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ELEVENTH PARLIAMENT-FOURTH SESSION

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MEDIATION COMMITTEE ON THE LAND LAWS (AMENDMENT)  
BILL, 2015 (NATIONAL ASSEMBLY BILL NO. 55 OF 2015)

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REPORT ON THE LAND LAWS (AMENDMENT) BILL, 2015  
(NATIONAL ASSEMBLY BILL NO. 55 OF 2015)

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JOINT CLERKS' CHAMBERS  
PARLIAMENT OF KENYA  
NAIROBI

JULY, 2016

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## 1.0 INTRODUCTION

### 1.1 Establishment of the Committee

The Mediation Committee on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of National Assembly and the Speaker of the Senate pursuant to Standing Order 154 (2) of the Senate on 21<sup>st</sup> June, 2016, and 28<sup>th</sup> June, 2016, respectively.

The members of the Committee were:-

- |                                      |                    |
|--------------------------------------|--------------------|
| 1. Sen. Lenny Kivuti, M.P            | - Chairperson      |
| 2. Hon. Alex Mwiru, M.P              | - Vice-chairperson |
| 3. Sen. George Khaniri, M.P.         | - Member           |
| 4. Hon. Chachu Ganya, M.P            | - Member           |
| 5. Sen. Hargura Godana, M.P.         | - Member           |
| 6. Sen. Naisula Lesuuda, M.P., CBS - | - Member           |
| 7. Sen. (Prof.) John Lonyangapuo M.P | - Member           |
| 8. Hon. Daniel Maanzo, M.P           | - Member           |
| 9. Hon. Moses Ole Sakuda, M.P.       | - Member           |
| 10. Hon. Francis Waweru, M.P         | - Member           |

### 1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was established to develop a version of the Land Laws (Amendment) Bill (National Assembly Bill No. 45 of 2015) that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No. 154 (6).

### 1.3 Committee Sitzings

The mediation Committee held a total of six sittings. The first sitting of the Committee was held on 5<sup>th</sup> July, 2016 where Sen. Lenny Kivuti, M.P and Hon. Alex Mwiru, M.P were elected as Chairperson and Vice-Chairperson respectively. The Committee carried out public participation on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) on Wednesday 13<sup>th</sup> July, 2016. The Committee considered the submissions from the stakeholders on the contentious clauses on Monday 18<sup>th</sup> July, 2016.

#### 1.4 Committee Resolutions

The Committee deliberated on the submissions from stakeholders on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is hereby appended to this report.

#### 1.5 Adoption of the Report

We the Members of the Mediation Committee on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) have adopted this report pursuant to Standing Order 150(1), and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as appended to this report.

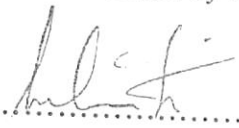
#### 1.6 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 150 (1), to present a report of the Mediation Committee on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) for consideration by the House.

SIGNED.....

DATE.....27/7/2016

SEN. LENNY KIVUTI, M.P. – CHAIRPERSON

SIGNED.....

DATE.....27th July 2016

HON. ALEX MWIRU, M.P - VICE - CHAIRPERSON

## 2.0 BACKGROUND

The Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) was published in the Kenya Gazette Supplement No. 140 of 11<sup>th</sup> August, 2015 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Kenya Constitution, 2010 and National Assembly Standing Orders and was passed on 5<sup>th</sup> May, 2016.

The Bill was referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142 where it was read for the first time on 2<sup>nd</sup> June, 2016. The Senate rejected the Bill in its entirety during the second reading that took place on 15<sup>th</sup> June, 2016.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly rejecting Land Laws (Amendment) Bill, 2015.

The National Assembly, on its Sitting of 21<sup>st</sup> June, 2016 considered the message from the Senate on the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154 the Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION ON THE LAND LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2015)

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 130 (4), the Committee held a one day public hearing in the Mini Chamber, County Hall, Parliament Buildings on 13<sup>th</sup> July, 2016 and received public representations on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) as captured in the attached matrix (see Annex I).

