quote

Ref No: IGFR/OSR/NPSIS/04 (27)

17th January, 2022

Mary Mwiti
Chief Executive Officer
Council of Governors
Delta Corner, 2nd Floor,
P.O Box 40401-00100
NAIROBI

Dear

RE: COMMENTS ON THE DRAFT NATIONAL RATING BILL, 2021

Reference is made to the submissions by the Council of Governors (COG) on the National Rating Bill, 2021 to the NDITC Legal sub-committee on 12th January, 2022. The Committee directed that a meeting of technical officers from the Ministry of Lands and Physical Planning, National Treasury and COG be convened on 13th January 2022 at 7.30 am to deliberate the few pending issues raised by COG before the full NDTIC on 13th January 2022 at 10:00 am.

Below is a summary of the issues and the agreed responses:

1. **Objects of the Bill:** The National Rating Bill, 2021 is not a bill that introduces a new aspect of rating. It is a Bill that first and foremost, consolidates provisions previously contained in Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267), then incorporates other provisions and ultimately seeks to repeal the two existing Acts. This unified Act is aligned to the Constitution. The sole objective of the Bill therefore cannot be said to be only to operationalize the provisions of Article 209(3)(a).
2. **Deposit of Draft Valuation Roll and Other Operational Matters:** It is true that the CECM is the office bestowed with the mandate of a respective Department in a County,

we are alive to the fact that the CECM is in charge of policy direction while implementation aspects at operational level are domiciled in the Office of the Chief Officer, hence reference to him in operational matters in this Bill.

3. **Creation of the Office of the Director of Valuation at the County Level:** The nomenclature of Departments at Counties changes from time to time. Indeed, in some Counties land matters are paired with Physical Planning, in others with Environment while in others with Energy. It therefore may not be prudent to be restrictive in definition but to generally talk about land matters which invariably include rating as well. In addition, very few counties if any have full-fledged Valuation departments or sections manned by valuers qualified in accordance with the Valuers Act (Cap 532). It was therefore agreed that it is at the discretion of the County Governments to create an office of the Director of Valuation based on the need basis and cost benefit analysis. In most cases preparation of valuation rolls takes two (2) years after which it is then handed to the county treasury for implementation.

4. **Office of the Chief Government Valuer (CGV):** During public participation sessions, it was obvious that glaring gaps exist in the area of quality assurance and standards vis-à-vis rating in general and preparation of Valuation Rolls in particular. It was pointed out that due to this lacuna, many Valuation Rolls which had been prepared by private practitioners, could not be implemented despite public funds having been spent due to quality gaps and legal anomalies. As a result, Counties could not lay any successful Contribution In lieu of Rates (CILOR) from the National Government. Further, there were functions that were being carried out by the Chief Government Valuer out of established custom and tradition without clear legal framework like auditing Valuation Rolls and recommending the payment of CILOR. It is this realization that gave birth to the functions assigned to the office of the Chief Government Valuer in this Bill. The CGV can also, upon request, prepare Valuation Rolls for Counties who so desire. According to the provisions of this Bill therefore, rating can be undertaken by either a private valuer, CGV or a Valuer in the employment of the County as long as they are qualified under the Valuers Act.

5. **Use of plans prepared and approved by County Governments for purposes of Annual Rental Value Rating:** While it is true that physical planning instruments as provided by the Physical and Land Use Planning Act (PLUPA) are critical in rating, the situation on the ground is that in many localities, development actually precedes planning. It is for this reason that the Bill has made provision for other forms of rating like Annual Rental Value rating so as to allow for levying of rates even when the areas are not planned or where the valuer encounters different uses in the midst of say agricultural use.

For planned areas, any valuer would be alive to the different uses while valuing for rating purposes.

6. **Submission of Valuation Rolls to CGV:** Submitting a copy of the Valuation Rolls with the CGV is key in not just acting as a central repository of rating data, but also in assisting in the continuous development and improvement of better standards and capacity building which are functions of the Ministry of Lands and Physical Planning.

The Revised Bill and the stakeholders' memorandum (Showing how all the comments and concerns from stakeholders were treated in the Bill) are already on the National Treasury website.

The purpose of this letter is to officially forward these responses as agreed.

