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11/3/2020

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF THE LAND (AMENDMENT) BILL,
2019 (NATIONAL ASSEMBLY BILL NO.54)

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2020



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CHAIRPERSON'S FOREWORD

The Land (Amendment) Bill, 2019 (National Assembly Bill No. 54) is a Bill which seeks to amend the Land Act No. 6 of 2012 in order to provide that where public land has been allocated to a public body or public institution by the National Land Commission for a public purpose or where land set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be. As it is presently, public land and land set aside for a public purpose by land buying companies continue to be grabbed by private persons primarily because there exist no certificates of title issued in respect to such land.

The Bill therefore seeks to provide for registration of public land. Pursuant to Standing Order 127 of the National Assembly Standing Orders, the Committee received submissions from the National Land Commission, Office of the Attorney-General and Consulting Surveying and Mapping Services which are contained in this Report.

The Bill underwent first Reading on 24th July 2019 and was subsequently committed to the Departmental Committee on Lands for consideration pursuant to the provisions of Standing Order 127.

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on 12th February 2020 inviting the public to submit memoranda on the Bill.

By close of business on 18th February 2020, the Committee had received submissions from the Office of the Attorney-General (AG), National Land Commission and Consulting Surveying and Mapping Services 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 Honourable Members of the Committee. This report represents an analysis of the Bill pursuant to Standing Order 127.

Hon. Dr. Rachael Kaki Nyamai, CBS, MP
Chairperson, Departmental Committee on Lands

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
 - (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (v) 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 or a Minister.
 - (vi) study and review all legislation referred to it

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects:
 - a) Lands
 - b) Settlement

1.3 Oversight

3. The Committee oversees the Ministry of Lands and Physical Planning; and the National Land Commission

1.4 Committee Membership

4. The Committee membership comprises: -

Chairperson

Hon. Dr. Rachael Nyamai, CBS, MP

Member for Kitui South Constituency

Jubilee Party

Vice Chairperson

Hon. Khatib Mwashetani, MP

Member for Lunga Lunga Constituency

Jubilee Party

Hon. Jayne Wanjiru Kihara, MP

Member for Naivasha Constituency

Jubilee Party

Hon Joshua Kutuny Serem, MP

Member for Cherangany Constituency

Jubilee Party

Hon. Kimani Ngunjiri, MP

Member for Bahati Constituency

Jubilee Party

Hon. Mishi Mboko, MP

Member for Likoni Constituency

Orange Democratic Movement (ODM)

Hon. Omar Mwinyi, MP

Member for Changamwe Constituency

Orange Democratic Movement (ODM)

Hon. Ali Mbogo, MP

Member for Kisauni Constituency

Wiper Democratic Movement (WDM)

Hon. Babu Owino, MP

Member for Embakasi East Constituency

Orange Democratic Movement (ODM)

Hon. Caleb Kipkemei Kositany, MP

Member for Soy Constituency

Jubilee Party

Hon. Catherine Waruguru, MP

Member for Laikipia County

Jubilee Party

Hon George Aladwa, MP

Member for Makadara Constituency

Orange Democratic Movement (ODM)

Hon George Risa Sunkuyia, MP

Member for Kajiado West Constituency

Jubilee Party

Hon. Jane Wanjuki Njiru, MP

Member for Embu County

Jubilee Party

Hon. Josphat Gichunge Kabeabea, MP

Member for Tigania East Constituency

Party of National Unity (PNU)

Hon. Owen Yaa Baya, MP

Member for Kilifi North Constituency

Orange Democratic Movement (ODM)

Hon. Samuel Kinuthia Gachobe, MP

Member for Subukia Constituency

Jubilee Party

Hon. Simon Nganga Kingara, MP

Member for Ruiru Constituency

Jubilee Party

Hon. Teddy Mwambire, MP

Member for Ganze Constituency

Orange Democratic Movement (ODM)

1.5 Committee Secretariat

5. The Committee secretariat comprises: -

Lead Clerk
Mr. Leonard Machira
Senior Clerk Assistant

Mr. Ahmad Guliye
Clerk Assistant III

Mr. Joseph Tiyan
Research Officer III

Ms. Peris Kaburi
Serjeant-At-Arms

Mr. Adan Abdi
Fiscal Analyst III

Ms. Winnie Kizia
Media Relations Officer III

Mr. Dennis Mawira
Audio Officer

Ms. Jemimah Waigwa
Legal Counsel I

2.0 INTRODUCTION

6. The Land (Amendment) Bill, 2019 (National Assembly Bill No. 54) is a Bill which seeks to amend the Land Act No. 6 of 2012 in order to provide that where public land has been allocated to a public body or public institution by the National Land Commission for a public purpose or where land set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be. As it is presently, public land and land set aside for a public purpose by land buying companies continue to be grabbed by private persons primarily because there exist no certificates of title issued in respect to such land. The Bill therefore seeks to provide for registration of public land.
7. The Bill underwent first Reading on 4th December 2019 and was subsequently committed to the Departmental Committee on Lands for consideration pursuant to the provisions of Standing Order 127

2.1 Analysis of the Bill

8. The Bill has a total of three clauses.

Clause 1 is the short title.

Clause 2 seeks to introduce the definition of the term Registrar as used in the Land Registration Act, 2012.

Clause 3 seeks to insert new subsections into section 12 of the Land Act, 2012 to provide that-

- (1) The Registrar shall register public land allocated to a public body or institution by the Commission.
- (2) Pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon proposed development.
- (3) Upon registration of land, the Registrar shall issue a certificate of title in the name of a public body, institution or relevant ministry as the Registrar may determine.
- (4) For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not approve the sub-division of the land until the certificates of titles for public utilities have been issued.

3.0 SUBMISSIONS FROM THE PUBLIC

9. The Committee placed an advert on 12th February 2020 inviting the public to submit their views on the Bill. By close of the period for submission of memorandum, the Committee had received memorandum from the Office of the Attorney-General (AG), National Land Commission (NLC) and Consulting Surveying and Mapping Services which made the following submissions to the Committee-

Clause 2

10. The Lands Act, 2012 hereinafter referred to as the “principal Act” is amended in section 2 by inserting the following new definition in its proper alphabetical sequence—

“Registrar” has the meaning assigned to it under section 2 of the Land Registration Act.

Submissions from the Attorney General

11. The term Registrar has been mentioned several times in the Land Act. The AG has no objection to the proposal.

Submissions from the National Land Commission

12. NLC agrees with the proposed amendment because it makes an express provision of what is implied in section 2 of the Land Registration Act.

Committee’s Observation

13. The clause is in order as it seeks to define the term Registrar as used in the Bill and hence is in order.

Clause 3

14. Proposed new sub-section (13) provides that the Registrar shall register public land allocated to a public body or institution by the Commission.

Submissions from the Attorney General

15. The requirement will streamline registration of public land to increase security. However, onus should be placed on the public body to ensure that allocation is completed by registration. The following amendment should be included-

13. A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission.

Committee’s Observation

Whereas the amendment by the AG states who has the onus in making application it would still be important to mandate the Registrar to register land. The clause should therefore be amended and substituted therefor the following-

- (13). A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission.

(13A) The Registrar shall register public land allocated to a public body or institution by the Commission.

Clause 3

16. Proposed new sub-section (14) provides that pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon proposed development.

Submissions from the Attorney General

17. Section 31 was repealed by the Physical and Land Use Planning Act, 2019 and the relevant section is therefore section 58 and paragraph 7 of the Third Schedule to the Act which deal with surrender of land for public utilities.

Submissions from the National Land Commission

18. NLC supports the amendment save for the Physical Planning Act was repealed by section 91 of Physical and Land Use Planning Act. The clause should be amended to refer to Article 62(2)(a) of the Constitution which provides that public land shall vest in county governments and be held in trust if such land is classified under Article 62(1)(c).
The section be reworded to read-
Pursuant to Article 62(2)(a) of the Constitution, the Registrar shall register land set aside by persons or a land buying company for a public purpose in the name of the respective county government.

Submissions by Consulting Surveying and Mapping Services

19. The amendment is tantamount to declaring a Registrar an allocating entity for public land. It is unconstitutional as it limits the Commission from undertaking its oversight role.