The Committee received submissions from the following institutions, which it considered comprehensively –

1. Ministry of Land and Physical Planning (see Annex II);
2. Council of Governors (see Annex III);
3. National Land Commission (see Annex IV);
4. Institute of Surveyors Kenya; (see Annex V); and
5. Haki Jamii (see Annex VI),



#### 4.0 DELIBERATIONS OF THE MEDIATION COMMITTEE ON THE LAND LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2015)

The Mediation Committee on Land Laws (Amendment) Bill, 2015, considered the submissions from stakeholders on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) and resolved as follows –

##### CLAUSE 2

THAT clause 2 be amended by-

- (a) deleting the word “means” in the definition of caution appearing in section 2 of the Land Registration Act paragraph and replacing therefor with the word “includes”; and
- (b) in sub-clause (i) by inserting the following new definitions in their proper alphabetical sequence-

“eviction” means the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise.

The committee noted that the Constitution did not provide for the term eviction and the term used in the Act was “eviction” not “forced eviction”.

##### CLAUSE 3

THAT clause 3 of the Bill be amended-

- (a) by deleting paragraph (a) and substituting therefore the following new paragraph by inserting the word “and the county government ” immediately after the words “the Cabinet Secretary in consultation with the Commission”.

##### CLAUSE 3A

THAT clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-



Amendment  
of section 6  
No. 3 of  
2012

(aa) For purposes of administration and effective land management the county government and National Land Commission will have access to all documents maintained in the registration units.

The Committee noted that the request to have the National Land Commission (NLC) keep a register of all community, private and public land was not feasible as this is not a function assigned to NLC in the Constitution. The Committee resolved to provide an amendment enabling access to registration records by the NLC and county governments for own internal use only. The committee noted that this access should be restricted to national government facilitating usage of the data and not giving copies to the two institutions.

**CLAUSE 4** Adopted as in the Bill

The Committee rejected the proposed amendments as sufficient consultation with the Commission had already been provided for.

**CLAUSE 7** Adopted as in the Bill

The Committee rejected the Ministry's amendments noting that the proposed amendment would negate other professions from serving as land registrars, which was unacceptable.

**CLAUSE 11**

**THAT** clause 11 of the Bill be amended by deleting paragraph (a).

The Committee noted that the amendment in the Bill proposed to delete spousal rights in Section 28 of the Land Registration Act. The Committee noted that this was potentially a challenge if spousal rights were not adequately secured by the matrimonial properties act. The matter was deliberated and confirmed that the Matrimonial Property Act, comprehensively addresses the issue.

**CLAUSE 15** Adopted as in the Bill

#### **INSERTION OF A NEW CLAUSE 15A OF THE BILL**

The Committee adopted the proposed amendment, as the NLC Act would be amended to delete the establishment of County Land Management Boards. The Committee noted that NLC should establish administrative structures to devolve its functions and not establish other autonomous/independent bodies to carry out its assigned constitutional functions.

The Committee therefore adopted the proposed amendment as follows –

THAT the Bill be amended by inserting the following new clause immediately after clause 15-

**15A**

Amendment  
of section 39  
(2) of No. 3  
of 2012

Section 39 of Land Registration Act is amended in sub section (2) by deleting the words “relevant County Land Management Board” appearing after the words “give by the” and substituting therefor the words “national or county government”.

**CLAUSE 36**

Amendment  
of section 5  
of No. 5 of  
2012

THAT clause 36 be amended

- a) in sub-clause (a) by deleting the word “and” appearing in paragraph (i) and substituting therefor the word “public”.
- b) By deleting paragraph (d) and substituting therefore the following new paragraph-  
“(d) The National Land Commission may develop and maintain a land information system for management of public land.”

The Committee noted that this was correction of a typographical error.

The Committee resolved to delete (d) in the principal act and replace it with “NLC may develop and maintain an effective land information system for management of public land.” The committee noted that the restriction to public land was based on the functions assigned to NLC by the constitution including the fact that any public land once registered would be transferred to the land register and accordingly would no longer be within the remit of NLC.

**CLAUSE 42**            Adopted as in the Bill

The Committee held several deliberations on this amendment but resolved to adopt the proposals as per the bill as land registration is singularly a national government function.