JULIUS MUIA, PhD, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY

Copy to: **Kennedy Ogeto**
Solicitor General
Office of the Attorney General
Harambee Avenue
NAIROBI

...
 SUMMARY OF THE PROPOSED NEW LEGISLATION AND
 RECOMMENDATION TO CONSOLIDATE THE RATING ACT (CAP 267) AND THE
 VALUATION FOR RATING ACT (CAP 266)

THE RATING ACT, CAP 267			
PROVISION	ISSUE	PROPOSED AMENDMENT	IMPACT
Short title	The title of the Act does not encompass all aspects of rating and it all covers rates.	To consolidate the intention of the Rating Act and Valuation for Rating Act under the name Rating Act, 2021	The amendment will ensure that the title of the Act is reflective of the national character that the new legislation intends to take up
Interpretation	A number of definitions are inconsistent with the Constitution, 2010	Insert and delete definitions The New Act has borrowed some of the definitions provided with modifications subject to the objects of the Act.	Key Definitions - Annual rental value Rate - CILOR - Public Benefit Organizations - Discount, Waivers, Remissions - Exclusion, Exemptions

	<p>Act.</p>	<p>- Exclusion, Exemptions - Time for Valuation</p>	<p>...</p>
<p>Duty to levy rates</p>	<p>Levying is on the County Government with an aim to enhance county own source revenue. The Act spells out the guiding principles to be considered by levying authority.</p>	<p>(i) The Act refers to local authority which has been phased out by the new constitution (ii) It refers to a fund that is no longer in operation</p>	<p>Ascertain who has the duty to levy rates and their allocation. The inclusion of the principles is to stress on the need to uphold the national values and principles intended by the Constitution.</p>
<p>Forms of Rating</p>	<p>Introducing 3 forms and defining them. The new form includes Annual Rental value rate to replace agricultural rental value rate/area rating which sets out on the rental value of</p>	<p>The Act provides for forms of Rating that are no longer viable to use. E.g. the Act refers to agricultural rental value rate and area rating.</p>	<p>Agricultural Rental value/Area rate is not viable and is not applicable/no longer in existence in the comparison jurisdiction study carried out.</p>

<p>Alternative methods of area rating</p>	<p>The existing forms of area rating are no longer in use in most jurisdictions thus not viable.</p>	<p>the rateable property.</p> <p>Replace the alternate methods of area rating by Annual rental value rate.</p>	<p>Replace with Annual Rental Value rate. The rate to be imposed is easier to be pegged on the rental income of the rateable property upon valuation.</p> <ul style="list-style-type: none"> - To make clarity on the purpose of rating and its intent. - To provide make clarity on the methods to be used for purposes of rating to guide rating authorities - To provide for a clear enforcement mechanism - To provide for clear provisions on
<p>Site value and improvement rate</p>	<p>The Act was specifically dealing with rates and the same is not consistent with Constitution.</p>	<p>The New Act has consolidated this area to be under Part 2 of the Act under the Title RATING.</p>	<p>This Part specifies.</p> <ol style="list-style-type: none"> 1. Duty to levy rates is vested on rating Authorities 2. Rateable Owner has been defined according to the ownership of
<p>Supplementary rate</p>	<p>It refers to amended terms and are no longer in existent in our legislative frameworks.</p>	<p>Delete and Replace</p>	<p>Lacks clarity on who</p>
<p>Special rate</p>	<p></p>	<p></p>	<p></p>
<p>Uniformity of rate</p>	<p></p>	<p></p>	<p></p>
<p>Areas chargeable with rates</p>	<p></p>	<p></p>	<p></p>
<p>Equitable distribution of rates</p>	<p></p>	<p></p>	<p></p>
<p>Rating in areas of urban, area and local councils</p>	<p></p>	<p></p>	<p></p>
<p>Fees for collection of rates on behalf of urban, area and local councils</p>	<p></p>	<p></p>	<p></p>
<p>Notice of Rate to be published and valuation roll to be conclusive</p>	<p></p>	<p></p>	<p></p>
<p>Payment of rates discount and</p>	<p></p>	<p></p>	<p></p>

conclusive	Lacks clarity on who the rating authority is	according to the ownership of the land	provisions on remissions, waivers, discounts and interest for late payment/default payment
<u>Payment of rates discount and interest</u>	Lacks clear guide on payment of rates on discount and interest rates	3. Forms of Rating- The Act has identified 3 forms	- To provide for a clear framework on how rating authorities can make a claim for their CILOR.
<u>Enforcement of payment of rate</u>	Need to clarify rateable property exempted for valuation for rating	4. Notice of Rating. Focuses on introducing Public Participation at this level	- The Act also focuses on incorporating use of technology in the administration of rates i.e. collection/payments, data collection.
<u>Recovery of rates from tenants and occupiers</u>	Under CILOR, there is no clear guidance for rating Authority to make claim of rateable property within the rating authority from the National Government.	5. Setting of Rate Struck is a new introduction to the Act.	
<u>Rates chargeable on property</u>		6. Payment, Enforcement, Remission, Discounts and Waivers,	
<u>Rateable owners liable for rates</u>			
<u>Statement of payment of rates and other charges</u>			
<u>Exemption from, and remission of rates</u>			
<u>Contribution in lieu of rates</u>			
<u>Evidence</u>			
<u>Jurisdiction of magistrates</u>			

Jurisdiction of magistrates	...
Publication and service of notices etc.	
Power to make rules	
Saving	
Amendment of Cap 266	
Validation	

Waivers, Recovery of Rates have been provided here in terms of procedure and timelines to be considered.	...
7. Introduction of CILOR and the Act highlights the process to make a claim for payment.	