Committee's Observation

The Physical Planning Act, 1996 was repealed by the Physical and Land Use Planning Act, 2019. The Bill had however been processed before the new Act was enacted. There is therefore need to refer to the existing law. The Committee however notes that whereas Articles 62(1)(c) and 62(2) of the Constitution deals with reversal of public land where there is surrender, the appropriate provisions would be section 58 as read with paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019.

The sub-clause should hence be amended to read-

(14) Pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon proposed development.

Clause 3

Proposed new sub-section (15) provides that upon registration of land under sub-sections (13) and (14), the Registrar shall issue a certificate of title in the name of a public body, institution or relevant ministry as the Registrar may determine.

Submissions from the Attorney General

20. The proposed amendment is so far as it relates to issuance of certificate of title is in order. The amendment be redrafted as follows-

(15) Upon registration of land under sub-sections (13) and 14), the Registrar shall issue a certificate of title-

- (a) in the case of an incorporated public entity, the certificate of title will be issued in the name of the entity;
- (b) in the case of unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee;
- (c) in the case of county government, in the name of the county government.

Submissions from the National Land Commission

21. The amendment is order save for the need to align it with Article 62(2)(a), (b) and Article 62(3) of the Constitution so as to reinforce the position of section 31 of the Land Allocation of Public Land Regulations 2017 which are anchored in section 12(11) of the Land Act and hence proposes the following amendment-

(15) Upon registration of land under sub-sections (13) and 14), the Registrar shall issue a certificate of title in the name of the respective county government or Cabinet Secretary to the Treasury as may be determined by the Commission.

Submissions by Consulting Surveying and Mapping Services

22. The amendment is tantamount to declaring a Registrar an allocating entity for public land. It is against the provisions of Article 67(2) of the Constitution and Land Act that allows the Commission to determine forms of ownership and access to land under all tenure systems. The amendment is also contrary to the Cabinet Secretary to the National Treasury Act, Cap. 101 and the Executive Order No. 1 of 2016 by proposing that the Registrar shall issue title in the name of institution yet the Executive Order clearly appoints the Cabinet Secretary to the National Treasury as the custodian of national government assets and properties.

Committee's Observation

The Committee notes that presently titles to public land are registered in the name of the Cabinet Secretary for Treasury. It would however be important to also recognize that there is a category of public land that is managed by the county governments in terms of Article 62(2) and hence there is need to amend the sub-clause to reflect this. The Committee also noted that the amendment does not take away the powers of NLC but ensures that there is registration of public land to guard against grabbing and hence not unconstitutional. Consequently, the Committee recommends the following amendment-

(15) Upon registration of land under sub-sections (13) and 14), the Registrar shall issue a certificate of title-

- (a) in the case of an incorporated public entity, the certificate of title will be issued in the name of the entity;
- (b) in the case of unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee;
- (c) in the case of county government, in the name of the county government.

Clause 3

Proposed new sub-section (16) provides that for avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not approve the sub-division of the land until the certificates of titles referred to under sub-section (15) have been issued.

Submissions from the Attorney General

23. The AG opposes the amendment as the Registrar cannot register a subdivision before approval of the subdivision by the Director of Surveys.

Submissions from the National Land Commission

24. NLC supports the amendment as it seeks to ensure that land surrendered to the public receives priority in registration. However, the wording of the clause gives power to the Registrar to approve sub divisions plans which is contrary to the Constitution and the Physical and Land Use Planning Act which empowers county governments to approve subdivision plans. To ensure that the obligation of the Registrar to give priority to surrendered public land is retained, the Commission proposes the following amendment-

(16) For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, **the Registrar shall not issue titles to shareholders or land buying companies or allottees until titles referred to under sub-section (15) have been issued.**

Submissions by Consulting Surveying and Mapping Services

25. Land Registrars do not approve subdivisions they only received approved subdivisions.

Committee's Observation

The Committee agrees that the Registrar does not have power to approve sub-divisions and can only register approved sub-divisions. In this regard, the Committee proposes to amend the sub-clause as follows-

(16) For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not issue titles to shareholders or land buying companies or allottees until titles referred to under sub-section (15) have been issued.

Further amendments: New Clause

26. The NLC proposes the insertion of the following new clause-

12B Review of grants and dispositions

- (1) Subject to Article 68(c)(v) of the Constitution and on commencement of this Act, the Commission shall on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.
- (2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the

better carrying out of its functions under subsection (1).

- (3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.
- (4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.
- (5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
- (6) Where the Commission *gazettes* the title for revocation, the Registrar shall revoke the title.
- (7) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.
- (8) No revocation of title shall be effected against a *bona fide* purchaser for value without notice of a defect in the title.
- (9) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.

Justification of the new clause: To ensure that those who grabbed or are inclined to grab public land do not get away with it by making it possible to legally recover such grabbed land.

Committee's Observation

The proposal offends the provisions of Standing Order 133(5) as it expands the subject of the Bill.

General Comments

27. **The Consulting Surveying and Mapping Services** also submits that the memorandum of the Bill provides that the Bill does not concern counties yet it does as it is dealing with land located in counties.

Committee's Observation

The memorandum of objects and reasons does not form part of the Bill that is subject to consideration.

4.0 GENERAL OBSERVATIONS

28. Having considered the Bill, the Committee observed as follows -

- I. There is need to provide for registration and issuance of titles on public land in order to deal with the issues of land grabbing.
- II. The registration of public land will also safeguard public utilities currently developed on public land for use by the public.
- III. The registration of public land is also key in unlocking funding of public projects which are occupying public land as proof of ownership of land serves as security for obtaining funds from both public and private actors.
- IV. The role of the Registrar is limited to registration of title documents and does not prepare certificates of leases emanating from allocation of public land.
- V. Further, it is the role of the National Land Commission to prepare and execute leases emanating from allocation of public land.
- VI. The Registrar only registers certificates of leases as title documents for allocation of public land and does not approve sub-divisions of land.

5.0 COMMITTEE RECOMMENDATION

29. Having analyzed the Bill, the Committee recommends that the Bill does proceed to Second Reading pursuant to Standing Order 127 subject to the following amendments—

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

Amendment of section 12 of No. 6 of 2012. 3. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (12)—

(13) A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission in the prescribed form.

(14) The Registrar shall register public land allocated to a public body or institution by the Commission.

(15) Pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon a proposed development.

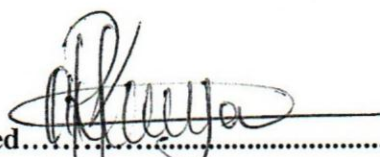
(16) Upon registration of land under sub-sections (14) and (15), the Registrar shall issue a certificate of title—

- (a) in the case of an incorporated public entity, the certificate of title shall be issued in the name of the entity;
- (b) in the case of an unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee; and
- (c) in the case of a county government, in the name of the county government.

(17) For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not issue titles to shareholders of land buying companies or allottees until titles referred to under sub-section (16) have been issued.

Justification.

- (a) The onus of applying for registration of public land should be placed on a public body.
- (b) The amendment is also necessary to realign the Bill with the new Act, Physical and Land Use Planning Act, 2019.
- (c) The amendment is necessary to align the amendment with Article 62(2) and the Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101.
- (d) The role of the Registrar is limited to registration of title documents and does not have power to approve sub-divisions.

Signed..........Date.....10/3/2020.....

The Hon. Dr. Rachael Nyamai, CBS, MP
Chairperson Departmental Committee on Lands

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 10TH MARCH, 2020 IN THE COMMITTEE ROOM 8TH FLOOR, UKULIMA HOUSE, PARLIAMENT BUILDINGS AT 11.30 A.M.

PRESENT

1. Hon. Dr. Rachael Nyamai, CBS, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Mishi Mboko, M.P
4. Hon. Ali Mbogo, M.P
5. Hon. Babu Owino, M.P
6. Hon. Caleb Kositany, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Josphat Gichunge Kabeabea, M.P
11. Hon. Simon Nganga Kingara, M.P
12. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Kimani Ngunjiri, M.P
4. Hon. Omar Mwinyi Shimbwa, M.P
5. Hon. George Aladwa, M.P
6. Hon. Owen Yaa Baya, M.P
7. Hon. Samuel Kinuthia Gachobe, M.P

THE NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye - Clerk Assistant III
2. Ms. Jemimah Waigwa - Legal Counsel
3. Ms. Maureen Kweyu - Audio Officer
4. Ms. Peris Kaburi - Serjeant-At-Arms

MIN. NO. NA/DCS/LANDS/2020/050: PRELIMINARIES

- i. The meeting was called to order at fifteen minutes to twelve o'clock and prayers were said.
- ii. The agenda of the meeting was adopted as outlined in the notice of meeting after it was proposed and seconded by Hon. Jayne Kihara, MP and Hon. George Sunkuyia, MP.