**CLAUSE 47**

THAT clause 47 of the Bill be amended by deleting sub-clause (c). The Committee noted the importance of this amendment and accepted the proposed amendments on securing pre-emptive rights.

**CLAUSE 88**            Adopted as in the Bill

The committee noted that settlement schemes are done on public land and accordingly NLC

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has a role in the management of settlement schemes. The Committee noted that this role was adequately provided for in clause 88(b) of the Bill.

**CLAUSE 89**            Adopted as in the Bill

The committee noted that the Board was all-inclusive and that NLC in its submissions to the committee was not against the composition of the Board. The Committee further noted that the cabinet secretary in consultation with the NLC would establish the Board.

The Committee also deliberated on the matter of including a representative from stakeholders but noted that funding for the purchase of land would come from the consolidated fund and would be undertaken as a national function and as such there was no need to include a representative from the stakeholders.

**CLAUSE 97**

**THAT** clause 97 of the Bill be amended by inserting the following new paragraph in clause 152 G-

- (j) the Cabinet Secretary shall prescribe regulations to give effect to this section.



## 5.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee made the following recommendations on the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) –

**Long title**                      Adopted as in the Bill

**CLAUSE 1**                      Adopted as in the Bill

### CLAUSE 2

THAT clause 2 be amended by-

(c) deleting the word “means” in the definition of caution appearing in section 2 of the Land Registration Act paragraph and replacing therefor with the word “includes”; and

(d) in sub-clause (i) by inserting the following new definitions in their proper alphabetical sequence-

“eviction” means the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise.

### CLAUSE 3

THAT clause 3 of the Bill be amended-

(b) by deleting paragraph (a) and substituting therefore the following new paragraph by inserting the word “and the county government ” immediately after the words “the Cabinet Secretary in consultation with the Commission”.

### CLAUSE 3A

THAT clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-

#### 3A

Amendment  
of section 6  
No. 3 of

(aa) For purposes of administration and effective land management the county government will have access to all documents maintained

in the registration units.

CLAUSE 4 Adopted as in the Bill

CLAUSE 5 Adopted as in the Bill

CLAUSE 6 Adopted as in the Bill

CLAUSE 7 Adopted as in the Bill

CLAUSE 8 Adopted as in the Bill

CLAUSE 9 Adopted as in the Bill

CLAUSE 10 Adopted as in the Bill

CLAUSE 11

THAT clause 11 of the Bill be amended by deleting paragraph (a)

CLAUSE 12 Adopted as in the Bill

CLAUSE 13 Adopted as in the Bill

CLAUSE 14 Adopted as in the Bill

CLAUSE 15 Adopted as in the Bill

**INSERTION OF A NEW CLAUSE 15A OF THE BILL**

THAT the Bill be amended by inserting the following new clause immediately after clause 15-

15A

Amendment  
of section 39  
(2) of No. 3  
of 2012

Section 39 of Land Registration Act is amended in sub section (2) by deleting the words "relevant County Land Management Board" appearing after the words "give by the" and substituting therefor the words "national or county government".

CLAUSE 16 Adopted as in the Bill

CLAUSE 17 Adopted as in the Bill

CLAUSE 18 Adopted as in the Bill



CLAUSE 19 Adopted as in the Bill  
 CLAUSE 20 Adopted as in the Bill  
 CLAUSE 21 Adopted as in the Bill  
 CLAUSE 22 Adopted as in the Bill  
 CLAUSE 23 Adopted as in the Bill  
 CLAUSE 24 Adopted as in the Bill  
 CLAUSE 25 Adopted as in the Bill  
 CLAUSE 26 Adopted as in the Bill  
 CLAUSE 27 Adopted as in the Bill  
 CLAUSE 28 Adopted as in the Bill  
 CLAUSE 29 Adopted as in the Bill  
 CLAUSE 30 Adopted as in the Bill  
 CLAUSE 31 Adopted as in the Bill  
 CLAUSE 32 Adopted as in the Bill  
 CLAUSE 33 Adopted as in the Bill  
 CLAUSE 34 Adopted as in the Bill  
 CLAUSE 35 Adopted as in the Bill  
 CLAUSE 36

Amendment  
 of section 39  
 (2) of No. 3  
 of 2012

THAT clause 36 be amended by-

a) deleting paragraph (d) and substituting therefore the following new paragraph-

“(d) The National Land Commission may develop and maintain a land information system for management of public land.”

b) in sub-clause (a) by deleting the word “and” appearing in paragraph (i) and substituting therefor the word “public”.