THE VALUATION FOR RATING ACT, CAP 266 LAWS OF KENYA

VISION	ISSUE	PROPOSED AMENDMENT	IMPACT
: title	The title is mirrored with the intention to provide guidance on rating.	To consolidate the intention of the Rating Act and Valuation for Rating	The amendment will provide for a uniform legislature that creates a flow of both functions of valuing land with

<p>ation; Preparation of valuation rolls and supplementary valuation rolls Deposit of valuation rolls and supplementary valuation rolls Valuation court</p>	<p>A number of definitions are inconsistent with the Constitution, 2010</p>	<p>Act under the name Rating Act, 2021</p> <p>Insert and delete definitions The New Act has borrowed some of the definitions provided with modifications subject to the objects of the Act.</p>	<p>an aim to realize property rating to generate revenue for the rating authorities. The updated interpretation section will provide clarity on key definitions used.</p>
<p>ation; Preparation of valuation rolls and supplementary valuation rolls Deposit of valuation rolls and supplementary valuation rolls Valuation court</p>	<p>(iii) The Act fails to provide for public participation in the process of undertaking valuation (iv) The Act fails to provide for a clear indication on who prepares the supplementary</p>	<p>- Provide for clear public participation and its role - Provide for timelines i.e. when valuation is to be undertaken, when public participation is to</p>	<p>- There is need to involve the public in the process from its commencement to allow their participation and comments to be taken into consideration. The Act has provided for the contents that should be taken into consideration when undertaking public</p>

<p>supplementary valuation rolls</p>			
<p>(v) The Act also refers to the function of a valuation court which is not consistent with the current provision of Chapter 10 of the Constitution of Kenya, 2010</p>	<p>participation is to commence, the procedure to invite public participation</p> <ul style="list-style-type: none"> - Provide for establishment of a National Tribunal with provision to set Regional Tribunal if necessary - Clear provisions on appointment of valuer and their powers - There is provision of presenting a valuation report for adoption 	<p>when undertaking public participation. It has also provided the CEC to facilitate public participation.</p> <ul style="list-style-type: none"> - The Act also identifies the function of the county assembly in the valuation for rating process and provides for timelines to avoid delays - The Act also establishes a National Rating Valuation Tribunal which focuses on objections made in relation to the valuation and rating process for their determination. - The act also allows room for an appeal if the person is aggrieved by the Tribunal decision to the 	
<p>(vi) The timelines provided for inspection, objections are also less</p>			
<p>(vii) There is also lacking of a clear function of what the local authority must do upon receipt of draft valuation roll and supplementary valuation rolls also it</p>			

<p>lacks timelines and if they fail to approve the rolls what is to be done thereafter.</p>	<p>instead of the valuation rolls and supplementary valuation rolls to be considered for approval by the County Assembly</p>	<p>... ELC. - The Act provides for timelines to present the draft valuation and draft supplementary valuation rolls to the County Assembly for its adoption.</p>
<p>(viii) The Act also lacks to create offences where a rateable owner provides or wrong information. It refers to a fund that is no longer in operation.</p>	<p>County Assembly - Provide for the consideration to be taken upon when undertaking valuation.</p>	<p>- Methods of valuation will act as a guide to make it easier for preparation of valuation rolls and supplementary valuation rolls.</p>
<p>(ix) There is no provision on method of valuation to guide valuers when undertaking valuation (x) There is no clear provision for publication of the roll and invite comments from the public</p>	<p>- Provide for avenues that are easily accessible to members of the public for their comments</p>	<p>- Publication should be made in a way that invites the public to comment on the valuation rolls as adopted and allow necessary objections be filed.</p>

Annexure 1



NATIONAL LAND COMMISSION

COMMENTS & RECOMMENDATIONS

ON

THE NATIONAL RATING BILL 2022

1. Background information

The National Land Commission (NLC) is an Independent Constitutional Commission established under Article 67 of the Constitution of Kenya, 2010. It was operationalized through Acts of Parliament that gave effect to Article 67 of the Constitution, namely; the National Land Commission Act, 2012; the Land Act, 2012 and the Land Registration Act, 2012, to carry out its mandate as outlined both in the Constitution and in the aforementioned legislations. The Commission is not subject to direction or control by any person or authority; it is subject only to the Constitution and the law as stated in Article 249 (2) of the Constitution of Kenya.