MIN. NO. NA/DCS/LANDS/2020/051: ADOPTION OF THE REPORT ON THE LAND (AMENDMENT) BILL, 2019

- i. The Committee considered the draft report on the Land (Amendment) Bill, 2019 and adopted having been proposed and seconded by Hon. Ali Mbogo, MP and Hon. Teddy Mwambire, MP respectively.
- ii. The Committee recommended that the Bill does proceed to Second Reading pursuant to Standing Order 127 subject to the following amendments:-

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

Amendment of section 12 of No. 6 of 2012. 3. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (12)—

(13) A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission in the prescribed form.

(14) The Registrar shall register public land allocated to a public body or institution by the Commission.

(15) Pursuant to section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon a proposed development.

(16) Upon registration of land under sub-sections (14) and (15), the Registrar shall issue a certificate of title—

(a) in the case of an incorporated public entity, the certificate of title shall be issued in the name of the entity;

(b) in the case of an unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee; and

(c) in the case of a county government, in the name of the county government.

(17) For avoidance of doubt, where land set aside is part of land

to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not issue titles to shareholders of land buying companies or allottees until titles referred to under sub-section (16) have been issued.

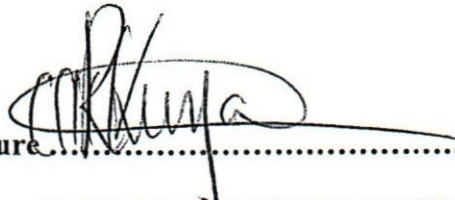
Justification

- (a) The onus of applying for registration of public land should be placed on a public body.
- (b) The amendment is also necessary to realign the Bill with the new Act, Physical and Land Use Planning Act, 2019.
- (c) The amendment is necessary to align the amendment with Article 62(2) and the Cabinet Secretary to the National Treasury (Incorporation) Act, Cap. 101.
- (d) The role of the Registrar is limited to registration of title documents and does not have power to approve sub-divisions.

MIN. NO. NA/DCS/LANDS/2020/052: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at thirty minutes past twelve o'clock.

Signature.....



HON. DR. RACHAEL KAKI NYAMAI, CBS, M.P.

(Chairperson)

Date.....

10/03/2020



MOI'S FINAL JOURNEY

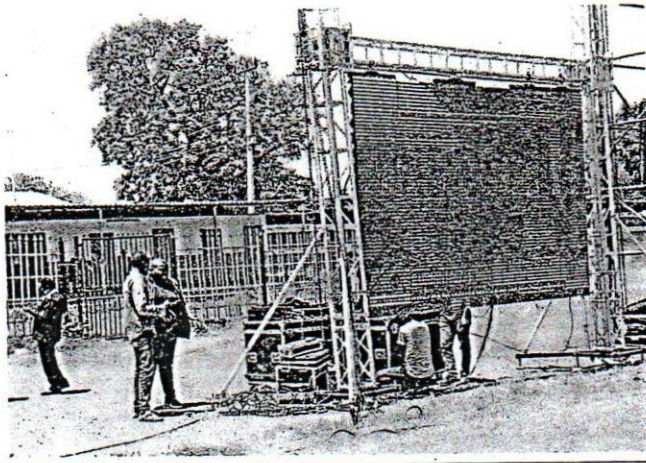


PHOTO STORY

A giant screen at Afraha Stadium, where people followed former President Daniel Moi's funeral service at Nyayo Stadium

By LOISE MACHARIA

HE LOVED MEAT

Plenty of meat for Moi's mourners as 300 chefs butcher hundreds of cattle

LOISE MACHARIA/ In life, former President Daniel Moi loved meat and for his send-off, the public will have tons of it to celebrate his life.

The government, in collaboration with family and friends, has slaughtered hundreds of cattle to feed members of the public who will attend the funeral service at his home in Kabarak in Nakuru.

Close to 300 chefs and cooks were busy chopping the carcasses at the Kabarak University main cafeteria which will be catering for the public.

Family members, dignitaries, friends and invited guests will have their lunch at Moi's home within the university compound.

"We have been told that the attendants should eat to their fill and we endeavour to ensure that the family wish is fulfilled," a chef who sought anonymity said.

Meanwhile, preparations for the final rite for the retired president of Kenya were in top gear at Kabarak University and Afraha Stadium where the proceedings will be projected.

Rift Valley Regional Commissioner

George Nitembeya said at least 30,000 mourners are expected to attend the service.

He, however, warned those interested in attending against putting on clothes with political messages.

"The only clothing with messages that will be allowed at the venue are those with Kanu prints because Mzee was the party chairman," Nitembeya said.

Rehearsals for the ceremony were ongoing as different formations did their final touches of preparations.



RIGHT: Chefs and cooks prepare meat to be served at former President Moi's burial, at Kabarak University

By LOISE MACHARIA

BUSINESS BOOM

Nakuru hotels fully booked, says official

People go as far as Elementaita, Molo and Rongai

LOISE MACHARIA
@TheStarKenya

Hotellers in Nakuru have recorded booming business ahead with some of them having to turn away clients because they are fully booked.

Nakuru County Tourism and Hotellers Association chairperson Dave Mwangi said hotels in the county and its environs had recorded increased activities since last week when retired President Moi died.

He confirmed that a good number of hotels such as Sarova Woodlands, OleKen, Grand Winston, Olepollos, Merica and Waterbuck were already fully booked. "The climax will be today (Tuesday) and tomorrow when many people will be coming down from Nairobi where the main activities have been centred since Moi's demise last week," he said.

The chairperson added that most of the guests had indicated that they will arrive late today and leave tomorrow morning.

Mwangi said there are many kinds of guests including senior security officers, emergency

response teams and journalists that have been camping in Nakuru for the past week.

"More personnel will arrive this evening to reinforce teams already on the ground and that will translate to more bookings," he said.

It was noted that people have gone as far as Elementaita, Molo and Rongai in search of accommodation.

Meanwhile, hundreds of residents in Nakuru were glued to their screens as they followed the proceedings of Moi's National Prayer Service at Nyayo Stadium in Nairobi.

Hotels in the town and within the estates were packed as everyone wanted to catch a glimpse of events at Nyayo Stadium.

"It was fun following the proceeding from a public place instead of home because it felt like I was at Nyayo Stadium with the rest of Kenyan," resident Peter Kipyegon said.

A handful of residents followed the prayers from Afraha Stadium through a giant screen that had already been erected.

Afraha is one of the four locations where the public will follow the funeral service.

Others are in former President Moi's rural homeland in Sacho and Kabarnet.

PREPARATIONS

Tight KDF, police watch around Kabarak as burial plans wind up

MATHEWS NDANYI/ Hundreds of military officers and police have been deployed around Kabarak and along all roads in the region ahead of retired President Daniel Moi's burial today.

Preparations for the burial were finalised at his Kabarak home as hundreds of residents from Rift Valley prepared to travel to the burial.

The government and counties in the region have provided buses to ferry representatives to the burial.

Governors described Moi as a great son of the region and the country, saying he is deserving of an equally great send-off. "We are prepared along with our people to give Moi a good send-off because he was our president,

a great statesman, a pan-Africanist and an elder. His record will remain unmatched for many years to come," Nandi's Stephen Sang said.

Yesterday, most residents watched on TV the funeral service at Nyayo Stadium. However, residents of Baringo complained that they had not been accorded a chance to view Moi's body before the burial.

"We had hoped that the body would be bought to Kabarnet so that we see him for the last time but we understand it's a state funeral and things did not work for us. We are proud that he served us for long as MP of Baringo Central and we pray for his soul," resident Benjamin Kiplagat said.

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FOURTH SESSION**

In the matters of consideration by the National Assembly:-

1. The Land (Amendment) Bill, 2019 (National Assembly Bill No. 54)
2. The Breastfeeding Mothers Bill, 2019 (National Assembly Bill No. 74)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Land (Amendment) Bill, 2019 (National Assembly Bill No. 54), seeks provide for registration of public land by amending the Land Act No. 6 of 2012 in order to provide that where public land has been allocated to a public body or public institution by the National Land Commission for a public purpose or where land is set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012, shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be.