CLAUSE 43 Adopted as in the Bill  
 CLAUSE 44 Adopted as in the Bill

CLAUSE 45 Adopted as in the Bill

CLAUSE 46 Adopted as in the Bill

CLAUSE 47

THAT clause 47 of the Bill be amended by deleting sub-clause (c )

CLAUSE 48 Adopted as in the Bill

CLAUSE 49 Adopted as in the Bill

CLAUSE 50 Adopted as in the Bill

CLAUSE 51 Adopted as in the Bill

CLAUSE 52 Adopted as in the Bill

CLAUSE 53 Adopted as in the Bill

CLAUSE 54 Adopted as in the Bill

CLAUSE 55 Adopted as in the Bill

CLAUSE 56 Adopted as in the Bill

CLAUSE 57 Adopted as in the Bill

CLAUSE 58 Adopted as in the Bill

CLAUSE 59 Adopted as in the Bill

CLAUSE 60 Adopted as in the Bill

CLAUSE 61 Adopted as in the Bill

CLAUSE 62 Adopted as in the Bill

CLAUSE 63 Adopted as in the Bill

CLAUSE 64 Adopted as in the Bill

CLAUSE 65 Adopted as in the Bill

CLAUSE 66 Adopted as in the Bill

CLAUSE 67 Adopted as in the Bill

CLAUSE 68 Adopted as in the Bill

CLAUSE 69 Adopted as in the Bill

CLAUSE 70 Adopted as in the Bill

CLAUSE 71	Adopted as in the Bill
CLAUSE 72	Adopted as in the Bill
CLAUSE 73	Adopted as in the Bill
CLAUSE 74	Adopted as in the Bill
CLAUSE 75	Adopted as in the Bill
CLAUSE 76	Adopted as in the Bill
CLAUSE 77	Adopted as in the Bill
CLAUSE 78	Adopted as in the Bill
CLAUSE 79	Adopted as in the Bill
CLAUSE 80	Adopted as in the Bill
CLAUSE 81	Adopted as in the Bill
CLAUSE 82	Adopted as in the Bill
CLAUSE 83	Adopted as in the Bill
CLAUSE 84	Adopted as in the Bill
CLAUSE 85	Adopted as in the Bill
CLAUSE 86	Adopted as in the Bill
CLAUSE 87	Adopted as in the Bill
CLAUSE 88	Adopted as in the Bill
CLAUSE 89	Adopted as in the Bill
CLAUSE 90	Adopted as in the Bill
CLAUSE 91	Adopted as in the Bill
CLAUSE 92	Adopted as in the Bill
CLAUSE 93	Adopted as in the Bill
CLAUSE 94	Adopted as in the Bill
CLAUSE 95	Adopted as in the Bill
CLAUSE 96	Adopted as in the Bill
CLAUSE 97	

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THAT clause 97 of the Bill be amended by inserting the following new paragraph in clause 152 G-

(j) the Cabinet Secretary shall prescribe regulations to give effect to this section.

CLAUSE 98            Adopted as in the Bill

CLAUSE 99            Adopted as in the Bill

CLAUSE 100          Adopted as in the Bill



MEDIATION COMMITTEE ON THE LAND LAWS (AMENDMENT) BILL, 2015

DATE: 27/7/2016 TIME: 9:00am VENUE: BOARD ROOM OF 4TH FLOOR PROTECTION HOUSE

AGENDA:- ADOPTION OF THE REPORT ON THE LAND LAWS (AMENDMENT) BILL, 2015

1.	Sen. Lenny Kivati	Chairman	
2.	Hon. Alex Mwiru	V/Chairman	
3.	Hon. FRANCIS CHACHA GANYA		
4.	Sen. Godana Harguia		
5.	Hon Francis Wambui Ndechi		
6.	Hon Moses Ole Sotude		
7.	Daniel K. Mearuzo M.P		
8.	Sen. N. kesuuda		
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MEDIATED VERSION OF THE LAND LAWS  
(AMENDMENT) BILL, 2015.