2. Mandate

National Land Commission derives its mandate from the Constitution of Kenya 2010, the National Land Policy (2009) and Acts of Parliament, namely the National Land Commission (NLC) Act, the Land Act and the Land Registration Act, all of 2012. The broad mandate of the National Land Commission can be categorized as provided for in the Constitution:

1. Manage Public land on behalf of the National and County governments, 67(2) a;
2. Recommend a National Land Policy to the National government, 67(2) b;
3. Advise the National government on a comprehensive program for the registration of title in land throughout Kenya, 67(2) c;
4. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities, 67(2) d;
5. Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress, 67(2) e;
6. Encourage the application of traditional dispute resolution mechanisms in land conflicts, 67(2) f;
7. Assess tax on land and premiums on immovable property in any area designated by law, 67(2) f;
8. Monitor and have oversight responsibilities over Land Use Planning throughout the country, 67(2) h; and
9. Perform any other functions prescribed by national legislation. 6(3)

3. Powers and functions

In line with the National Land Commission Act 2012 Revised Edition 2016 [2015], the Commission is obligated to exercise all the powers necessary for the execution of its functions under the Constitution, the National Land Commission Act 2012 and any other written law. This translates into exercising its powers in a variety of ways like:

1. Without prejudice to the generality of subsection (1), the Commission shall have powers to;

- i. Gather, by such means as it considers appropriate, any relevant information including requisition of reports, records, documents or any information from any source, including any State organ, and to compel the production of such information where it considers necessary;
- ii. Hold inquiries for the purposes of performing its functions under the National Land Commission Act;
- iii. Take any measures it considers necessary to ensure compliance with the principles of land policy set out in Article 60 (1) of the Constitution as depicted in box 1 below. These principles continue to guide the work of the Commission.

4. Relationship between the National Land Commission and the County Governments

In line with the National Land Commission Act 2012 Revised Edition 2016 [2015], in carrying out its functions, the Commission shall work in consultation and co- operation with the national and county governments subject to Article 10 and Article 232 of the Constitution.

Further the National Land Commission is mandated to manage public land on behalf of the National and County governments as per Article 67(2) (a) of the Constitution of Kenya.

5. Role of the National Land Commission in matters related to tax on land

Pursuant to Article 67 (2) (g) of the Constitution, the National Land Commission is mandated with the function of assessing tax on land and premiums on immovable property in any area designated by law.

Please find the following comments and recommendations for the above subject for your attention

PART	NO.	READING	COMMENTS	RECOMMENDATIONS/ RATIONALE
I	3. Purpose and objects of the Act	<p>3. (1) The objects and purpose of this Act are to-</p> <p>(a) give effects to Articles 190 (1) and 209(3) of the Constitution by providing</p> <p>(i) for a uniform legislative framework; and</p> <p>(ii) mechanisms on how the county governments shall undertake for rating and imposition of rates on ratable property</p> <p>(b) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes;</p> <p>(c) provide for the role of the Chief Government in respect to collation of all valuation rolls prepared and deposited by any county government</p>	<p>This section has not defined the role of the National Land Commission pursuant to Article 67 (2) (g) of the Constitution</p>	<p>3. (1) The objects and purpose of this Act are to-</p> <p>(a) give effects to Articles 190 (1), 209(3) & (Insert) “67 (2) (g)” of the Constitution by providing for a uniform legislative framework;</p> <p>(b) provide the role of the National Land Commission to assess tax on land and premium on immovable property on any area designated by law pursuant to Article 67 (2) (g) of the Constitution;</p> <p>(c) provide for delegated authority to the county governments by the National Land Commission to assess rates on land pursuant to Article 67 (2) (g) of the Constitution, the National Land Act (5) (g) & (17) and the County Government Act (118),</p> <p>(d) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes;</p>
I	(4) (2) (h) Guiding principles	<p>(h) taking into account the effect of tax rates on public property held on behalf by the National Government on all public ratable property within the respective county; and</p>	<p>This section fails to recognize the role of the National Land Commission in management and administration of public land on behalf of county and national governments pursuant to Article 67 (2) (a) of the Constitution</p>	<p>(h) take into account the effect of tax rates on public property held on behalf by the National Government on all public ratable property within the respective county in consultation with the National Land Commission pursuant to Article 67 (2) (a) of the Constitution”; and</p>