The Breastfeeding Mothers Bill, 2019 (National Assembly Bill No. 74), seeks to provide for a legal framework for mothers who may wish to breastfeed their children at workplace, provides for the right of a mother to breastfeed freely or express milk for her infant and requires the employers to provide breastfeeding employees with lactation rooms to either breastfeed or express their milk for their children.

The Land (Amendment) Bill, 2019 (National Assembly Bill No. 54) and the **Breastfeeding Mothers Bill, 2019 (National Assembly Bill No. 74)** have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Health and Departmental Committee on Lands respectively, for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the respective Committees invites interested members of the Public to submit any representations they may have on the said Bills. The Bills can be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills. The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Tuesday, 18th February, 2020 at 5.00 pm.

**MICHAEL R. SIALAL, EBS
CLERK OF THE NATIONAL ASSEMBLY**

PECIAL ISSUE

Kenya Gazette Supplement No. 109 (National Assembly Bills No. 54)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

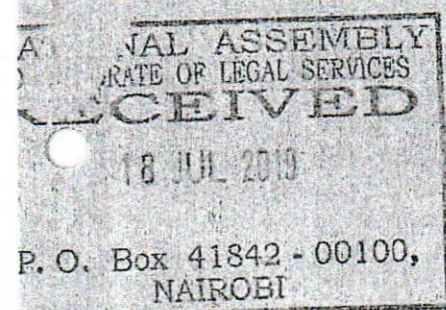
NAIROBI, 4th July, 2019

CONTENT

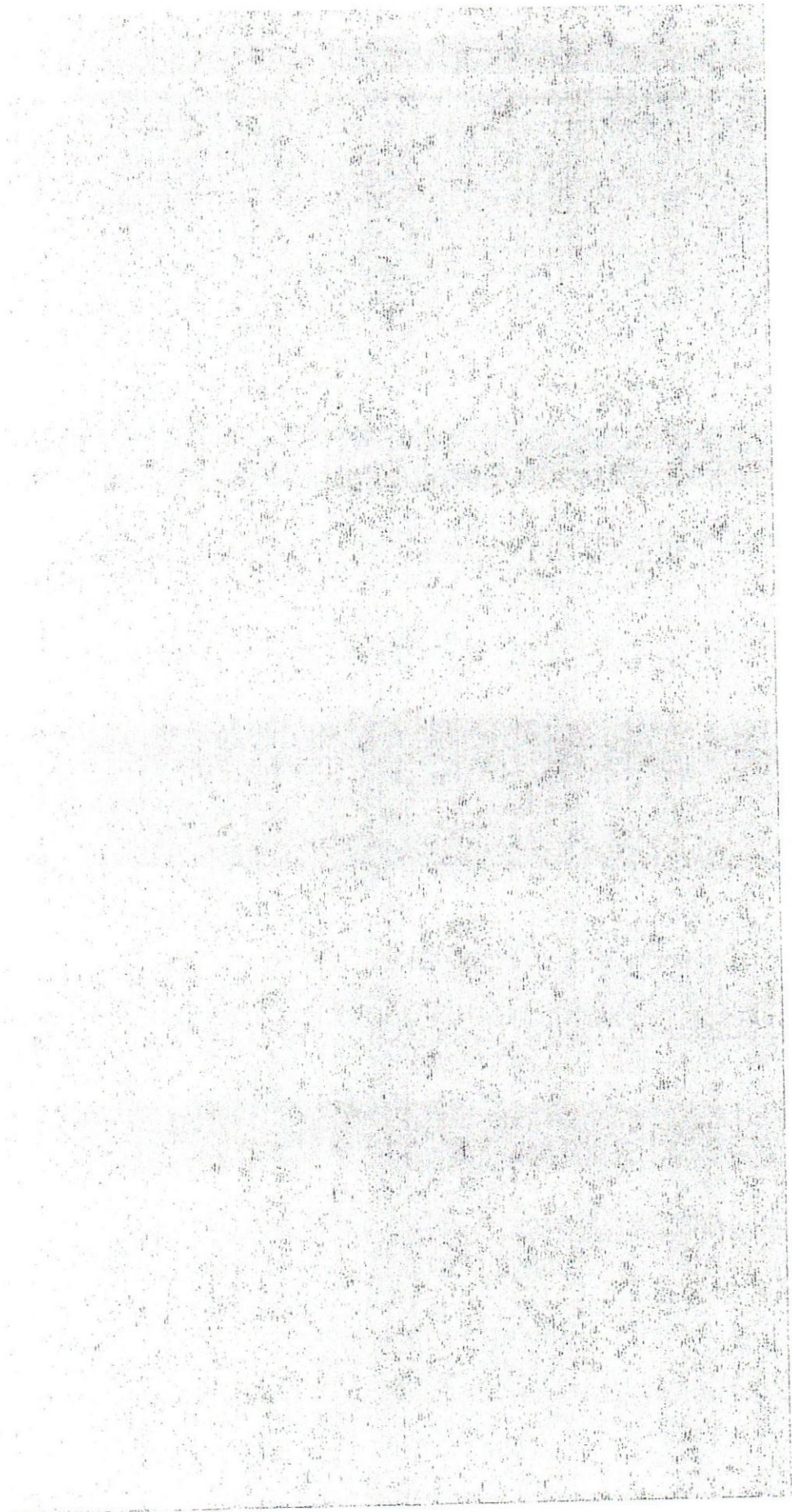
for Introduction into the National Assembly—

PAGE

The Land (Amendment) Bill, 2019..... 873



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THE LAND (AMENDMENT) BILL, 2019**A Bill for****AN ACT of Parliament to amend the Land Act.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Land (Amendment) Act, 2019. Short title.
2. The Lands Act, 2012 hereinafter referred to as the "principal Act" is amended in section 2 by inserting the following new definition in its proper alphabetical sequence—
 - "Registrar" has the meaning assigned to it under section 2 of the Land Registration Act. Amendment of section 2 of No. 6 of 2012.
 - No. 3 of 2012.
3. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (12) —
 - (13) The Registrar shall register public land allocated to a public body or institution by the Commission. Amendment of section 12 of No. 6 of 2012.
 - (14) Pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon proposed development. No. 6 of 1996.
 - (15) Upon registration of land under sub-sections (13) and (14), the Registrar shall issue a certificate of title in the name of a public body, institution or relevant ministry as the Registrar may determine.
 - (16) For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not approve the sub-division of the land until the certificates of titles referred to under sub-section (15) have been issued.

MEMORANDUM OF OBJECTS AND REASONS**Statement of Objects and Reasons**

The principal object of the Bill is to amend the Land Act No. 6 of 2012 in order to provide that where public land has been allocated to a public body or public institution by the National Land Commission for a public purpose or where land set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be. As it is presently, public land and land set aside for a public purpose by land buying companies continue to be grabbed by private persons primarily because there exist no certificates of title issued in respect to such land. This Bill therefore seeks to provide for registration of public land.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments

The Bill seeks to amend the Land Act so as to provide for registration of public land and land set aside for a public purpose. In view of this, the Bill does not concern County Governments in terms of Article 110(1)(a) of the Constitution as it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 27th June, 2019.

SIMON KING'ARA,
Member of Parliament.

Section 12 of No. 6 of 2012 which the Bill proposes to amend-

Allocation of public land

12. (1) Whenever the national or county government is satisfied that it may be necessary to allocate the whole or part of a specific public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission for the necessary action by way of—

- (a) public auction to the highest bidder at prevailing market value subject to and not less than the reserved price;
- (b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;
- (c) public notice of tenders as it may prescribe;
- (d) public drawing of lots as may be prescribed;
- (e) public request for proposals as may be prescribed; or
- (f) public exchanges of equal value as may be prescribed.

(2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—

- (a) public land that is subject to erosion, floods, earth slips or water logging;
- (b) public land that falls within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;
- (c) public land that is along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas riparian and the territorial sea as may be prescribed;
- (d) public land that has been reserved for security, education, research and other strategic public uses as may be prescribed; and
- (e) natural, cultural, and historical features of exceptional national value falling within public lands;
- (f) reserved land; or
- (g) any other land categorized as such, by the Commission, by an order published in the *Gazette*.

(3) Subject to Article 65 of the Constitution, the Commission shall upon the request of the national or a county government set aside land for investment purposes.