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**THE LAND LAWS (AMENDMENT) BILL, 2015**

**A Bill for**

**AN ACT of Parliament to amend the laws relating to land to align them with the Constitution, to give effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Land Laws (Amendment) Act, 2015.

Amendment to section 2 of No.3 of 2012.

2. Section 2 of the Land Registration Act is amended in section 2—

(a) by deleting the definition of “assignee” and substituting therefor the following new definition—

No. 6 of 2012

“assignee” has the meaning assigned to it under the Land Act, 2012;

(b) in the definition of “borrower” by deleting the words “land or lease” and substituting therefor the words “interest in land or lease”;

(c) in the definition of “caution” by deleting the word “means” and substituting therefor the word “includes”;

(d) deleting the definition of “charge” and substituting therefor the following new definition—

No. 6 of 2012

“charge” has the meaning assigned to it under the Land Act, 2012;

- (e) deleting the definition of “Court” and substituting therefor the following new definition—

No. 19 of 2011

“Court” means the Environment and Land Court established by the Environment and Land Court Act, 2011, and other courts having jurisdiction on matters relating to land;

- (f) deleting the definition of the word “disposition” and substituting therefor the following new definition—

No. 6 of 2012

“disposition” has the meaning assigned to it under the Land Act, 2012;

- (g) by deleting the definition of “register” and substituting therefor the following new definition—

“register means the register maintained under section 7 of the Act”;

- (h) in the definition of “Registrar” by inserting the words “the Deputy Land Registrar” immediately after the words “Chief Land Registrar”;

- (i) inserting the following new definitions in their proper alphabetical sequence—

“allocation of land” means the legal process of granting the right to public land;

“cadastral plan” means a geo-referenced plan approved by the statutory body responsible for survey of land;

“certificate” means a certificate of lease or a certificate of title;

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“community land register” means a register compiled in accordance with section 8 of the Act and the law relating to community land;

“condominium” means housing consisting of a complex of dwelling units in which each unit is individually owned;

“copy of a document” in respect to a prescribed document or other document required by law means a copy of that document certified as a true copy of the original by an authorized person;

“easement” has the same meaning assigned in the Land Act, 2012;

No. 6 of 2012

“encumbrance” means any charge, lease, or other interest noted or required to be noted in the encumbrance Section of the Land Register;

“eviction” means the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise;

“fees” means money payable for any land transaction or service as prescribed by the Cabinet Secretary under regulations;

“licensee” has the same meaning assigned to it under the Land Act.

“matrimonial home” means any interest in land that is owned or leased by one or both spouses and occupied by the spouses as their family home;

“matrimonial property” means any interest in land or lease that is acquired by a spouse or spouses during the subsistence of a marriage;

“registration” means 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;

“sectional plan” means a geo-referenced plan of units or a part of land as the case may be prepared by a surveyor and approved by the statutory body responsible survey of land;

“sectional unit” means a space that is situated within a building and described in a sectional plan by reference to floors, walls and ceilings within the buildings;

“spouse” means either a husband or a wife married under any recognized law in Kenya;

“Rules Committee” means the rules committee of the High Court;

“transfer” means passing of an estate or interest in land or lease under this Act, whether for valuable consideration or otherwise;

Amendment of  
section 6 No. 3 of  
2012.

3. Section 6 of the Land Registration Act is amended by—

(a) in subsection (1), by deleting the words “Commission in consultation with national and county governments may” and substituting therefor the words “Cabinet Secretary in consultation with the Commission and the county governments shall”;

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(b) in subsection (5) by deleting the word “Commission”



- appearing immediately after the words “by the” and substituting therefor with the word “Cabinet Secretary”;
- (c) in subsection (6) inserting the following new subsection immediately after subsection (6)—

(7) For purposes of administration and effective land management, the county government shall have access to all documents maintained in the registration units.