II	12(3)	<p>The Cabinet Secretary may, in consultation with the National Land Commission, prescribe guidelines on the royalties' payable on natural resources, forestry land and its products for purposes of rating</p> <p>The Cabinet Secretary may make regulations for the effective implementation of this section</p>	<p>This section also fails to recognize the role of the National Land Commission in management and administration of public land on behalf of county and national governments pursuant to Article 67 (2) (a) of the Constitution</p> <p>This section also fails to recognize the role of the National Land Commission in assessment of tax on lands and premiums on immovable properties pursuant to Act 67 (2) (g) of the Constitution</p> <p>Additionally, The National Land Commission is directly involved in assessment for Annual Rental Value during alienation and lease renewals</p>	<p>The National Land Commission in consultation with the Cabinet Secretary shall prescribe guidelines on the royalties' payable on natural resources, forestry land and its products for purposes of rating</p> <p>The National Land Commission in consultation with the Cabinet Secretary shall, make regulations for the effective implementation of this section.</p>
II	20. Contribution in lieu of rates	<p>20. (1) Where any land for which rates are due is public land held by a National Government entity and is located within the jurisdiction of any county government, the county government shall for purposes of assessing the contribution in lieu of rates payable to the county government in respect of that parcel of land, cause the valuer to either prepare a draft valuation roll, assess the rental value rate or any other form of rating on the rateable property in the area of the county government.</p>	<p>This section contradicts Sec.25(1) on the party responsible for causing a valuation to be undertaken for the respective county government.</p> <p>It also fails to fully recognize the role of the National Land Commission in management and administration of public land on behalf of county and national governments pursuant to Article 67 (2) (a) of the Constitution & assessment of tax on lands and premiums on immovable properties pursuant to Act 67 (2) (g) of the Constitution</p>	<p>20. (1) For purposes of assessing contributions in lieu of rates payable for public lands within the jurisdiction of any county government the National Land Commission shall in consultation with the Cabinet Secretary make regulations to prescribe for -</p> <ul style="list-style-type: none"> a) All public land that should be included in the valuation roll; b) All public land excluded from appearing on the valuation roll for rating purposes; and c) All public land exempted for purposes of appearing on the valuation roll

		<p>(2) The National Land Commission shall, in consultation with the Cabinet Secretary, make regulations to prescribe for</p> <ul style="list-style-type: none"> a) All public land that should be included in the valuation roll; b) All public land excluded from appearing on the valuation roll for rating purposes; and c) All public land exempted for purposes of appearing on the valuation roll <p>(3) The National Government entity responsible for the payments of rates which may be due in respect of any public land held by the National Government shall remit to the county government, an annual contribution in lieu of rates levied under this Act for each and every financial year.</p> <p>(4) For the purpose of claiming rates under this section, the county government shall in three months before the rates fall due, lodge a claim to the National Treasury through the National Land Commission as contribution in lieu of rates.</p>		<p>d) Filing, Hearing & Determination of objections regarding Public Valuation Rolls</p>
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		<p>(5) A claim for rates under this section shall be in Form. 2 set out in the second schedule and may be accompanied by an introductory letter and any other relevant documentation.</p> <p>(6) The National Land Commission shall upon receipt of a claim under this section evaluate the claim and recommend to the Cabinet Secretary Ministry of Lands to further review before submission to the cabinet secretary, National Treasury for rates due to be paid accordingly.</p>		
III	<p>25. Responsibilities of Chief Government Valuer</p>	<p>25. (1) The Chief Government Valuer may upon request by the county government cause a valuation to be undertaken for the respective county government</p> <p>(2) The Chief Government Valuer shall from time to time develop guidelines with respect to standardization and harmonization on preparation and implementation of valuation rolls.</p> <p>(3) The Chief Government Valuer shall upon request by any person, advise on preparation of valuation rolls for rating areas.</p>	<p>This section contradicts the spirit of devolution. As per the County Government Act 2012, counties should be autonomous.</p> <p>It also fails to fully recognize the role of the National Land Commission in management and administration of public land on behalf of county and national governments pursuant to Article 67 (2) (a) of the Constitution & assessment of tax on lands and premiums on immovable properties pursuant to Act 67 (2) (g) of the Constitution</p>	<p>Rename section to "Standardization and depository of valuation rolls and supplementary valuation rolls"</p> <p>25. (1) For the purpose of ensuring harmonized and standardized valuation rolls across the counties, the National Land Commission in consultation with the Cabinet Secretary may from time to time develop guidelines with respect to preparation and implementation of valuation rolls.</p> <p>(2) The regulations contemplated under subsection (1) shall provide for intergovernmental rating and valuation standards and procedures in accordance</p>