(4) In fulfilling the requirements of subsection (3), the Commission shall ensure that the investments in the land benefit local communities and their economies.

(5) Subject to the Constitution and any other law, the Commission may, in consultation with the National and county governments, allocate land to foreign governments on a reciprocal basis in accordance with the Vienna Convention on Diplomatic Relations.

(6) At the expiry, termination or extinction of a lease granted to a non-citizen, reversion of interests or rights in and over the land shall vest in the national or county government as the case may be.

(7) Public land shall not be allocated unless it has been planned, surveyed and serviced and guidelines for its development prepared in accordance with section (17) of this Act.

(8) Public land allocated under this section shall not be sold, disposed off, subleased, or subdivided unless it is developed for the purpose for which it was allocated.

(9) Where the land allocated under subsection (8) is not developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be and the Commission shall include in its annual report the status of implementation of this subsection.

(10) In an allocation of public land under this section, the Commission may impose any terms, covenants, stipulations and reservations that the Commission considers advisable, including—

- (a) that the applicant shall personally occupy and reside on the land for a period set by the Commission;
- (b) the applicant shall do such work and spend such money for permanent improvement of the public land within the period specified by the Commission; or
- (c) the consideration that must be paid for a disposition of public land.

(11) The Commission shall make regulations prescribing the criteria for allocation and for connected matters.

(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe—

- (a) forms of ownership and access to land under all tenure systems;
- (b) the procedure and manner of setting aside land for investments;
- (c) procedures to be followed with respect to auction and disposition of land;
- (d) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and
- (e) mechanisms of benefit sharing with local communities whose land have been set aside for investment.

② MACHUKI
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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

RECEIVED
07 FEB 2020
DIRECTOR COMMUNICATIONS
Time:.....

3rd February, 2020

AG/LDD/188/1/68

The Clerk of the National Assembly,
Parliament Buildings,
P. O. Box 41842-00100
NAIROBI.

① Daniels/DLS
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05/2/20

RE: THE LAND (AMENDMENT) BILL, 2019

We refer to your letter ref. no. KNA/DC/lands/2019/(023) and dated the 3rd April, 2019, vide which you forwarded the Legislative Proposal for proposed Land (Amendment), 2019, for our comments.

We have consulted the Ministry of Lands and Physical Planning on the proposed amendments and forward the comments indicated in the attached matrix for your consideration and further action.

Catherine Ochanda

CATHERINE OCHANDA,
Deputy Chief Parliamentary Counsel.

For: Attorney-General.

Copy to: Hon. P. Kihara Kariuki EGH
Attorney General

Mr. Kennedy Ogeto CBS
Solicitor General

M. N. Nzioka (Mrs.)
Chief Parliamentary Counsel



SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.state.law.office@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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REVIEW OF THE LAND (AMENDMENT) BILL, 2019

CLAUSE	PROVISION	RATIONALE	COMMENT	RECOMMENDATION
2	Proposal to amend Section 2 of the Land Act by inserting a new definition "Registrar"	To align the definition of the term "Registrar" under the Land Act with the one contained in the Land Registration Act to provide clarity	The term 'Registrar' has been mentioned several times in the Land Act. We have no objection to the proposal for amendment	Proposed amendment is in order
3	Proposal to amend Section 12 of the Land Act by inserting new sub-sections 13, 14, 15 and 16 in relation to: i) Registration of public land allocated to public bodies or institutions by the National Land Commission ii) Registration of land set aside for a public purpose consequent upon a proposed development application pursuant to Section 31 of the Physical Planning Act (Repealed)	To secure public land allocated to a public body or institution by the National Land Commission	The requirement will streamline registration of public land to increase security. However, onus should be placed on the public body to ensure that allocation is completed by registration	We recommend an amendment to the provision as follows- "A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission"
	12(13) The Registrar shall register public land allocated to a public body or institution by the Commission	To secure public land allocated to a public body or institution by the National Land Commission	The requirement will streamline registration of public land to increase security. However, onus should be placed on the public body to ensure that allocation is completed by registration	We recommend an amendment to the provision as follows- "A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission"
	12(14) Pursuant to section 31 of the Physical Planning Act (Repealed), the Registrar shall register land set aside by persons or a land buying company for a public	To secure land set aside for public use on subdivision	Section 31 of the repealed Physical Planning Act (Cap. 286) provided as follows- "31. Any person requiring a development permission shall make an application in the form	We propose to amend the provision to replace Section 31 of the Repealed Physical Planning Act with the relevant Section 58 of the Physical and Land Use Planning Act, 2019 and

purpose consequent upon proposed development

prescribed in the Fourth Schedule, to the clerk of the local authority responsible for the area in which the land concerned is situated.

31 (2) The application shall be accompanied by such plans and particulars as are necessary to indicate the purposes of the development, and in particular shall show the proposed use and density, and the land which the applicant intends to surrender for-

- (a) purposes of principal and secondary means of access to any sub-divisions within the area included in the application and adjoining land;
- (b) public purposes consequent upon the proposed development"

The Physical and Land Use Planning Act No. 13 of 2019 which repealed the Physical Planning Act provides similar provisions under Section 58, 61 and Paragraph 7 of the Third Schedule.

Paragraph 7 of the Third Schedule to the Act, dealing with surrender of land for public utilities in an application for sub-division.

Section 58 (1) A person shall obtain development permission from the respective county executive committee member by applying for development permission from the executive committee member in the prescribed form and after paying the prescribed fees.

Section 58(3) An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which the land shall be subjected and the portion of the land the applicant shall provide for easements as a consequence to the applicant's proposed development.

Section 61 (2) of the Act empowers the county executive committee member to impose conditions whenever granting consent to a development application

Under Paragraph 7 (h) of the Third Schedule to the Act, the county government shall in considering a sub-division proposal factor in surrender of land for public utilities.

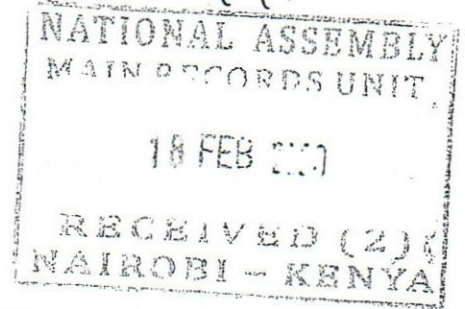
				Both the repealed Physical Planning Act and the Physical Land Use Planning Act, 2019 do not provide direct linkage to registration of land surrendered for public utilities on an application for development permission.	
				There are instances where instruments required to effect such surrender have not been prepared or registered. Registration will work to control the mischief associated with appropriations of public land. We therefore support the amendment.	
12 (15)	Upon registration of land under sub-sections (13) and (14), the Registrar shall issue a certificate of title in the name of a public body, institution or relevant ministry as the registrar may determine.	To secure public land	This aspect is crucial to ensure that registration is completed by issuance of certificate of title to provide documentation to support ownership by public institutions. Pursuant to Regulation 31 of the Land (Allocation of Public Land) Regulations, 2017, in the case of an incorporated public entity, the certificate of title will be issued in the name of the entity.	Proposed amendment in so far as issuance of a certificate of title for public land is in order. We recommend that the amendment be redrafted as follows- “12 (15) Upon registration of land under sub-sections (13) and (14), the Registrar shall issue a certificate of title-	

				<p>In the case of unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee.</p> <p>In the case of county government, in the name of the county government</p>	<p>(a) in the case of an incorporated public entity, the certificate of title will be issued in the name of the entity</p> <p>(b) In the case of unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee</p> <p>(c) In the case of county government, in the name of the county government</p>
	(16)	<p>For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the registrar shall not approve the sub-division of the land until the certificates of titles referred to under sub-section (15) have issued.</p>	<p>To secure land set aside for public purpose on subdivision</p>	<p>Under Section 39 of the Land Registration Act the Registrar can only decline to register a subdivision if necessary consents have not been obtained.</p> <p>Both the repealed Physical Planning Act and the new Physical and Land Use Planning Act provide for the requirement of a development permission granted by the county governments for a subdivision.</p> <p>Upon the grant of development permission, consent for subdivision</p>	<p>We oppose the proposed amendment as the Registrar cannot register a subdivision before approval of the subdivision by the Director of Surveys</p>