Amendment of  
section 7 of No. 3  
of 2012.

4. Section 7 of the Land Registration Act is amended by—

- (a) in subsection (1) by deleting the word Commission wherever it appears and substituting therefor the word “Cabinet Secretary”;
- (b) in subsection (3) by deleting the words “Public Service Commission and”;
- (c) inserting the following new subsections immediately after subsection (3)—

(4) The land register shall include the following features—

- (a) the property section;
- (b) the proprietorship section;
- (c) the encumbrance section;
- (d) the user of the land; and
- (e) any other feature required under any law or otherwise considered necessary by the Cabinet Secretary.

(5) Registration shall be effected by an entry in the

register in such form as may from time to time be prescribed by the Cabinet Secretary, and by cancellation of the entry, if any, which it replaces.

(6) Subject to the provisions of this Act, the Registrar may at any time, open a new edition of a register showing only the subsisting entries and omitting therefrom all entries that have ceased to have effect.

(7) The Registrar may cancel any entry in the register which have ceased to have effect.

Amendment of section 9 of No. 3 of 2012.

5. Section 9 of the Land Registration Act is amended by inserting the following new paragraph in subsection (2) immediately after paragraph (d)—

(da) passport number, telephone number and email address, where applicable.

Amendment of section 12 of No. 3 of 2012.

6. Section 12 of the Land Registration Act is amended in subsection (1) by—

(a) deleting the marginal note and substituting therefor the following marginal note—

Appointment of Land Registrars and other officers.

(b) inserting the words “a Deputy Chief Land Registrar, County Land Registrars, Land Registrars” immediately after the words “Chief Land Registrar”.

Insertion of new section 13A in No. 3 of 2012.

7. The Land Registration Act is amended by inserting the following new section immediately after section 13—

Qualifications for appointment **13A.**(1) A person shall not qualify for appointment as Deputy Chief Land Registrar unless such a

of other land Registrars.

person is an Advocate of the High Court of Kenya of not less than ten years' standing, a land surveyor, a land economist or an expert in any other relevant field.

(2) A person shall not qualify for appointment as a County Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than five years' standing or an Advocate of the High Court with at least five years' experience in land administration, a land surveyor, a land economist or an expert in any other relevant field.

(3) A person shall not qualify for appointment as a Land Registrar unless such a person is an Advocate of the High Court of Kenya, a land surveyor, a land economist or an expert in any other relevant field.

(4) Upon appointment, the Registrar shall take an oath of office in the prescribed form.

(5) Upon the commencement of this Act, any person holding the position of Chief Land Registrar, and Land Registrars who do not meet the qualifications prescribed in this Act shall be redeployed to other positions and duties within the public service.

Amendment of section 14 of No. 3 of 2012.

8. Section 14 of the Land Registration Act is amended by—

- (a) renumbering the existing section 14 as 14 (1);
- (b) inserting the following new subsections immediately after subsection (1)—

~~(2) In addition to the powers conferred by section 14~~

(1) the Chief Land Registrar shall—

- (a) formulate practice instructions and guidelines for implementation of the land registration policies and strategies;
- (b) set standards for the registries;
- (c) supervise the registries;
- (d) prepare and submit an annual report on the state of land registration to the Commission and the Cabinet Secretary;
- (e) hear and determine appeals from the registries;
- (f) approve the format of any instrument which is not in accordance with the prescribed form; and
- (g) perform such other functions or duties as may be provided under any written law.

(3) The Deputy Chief Land Registrar shall be the principal assistant of the Chief Land Registrar in the execution of the functions of the Chief Land Registrar.

(4) The County Land Registrar shall be responsible for administering the registries within the respective county and in the implementation of policies, guidelines and strategies in accordance with this Act.

(5) The Registrar shall not be held personally liable for lawful acts discharged by the Registrar under this Act in good faith.