		<p>(4) The Chief Government Valuer shall maintain a depository and record of all valuation rolls prepared by each county government.</p> <p>(5) For purposes of ensuring harmonized and standardized valuation rolls and rating on rateable areas across the counties, the Cabinet Secretary, in consultation with the Chief Government Valuer shall develop regulations thereto.</p> <p>(6) The regulations contemplated under subsection (5) shall provide for intergovernmental rating and valuation standards and procedures in accordance with the requirements of the Intergovernmental Relations Act, 2012.</p>	<p>Also that the Commission assesses Stand Premium and Annual Rent on all leasehold land.</p>	<p>with the requirements of the Intergovernmental Relations Act, 2012.</p> <p>(3) The county government shall upon request by any person, advise on preparation of valuation rolls for rating areas within its jurisdiction. Rating is a function of the Counties which should not be interfered with.</p> <p>(4) The Cabinet Secretary shall maintain a depository and record of all valuation rolls prepared by each county government. This should only apply to private land Valuation Rolls.</p> <p>The National Land Commission in line with its mandate on management of public land on behalf of the National and County Government should be the Custodian of all public land Valuation Rolls.</p>
<p>III</p>	<p>The National Rating Tribunal</p>	<p>37. (1) There is established a Rating Tribunal to hear and determine all matters relating to valuation or rating referred to it under this Act or any other written law.</p> <p>(2) The Tribunal may sit at such times and, in such place as it may appoint to ensure reasonable and equitable access</p>	<p>The tribunal should be county based.</p> <p>The size of the tribunal should be trimmed in to Three (3) members similar to the Land Acquisition Tribunal as outlined in the Land Value (Amendment) Act of 2019.</p> <p>The National Land Commission should be represented on the</p>	<p>37. (1) There is established a Tribunal known as the County Rating Tribunal to hear and determine all matters relating to valuation or rating referred to it under this Act or any other written law.</p> <p>(2) The Tribunal may sit at such times and, in such place as it may appoint to ensure reasonable and equitable access to the services of the Tribunal by the public.</p>

VII	Provisions on Delegated Legislation	<p>equitable access to the services of the Tribunal by the public.</p> <p>38 (1) The Tribunal shall consist of not more than fifteen members appointed by the Judicial Service Commission who shall consist of –</p> <p>(a) the chairperson; and</p> <p>(b) fourteen other persons possessing knowledge, skills and experience in-</p> <ul style="list-style-type: none"> (i) law; (ii) valuation and rating; (iii) physically planning; (iv) land surveying; (v) information; (vi) technology; (vii) economics; (viii) finance; or (ix) public administration <p>56. (1) The Cabinet Secretary may make regulations generally for the better carrying into effect the provisions and purposes of the Act.</p> <p>(2) Without prejudice to the generality of subsection (1) the Cabinet Secretary may make regulations on-</p> <ul style="list-style-type: none"> a) Preparation of valuation rolls and supplementary valuation rolls b) Property exempted from payment of rates 	<p>tribunal owing to its critical role in matters rating and its role pursuant to Article 67 (2) (a) & (g) of the Constitution.</p>	<p>38 (1) The Tribunal shall consist of three members appointed by the Judicial Service Commission who shall consist of –</p> <ul style="list-style-type: none"> (a) The Chairperson; and (b) Two other persons possessing knowledge, skills and experience in- <ul style="list-style-type: none"> (i) valuation and rating; (ii) physically planning;
			<p>This part should explicitly align with other sections of the bill to minimize ambiguity and contradiction</p> <p>For instance, the roles of the Cabinet Secretary, the County Government and the National Land Commission should be consistent all through.</p>	<p>56. (1) The National Land Commission in consultation with the Cabinet Secretary may make regulations generally for the better carrying into effect the provisions and purposes of the Act.</p> <p>(2) Without prejudice to the generality of subsection (1) the National Land Commission in consultation with the Cabinet Secretary may make regulations on-</p> <ul style="list-style-type: none"> a) preparation of valuation rolls and supplementary valuation rolls; b) property exempted from payment of rates;