				<p>based on the development permission is given by the Director of Land Administration. Survey is then carried out as per the development permission and submitted to the Director of Surveys for quality control and approval.</p> <p>Section 22(2) of the Land Registration Act requires that the subdivision be authenticated before registration. This is to be done by the Director of Surveys or a Government surveyor authorized in writing by the Director in that behalf pursuant to Section 32 of the Survey Act.</p> <p>The Registrar cannot therefore register a subdivision before an approval of subdivision.</p>	
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(2) MACHAKI
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OFFICE OF THE CHAIRMAN

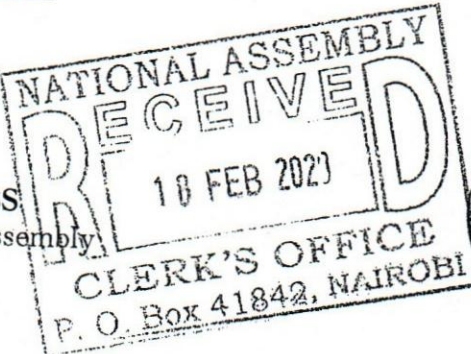
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Telephone: Nairobi 020 (2718050)/020-2187505
Email: info@landcommission.go.ke

ARDHI HOUSE
OFF NGONG ROAD
P.O BOX 44417-00100
NAIROBI.

File Ref: NLC/1/7/13
Your Ref:

Date: 14th February, 2020

Mr. Micheal Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



D/counts/DLS
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CMA
19/2/20

RE: THE LAND (AMENDMENT) BILL 2019 (NATIONAL ASSEMBLY BILL NO. 54)

We make reference to the above subject matter and notice issued in the Daily Newspapers on calls for public participation. We have taken note that the proposed amendment will affect our constitutional and statutory mandates to administer and manage public land on behalf of National and County Governments. Having been sworn in on 15th November 2019, way after the Land Amendment Bill 2019 had gone through two readings in the National Assembly, we welcome the opportunity to submit our views on the same to the Departmental Committee on Land.

As ably articulated in the Memorandum of Objects and Reasons of Land (Amendment) Bill 2019, the Commission is equally concerned with grabbing of public Land. We therefore welcome all efforts to ensure that public land which is under constant threat of grabbing is not only protected but where it has been grabbed, it is legally recovered. It is our considered view that the proposed amendments to Land Act 2012 will with our views taken into account go along in:

- Bolstering generally the efforts by His Excellency The President Hon. Uhuru Kenyatta (e.g. on School Titling Program and the Shule Yangu Campaign), the National Assembly and the Ministry of Lands and Physical Planning to not only protect but also recover grabbed public land.



- Strengthen and expressly reaffirm the roles of various Government Agencies in protection of Public Seal gaping holes exploited by grabbers of Public Land by ensuring that land surrendered by individuals, body corporates and land buying companies receive protection given to titles on registration as provided under Section 25 and 26 of Land Registration Act No.3 of 2012.

COMMENTS, OBSERVATIONS AND PROPOSALS

Our comments, observation and proposals are aimed at ensuring the proposed amendments provide clarity and are aligned to the Constitution, Laws and Government Policies and Directives. Accordingly, after studying the Land (Amendment) Bill 2019 (National Assembly Bill No. 54) in relation to the proposed amendments to Section 12 of the Land Act, 2012 by introducing new subsections, we present our comments and proposals as follows;

1. Proposed amendment to Section 12 of the Land Act, 2012.

Section	Proposed insertion of a new subsection
3 (13)	The Registrar shall register public land allocated to a public body or institution by the Commission.

We agree with the proposed amendment because it makes an express provision of what is implied in Section 2 of the Land Registration Act, No. 3 of 2012 which defines the role of a registrar i.e. "registration," to mean 'bringing of an interest in land or lease under the provisions of the Act and includes making of an entry, note or record in the land register.'

2. Proposed amendment to Section 12 of the Land Act, 2012.

Section	Proposed insertion of a new subsection
3(14)	Pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or land buying company for a public purpose consequent upon proposed development.

We agree with the proposed amendment. However, since the Physical Planning Act was repealed by Section 91 of the Physical Planning and Land Use Act, No.13 of 2019, we propose that the Section be anchored in the Constitution under Article 62 (2)(a) which provides that Public Land shall vest in the County Government and be held in trust for the people resident in that county if such land is classified among others under article 62(1)(c) that is land transferred to the state pursuant to Article 62(2)(a) of the Constitution the registrar shall register land set aside by way of sale, reversion or surrender. Accordingly, we propose the Section be reworded to read "persons or land buying company for a public purpose in the name of the respective county government".

3. Proposed amendment to Section 12 of the Land Act, 2012.

Section	Proposed insertion of a new subsection
3(15)	Upon registration of land under sub-section (13), the Registrar shall issue a certificate of title in the name of a public body, institution, or relevant ministry as the Registrar may determine.

We agree with the proposed amendment and so as to align it to Article 62 (2) (a) and (b) and Article 62(3) of the Constitution, reinforce the position of Section 31 Land (Allocation of Public Land) Regulations 2017 which are anchored in Section 12 (11) of the Land Act, 2012 and Executive Order No. 1 of 2016 and reaffirm the role of the Commission in allocating Public Land, we propose that the Section be amended to read, *“Upon registration of land under sub-section (13), the Registrar shall issue a certificate of title in the name of the respective County Government or Cabinet Secretary to the Treasury (as Trustee) as may be determined by the Commission”*.

4. Proposed amendment to Section 12 of the land Act, 2012.

Section	Proposed insertion of a new subsection
3(16)	For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not approve the sub-division of the land until the certificates of the titles referred to under sub-section (15) have been issued.

We agree with the proposed amendment as it seeks to ensure that land surrendered to the public receives priority in registration. However, the unfortunate consequences of the wording of the clause makes the Registrar a party in the approval of subdivision plans. This is contrary to the Constitution and the Physical Planning and Land Use Act, Act No.3 of 2019, which empowers County Governments to approve subdivision plans. In Practice and as provided in law, the Registrar receives already approved sub-division schemes that include a list of beneficiaries. It is from this list that the Registrar should enter in the register all public purpose land set aside in the name of the respective County Government. To ensure that the obligation of the Registrar to give priority to surrendered Public Land is retained and at the same time not to create conflict with the development control function of the County Governments or introduce another layer for approving already approved subdivision schemes, we propose the section be amended to read *“For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar*



shall not issue titles to shareholders of land buying companies and/or allottees until referred to under sub-section (15) have been issued".

We are encouraged that The Land (Amendment) Bill, 2019 seeks to cure the problem with Public Land set aside for a public purpose by land buying companies continue to be grabbed private persons primarily because there exists no certificate of the title issued in respect to such land. To ensure that those who grabbed or are inclined to grab public land do not get away with it by making it is possible to legally recover such grabbed land as provided in article 68(c)(v) of the Constitution, we propose insertion of a new Clause 12B as follows:

12B. (1) Subject to Article 68 (c)(v) of the Constitution and on commencement of this Act, the Commission shall on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.

(2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).

(3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.

(4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.

(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.

(6) Where the Commission gazettes the title for revocation, the Registrar shall revoke the title.

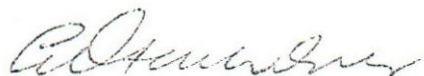
(7) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.

(8) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.

(9) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.

We further reiterate our support for the amendment as it adds much needed clarity and fills a critical missing gap in the protection of public land particularly those parcels surrendered by individuals and/or Land Buying Companies during subdivision. The additional proposed Section 12B will ensure that land that was grabbed or is grabbed is recoverable through a legal and constitutionally sanctioned process. We are readily available to discuss and clarify our contribution further with you at your convenience should you find it necessary.