		<p>c) Timelines to be considered in implementation of this Act</p> <p>d) Penalties of interest rates</p> <p>e) Annual rental value rate</p> <p>f) Valuation for intercounty ratable properties: and</p> <p>g) Tax rate to ensure its compliance with Article 299(5) of the constitution</p> <p>(3) The National Land Commission shall make Regulations for valuation of public land for purposes of paying contribution in lieu of rates.</p> <p>(4) Each County Government shall enact their respective county legislation and regulations for the better implementation for provision of this Act. Provided that the county legislation and regulation made under this subsection shall be consistent with the Act in Regulations made under subsections (2) and (3).</p> <p>(5) Without prejudice to the generality of subsection (4), a County Government shall make regulations on</p> <p>a) the use of appropriate technology in the implementation of this Act;</p>		<p>c) timelines to be considered in implementation of this Act;</p> <p>d) penalties of interest rates;</p> <p>e) annual rental value rate;</p> <p>f) valuation for intercounty ratable properties;</p> <p>g) tax rate to ensure its compliance with article 299(5) of the Constitution; and</p> <p>h) valuation of public land for purposes of paying contribution in lieu of rates.</p> <p>(3) Each County Government shall enact their respective county legislation and regulations for the better implementation for provision of this Act. Provided that the county legislation and regulation made under this subsection shall be consistent with the Act in Regulations made under subsections (1) and (2).</p> <p>(4) Without prejudice to the generality of subsection (3), a County Government shall make regulations on-</p> <p>a) the use of appropriate technology in the implementation of this Act;</p> <p>b) circumstances under which discounts, waivers and remissions may apply;</p> <p>c) procedures when considering auction of ratable property;</p> <p>d) procedure on issuance of agency notices;</p> <p>e) county services to be denied upon default;</p>
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		<p>b) circumstances under which discounts, waivers and remissions may apply;</p> <p>c) procedures when considering auction of ratable property;</p> <p>d) procedure on issuance of agency notices;</p> <p>e) county services to be denied upon default;</p> <p>f) procedure on transmission and tabling of the prepared draft valuation roll and draft valuation roll; and</p> <p>g) setting their rate struck.</p>		<p>f) procedure on transmission and tabling of the prepared draft valuation roll and draft valuation roll; and</p> <p>g) setting their rate struck.</p>
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COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE NATIONAL RATING BILL, 2021

TO

THE NATIONAL TREASURY

FROM

THE COUNCIL OF GOVERNORS
LANDS, PLANNING, HOUSING, URBAN DEVELOPMENT, INFRASTRUCTURE AND ENERGY COMMITTEE AND THE FINANCE AND
ECONOMIC AFFAIRS COMMITTEE

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (hereafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that the Constitution sets out the functions of County Governments with regards to Article 209 (3) (a) of the Constitution

In further recognition of the need to align the National Rating Bill, 2021 and its implementation to the Constitution to ensure consultation and cooperation in the sector and for effective implementation in the counties; and

Aware of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council of Governors therefore proposes the following amendments to the National Rating Bill, 2022:

PROPOSED AMENDMENTS TO THE NATIONAL RATING BILL, 2022

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Title	AN ACT of Parliament to provide for the framework for levying of rates by county governments; provide for the valuation of rateable property; provide for the appointment and powers of valuers; provide for the establishment, powers and functions of the National Rating Valuation Tribunal; and for connected purposes.	AN ACT of Parliament to give effect to Article 209 (3) (a) of the Constitution; to provide for levying of property rates by county governments; provide for the valuation of rateable property and for connected purposes.	This is to ensure that we capture the constitutional provision to which the bill seeks to operationalize
	“county executive committee member” means the county executive committee member responsible for matters relating to land in the respective county;	Replace ‘physical and land use’ with Land to read; “County executive committee member” means the county executive committee member responsible for matters relating to property valuation and rating in the respective county	This is to align the bill with the County Government Act 2021
Objects of this Act.	3. (1) The objects of this Act are to— (a) provide for a uniform legislative framework in accordance with Article 209 (3) (a) in which the rating authorities shall undertake valuation for rating and imposition of rates on rateable property;	Amend to read 2. (1) The objects of this Act are to— (a) provide for a standard legislative framework in accordance with Article 209 (3) (a) in which the rating authorities shall undertake valuation for rating and imposition of rates on rateable property;	Clear provision of the role of each level of Government is critical. Section 2 (c) as captured currently purports to introduce a role that is not envisaged in the Constitution of Kenya 2010. The National Government’s role (represented by the

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
	<p>(b) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes;</p> <p>(c) to provide for the role of the Chief Government valuer in respect to collation of all valuation roll prepared and deposited by the rating authority in their respective counties;</p> <p>(d) to ensure rating authority legislations enacted on and valuation for rating laws are in conformity with Article 190(1) and 209(5) of the Constitution and 210 (1) of the Constitution</p>	<p>(b) enhance use of appropriate technology in undertaking valuation for rating and rating related purposes;</p> <p>(c) to provide for the role of each level of Government in respect to matters property valuation and rating;</p> <p>(d) to ensure rating authority legislations enacted on and valuation for rating laws are in conformity with Article 190(1) and 209(5) of the Constitution and 210 (1) of the Constitution</p>	<p>Chief Government Valuer) is restricted to development of norms and standards.</p>
Use of technology.	<p>6. Each County Government shall identify or create an appropriate technological system for preparation and implementation of the roll.</p>	<p>Amend to read 6. Each County Government shall ensure that all valuation rolls prepared are GIS based</p>	<p>County Governments are obligated by the County Government Act to prepare GIS based spatial plans which form the basis for valuation and thus GIS based valuation rolls will enhance efficiency of the rating authorities</p>
Annual rental value rate	<p>12. (1) The valuer when determining the rate in respect of area rating shall consider the annual rental value rate.</p>	<p>Amend to read 12.(1) The valuer when determining the rate in respect of area rating shall consider the annual rental value rate.</p>	<p>Physical and Land Use Plans are the instruments for assignment of uses and as such the valuer must consult those plans to</p>

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
	<p>(2) Subject to subsection (1), the rating authority shall take into account the different categories of properties for purposes of payment of rates which include but not limited to—</p> <ul style="list-style-type: none"> (i) residential properties; (ii) commercial properties; (iii) Mineral Lands that do not fall under industrial Lands (iv) agricultural properties; (v) any other category of properties as may be prescribed by legislation enacted by the respective county <p>(3) The Cabinet Secretary may in consultation with the National Land Commission provide guidelines on royalties paid on forestry land and its products for purposes of rating.</p> <p>(4) The Cabinet Secretary may make rules to guide the implementation of this Section.</p>	<p>(2) Subject to subsection (1), the rating authority shall take into account the different physical and land use plan for existing physical and land use plan for purposes of payment of rates which include but not limited to—</p> <ul style="list-style-type: none"> (i) residential properties; (ii) commercial properties; (iii) Mineral Lands that do not fall under industrial Lands (iv) agricultural properties; (v) any other category of properties as may be prescribed by County Plan, Policy or legislation enacted by the respective county <p>(3) The Cabinet Secretary may in consultation and agreement with County Governments and the National Land Commission provide guidelines on royalties paid on forestry land and its products for purposes of rating.</p> <p>(4) The Cabinet Secretary may in consultation with the County Governments make rules to guide the implementation of this Section.</p>	<p>Identify the various uses in line with the Physical and Land Use Planning Act 2019 and the urban areas and cities act.</p> <p>Further in developing the guidelines on royalties paid on forestry land and its products, there should be consensus between the two levels of Government through the intergovernmental structures established in the Intergovernmental Relations Act of 2012.</p>

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Contribution in lieu of rates	<p>20 (1) Where any land for which rates are due is public land held by National Government entity and is located within the jurisdiction of a county Government, the county government shall for purposes of assessing the contributions in lieu of rates payable to the County Government in respect of the parcel of land, cause the valuer to either prepare a draft valuation roll, assess rate or any other form of rating on the rateable property in the area of the County Government the rental value</p> <p>(2) The National Land Commission in consultation with the cabinet secretary shall make regulations to provide for .</p> <p>(a) all public land that should be included in the valuation rolls;</p> <p>(b) all public land excluded from appearing on the valuation roll for rating purposes;</p> <p>(c) all public land exempted for purposes of appearing on the valuation roll.</p>	<p>20 (1) Where any land for which rates are due is public land held by National Government entity and is located within the jurisdiction of a county Government, the county government shall for purposes of assessing the contributions in lieu of rates payable to the County Government in respect of the parcel of land, cause the valuer to either prepare a draft valuation roll, assess rate or any other form of rating on the rateable property in the area of the County Government the rental value</p> <p>(2) The National Land Commission in consultation and agreement with the County Governments and the cabinet secretary shall make regulations to provide for .</p> <p>(d) all public land that should be included in the valuation rolls;</p> <p>(e) all public land excluded from appearing on the valuation roll for rating purposes;</p> <p>(f) all public land exempted for purposes of appearing on the valuation roll.</p> <p>Section 4 should read:</p>	<p>The already developed regulations will ensure that the valuer has a basis for determining the contribution in lieu of public land and any necessary exemptions and therefore the principal secretary in charge of lands has no role whatsoever.</p> <p>In formulating the above regulations, there should be consensus between the two levels of government through the established intergovernmental structures under the intergovernmental relations act 2012.</p> <p>There is no need to introduce bureaucracy in the lodge of claims by counties since the standards have been set..</p>

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
		<p>(4) For purposes of claiming rates under this section, the County Governments shall in three months before the rates fall due lodge a claim to the National Treasury as the Contribution in lieu of Rates</p> <p>Delete section 6</p>	
Chief Valuer.	Section 25 : Functions of the chief Government Valuer	<p>Restrict the functions to National Policy development, norms and standards on property valuation and capacity building of counties, advise to the national government on matters property valuation and rating</p> <p>Dispute resolution institution at the County Level</p> <ul style="list-style-type: none"> • Create a dispute resolution institution at the County Level 	This is in line with schedule 4 of the constitution
Objections. Section 33	Provides for the role of Chief Officers	Replace the Chief Offer with the County Executive Committee Member	The Authority to prepare the roll is vested with the County Executive Committee Member as per our proposal and therefore any objections should be filled with the Authority