Yours



GERSHOM OTACHI BW'OMANWA
CHAIRMAN, NATIONAL LAND COMMISSION

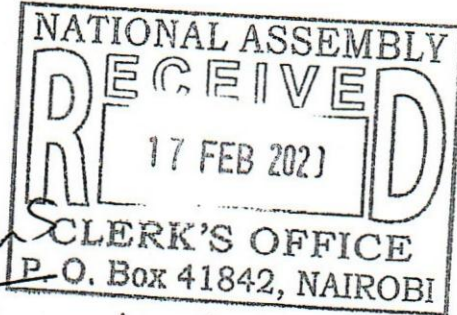


② MAETIRA
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17th February, 2020

Office of the Clerk
Main Parliament Buildings
Parliament Buildings
P.O Box 41842-00100
Nairobi



① Odianwa / Dk
TMA
18/2/20

Dear Sir/Madam,

COMMENTS ON THE LAND (AMENDMENT) BILL, 2019 AMENDING SECTION 12 OF THE LAND ACT, 2012 BY INTRODUCING SUBSECTIONS 13, 14, 15 AND 16

The National Land Commission is a creation of the Constitution of Kenya (2010) to bear the intent of the National Land Policy towards spearheading the land reforms in Kenya. The Commission is a Constitutional Commission established under article 67(1) and 248(2) (b) of the Constitution of Kenya. It's Constitutional mandates are specified in articles 67(2) (a-h) and 62(2) and (3). The provisions of the National Land Policy and the Constitutional functions of the Commission are operationalized through Acts of Parliament and regulations specifically: the National Land Commission Act 2012; the Land Act 2012, the Land Registration Act, 2012, the Land (Amendment) Act of 2016 and the approved land regulations of 2016.

The public has been called upon to submit any representations on the Bill and here below are observations and comments on proposed amendments to section 12 of the Land Act 2012 through "The Land (Amendment) Bill, 2019 (National Assembly Bill No.54).

It is my considered opinion that the proposed amendments which are not curing any existing land problems as identified in the National Land Policy Session Paper No 3 of 2009 on institutional conflicts and confusion that had

18 FEB 2020
DIRECTOR GENERAL



been created by multiple laws on land administration and management before the coming of 2010 Constitution. The proposed amendments by introducing sub-section 13, 14, 15 and 16 to section 12 of the Land Act 2012 are bound to:

1. Empower the Land Registrars as an allocating authority of public land which is a category of land administered and managed by the National Land Commission on behalf of the national and county governments.
2. Create conflict on other provisions of the Land Act 2012 which deal with prudent management of public land.
3. To be unconstitutional in as far as the functions of the National Land Commission are stated in Article 67(2) and 62(2) and (3).
4. To be against the provisions of the land regulations, 2017.
5. To go against the Executive Order No. 1 of 2016.

By introducing a sub-section 14 to Section 12 of the Land Act that reads:

“Pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or a land buying company for public purpose consequent upon proposed development” is tantamount to declaring a Registrar an allocation entity for public land.

Land set aside for public purpose through application of the Physical Planning Act (repealed by the Physical Planning and Land Use Act 2019) during development application for sub-divisions of large land holdings is merely a proposed use. It does not determine who the user shall be but what public use the land should be put into. In the definition of public land under Article 62(2) (c) of the Constitution:

Public land is also “land transferred to the state by way of sale, reversion or surrender” and 62(1)(n)(i) and (ii).

This definition covers land set aside through sub-division planning.

In land sub-divisions, individual land holders, land buying companies, corporates or community holders of land surrender land for public use as advised through planning proposals. This land falls under the

administration and management of the National Land Commission. The Commission administers this land guided by Constitution Article 10 (2) (d) and Principles of the National Land Policy under Article 60. Therefore the introduced sub-section 14 is unconstitutional as it limits the Commission from undertaking its oversight role on the principals of the Land Policy.

Proposed amendments subsection 15 reads:

“Upon registration of land under sub-section (13) and (14), the Registrar shall issue a certificate of title in the name of a public body, institution or relevant ministry as the Registrar may determine.

This is a direct way of declaring the Land Registrar an allocating authority for public land. It goes against the provisions of Article 67 (2) and is in conflict with the provisions of the Land Act Section 12 (12) (a) that allows the Commission to determine forms of ownership and access to land under all tenure systems. The same proposed amendments conflicts the Commissions management roles on public land held by public agencies as found in Land Act section 10(2) and infringes on smooth implementation of Land Act section 8(a) and (d) which allows the Commission to introduce management guidelines, conditions of use and reversionary terms on all public land use.

It is also contrary to Cabinet Secretary to the National Treasury Act CAP 101 and the Executive Order No. 1 of 2016 to propose in the amendments that the Registrar shall issue title in the name of institution or relevant ministry as he/she may determine, yet the **Executive Order** clearly appoints the Cabinet Secretary to the National Treasury as custodian of national government assets and properties. The Land Regulations 2017 are specific on the role of the National Land Commission when it comes to management of public land. It is also the Commission that is entrusted in ensuring that public land is protected.

It is not clear from the proposed sub-section 16; at what point in time the Registrar becomes an approving authority for land sub-divisions. Land Registrars receive approved subdivisions schemes accompanied by a list

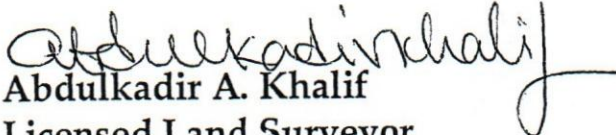
of beneficiaries and their role in protecting public land is limited to entering into the register parcels set aside for public purpose before issuing other titles as per the provided list. It is proposed that the land register should read for example "public land reserved for primary school"

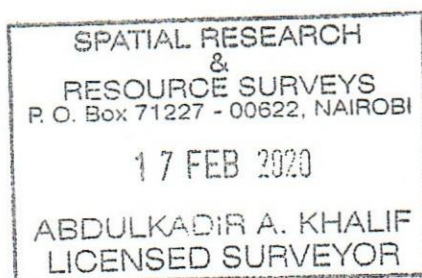
On the memorandum, it is noted that the National Assembly Bill No. 54 of 2019 on amendments of the Land Act Section 12 does not concern the County Governments, which it must. The amendments are dealing with land located in the Counties. The proposed activity is about subdivisions, mainly of land held by land buying companies which amounts to development applications by way of re-planning and re-surveying. Under schedule 4, county governments are **planning and surveying authorities**. They are the same entities that approve the sub-divisions as per the Physical Planning and Land Use Act, 2019. Some of the public uses set aside during sub-divisions are public purpose plots vested in county governments as trustees of the people ordinarily living there such as cattle dips, tertiary institutions, nursery schools etc.

The proposed Land (Amendment) Bill 2019 (National Assembly Bill No. 54) must be withdrawn, since it conflicts with other existing Laws and the constitution of Kenya 2010.

The National Assembly should instead empower the National Land Commission with adequate resources to protect public that is unallocated, that which is already allocated or occupied by public institutions, land reserved during adjudication, land set aside during settlement schemes implementation, and land set aside in sub-divisions of land buying companies and large private land holdings proposed for change of use and subdivision.

Presented by:

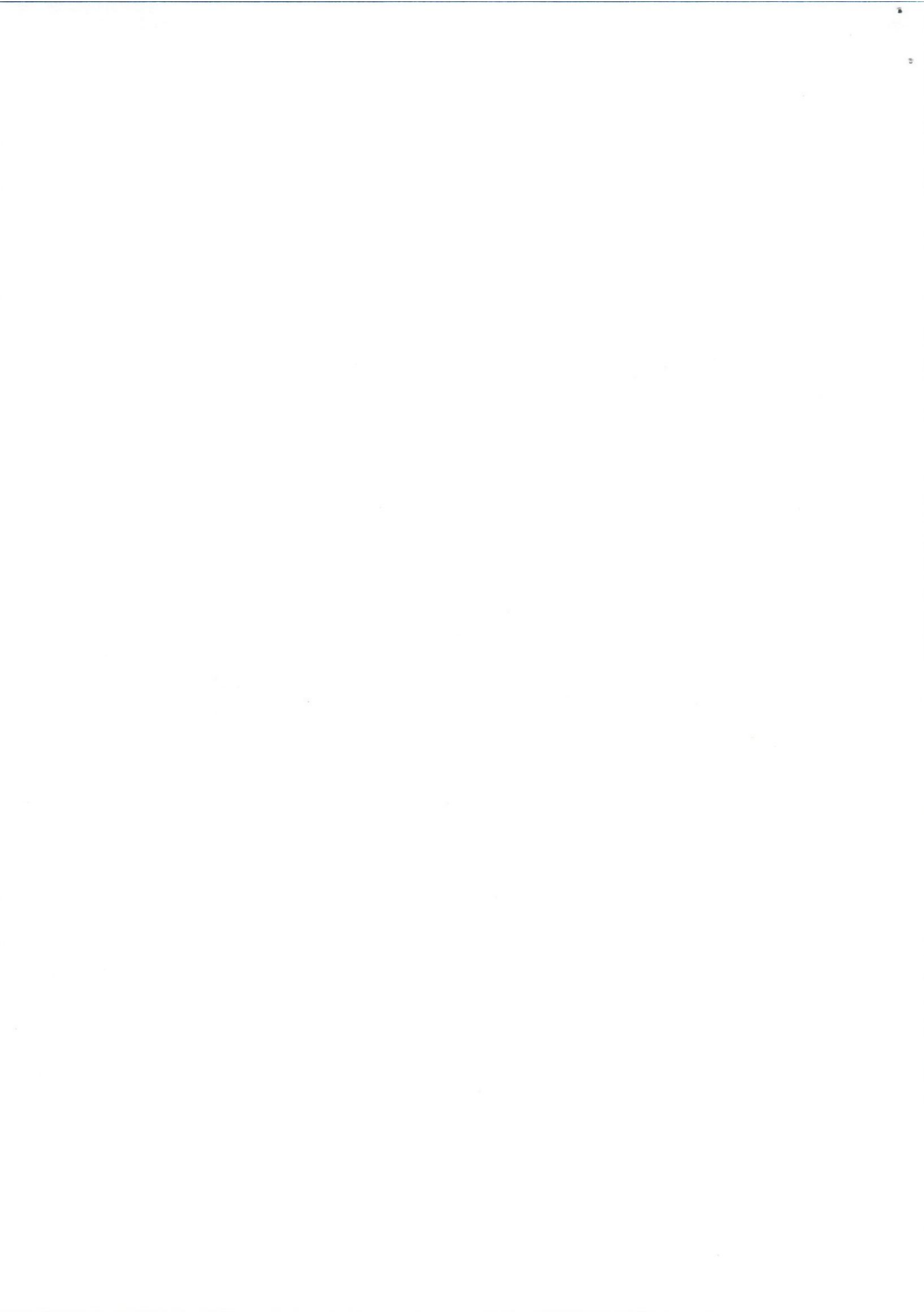

Abdulkadir A. Khalif
Licensed Land Surveyor
Tel: 0714714777



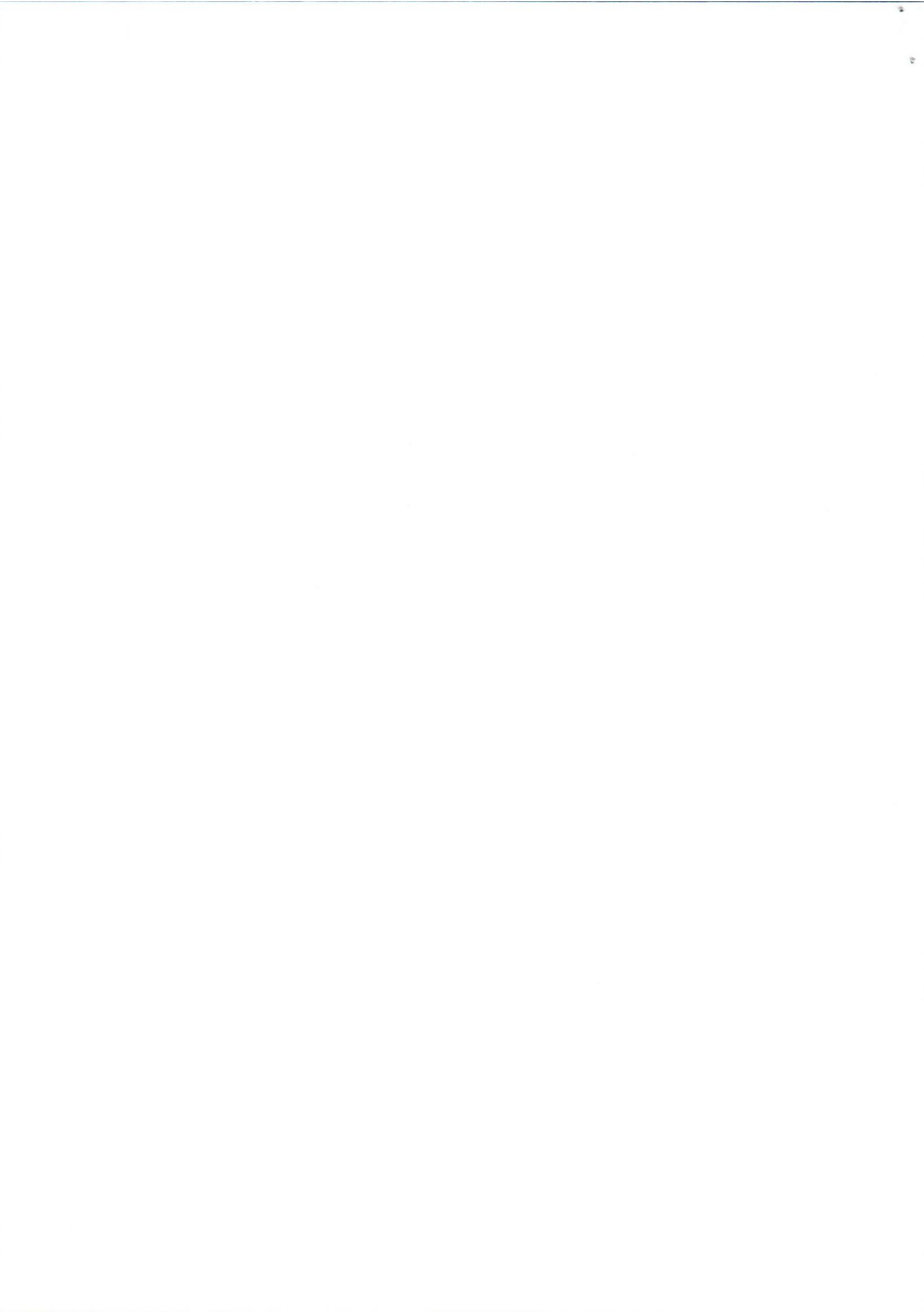


**National Land Commission Proposals in compliance to amendment of Land Act, Section 51 (b2)
LAND AMENDMENT BILL, 2019**

S/no.	Section of Land Act	Provision	National Land Commission Proposal	Justification
1.	Section 12 (Proposed 13)	The Registrar shall register public land allocated to a public body or institution by the commission	<i>"A lease or license emanating from allocation of public land within the meaning of Art. 62 (1) of the COK shall be prepared executed and sealed by the National Land Commission and registered by the Chief Land Registrar" for issuance of certificate of lease.</i>	Execution of a lease is a contract between the lessor and the lessee. In allocation of public land the lessor is the Commission on behalf of the national or county government as the case may be as provided in Article 67(2) (a) and Land Act 2012 section 2.
2.	Section 12 (proposed 14)	Pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or a land buying company for a public purpose	<i>Substitute the words thereof before the word "the registrar " with the words "The Commission shall issue allocation documents for land set aside by persons or land buying companies for public purpose and thereafter The Registrar shall register the leases</i>	For a Registrar to register a lease and issue a certificate of lease, the lease document has to be prepared, executed and sealed by the Commission.



S/no.	Section of Land Act	Provision	National Land Commission Proposal	Justification
		consequent upon proposed development.	<i>which have been signed and sealed by the Commission. "</i>	
3.	Section 12 (Proposed 15)	Upon registration of land under sub-sections (13) and (14), the Registrar shall issue a certificate of lease in the name of a public body, institution or relevant ministry as the Registrar may determine	<i>Immediately after the word Ministry to read " as per the lease document"</i>	The Registrar Registers documents already prepared by other Government Departments such as Land Administration and Land Adjudication or private lawyers and therefore, the Land Registrar cannot prepare and register a document at the same time.



S/no.	Section of Land Act	Provision	National Land Commission Proposal	Justification
4.	Section 12 (Proposed 16)	For avoidance of doubt, where land set aside is part of land to be subdivided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not approve the sub-division of the land until the certificates of titles referred to under sub-section (15) have been issued.	<p><i>Substitute thereof the words after the word Registrar, with the words,</i></p> <p><i>“Shall not register the subdivision until all the survey plans/ registry index maps referred to under section 15 have been submitted by the Land Administration Officer.”</i></p>	<p>The Registrar does not approve subdivision schemes because Development proposals are forwarded by the County Government Planning Department and approved by the Land Administration office or the Land Adjudication Officer as the case may be.</p>