- (a) in subsection (1) by deleting the words “and such correction shall not be effected except on the instruction of the Registrar, in writing,” appearing immediately after the words “subdivision plan” and substituting therefor the words “approved combination plan or any other approved plan necessitating the alteration of the boundary”;
- (b) in subsection (2) by deleting the words “Notwithstanding subsection (1), any alteration and shall be made public and”
- (c) by inserting the following new subsection immediately after subsection (3)—
  - (4) Any rectification to the cadastral map in accordance with this section shall be notified to the Registrar by the submission of the rectified cadastral map and all the approvals that necessitated the amendments.

Amendment of  
section 17 of No.  
3 of 2012.

**10.** The Land Registration Act is amended in section 17 by deleting subsection (3) and substituting therefor the following—

(3) The office or authority responsible for the survey of land shall submit to the Commission a copy of the cadastral maps relating to public land and the Commission shall be a depository of the maps.

Amendment of  
section 28 of No.  
3 of 2012.

**11.** Section 28 of the Land Registration Act is amended by—

- (a) deleting paragraph (a);
- (b) deleting paragraph (f);
- (c) inserting the following new proviso to the section—

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore

Amendment to  
section 30 of No.  
3 of 2012.

defined in such manner as the Registrar deems necessary.  
**12.** Section 30 of the Land Registration Act is amended—

- (a) in subsection (1) by deleting the words “or a lease” and substituting therefor the words “whose name appears in the register or a lease”;
- (b) in subsection (2)(b) by deleting the expression “twenty-five” and substituting therefor the expression “twenty-one”.

Amendment of  
section 33 of No.  
3 of 2012

**13.** Section 33 of the Land Registration Act is amended—

- (a) in subsection (1) by deleting the word “duplicate” appearing immediately after the word “issue of a” and substituting therefor with the word “replacement”;
- (b) in subsection (3) by deleting the word “duplicate” appearing immediately after the word “issue a” and substituting therefor the word “replacement”;
- (c) by inserting the following new subsection (6)—
  - (6) Upon the issue of a replacement certificate no further dealings shall be carried out using the replaced certificate.

Amendment of  
section 36 of No.  
3 of 2012.

**14.** Section 36 of the Land Registration Act is amended—

- (a) by deleting subsection (4) and substituting therefor the following subsection—
  - (4) Where an instrument presented for registration later than three months from the date of the instrument, then, as well as registration fee, and additional fee equal



to the registration fee shall be payable for each of the three months which have elapsed since that date:

Provided that in no such case shall the sum of the additional fees, exceed two times the original registration fees payable;

(b) by inserting the following new subsections immediately after subsection (4)—

(5) Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:

Provided that where an instrument is prepared in the registry, it shall be deemed to have been presented on the date which the application was made to the Registrar.

(6) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of office that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

(7) Where more than one instrument or application are presented on the same day such that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar shall reject the registration and shall inform the applicants of such rejection.

(8) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.

(9) If a properly executed instrument affecting the proposed dealing is presented for registration, within the suspension period, the instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or any other entry for which application for registration may have been made during the suspension period

Provided that upon commencement of the Act, any instrument that shall not have been registered will be required to be so registered within three months.

(10) Where on the registration of an instrument relating to a disposition under this Act, the interests of—

- (a) a lessor and lessee;
  - (b) chargor and chargee, or
  - (c) the proprietor of a parcel which is burdened with an easement, a profit or restrictive agreement and the proprietor of a parcel which benefits from the easement, profit and agreement, vests in the same
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proprietor,

the interests shall not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the disposition.

Amendment of  
section 38 of No.  
3 of 2012.

**15.** Section 38 of the Land Registration Act is amended—

(a) in subsection (1) by deleting the words “purporting to transfer or to vest” appearing immediately after the word “instrument” and substituting therefor with the words “transferring or vesting”;

(b) in subsection (2) by deleting paragraph (b).

Amendment of  
section 39 of No.  
3 of 2012.

**16.** Section 39 of the Land Registration Act is amended in subsection (2) by deleting the words “relevant County Land Management Board” and substituting therefor the words “national or county government”.

Amendment of  
section 43 of No.  
3 of 2012.

**17.** Section 43(2) of the Land Registration Act is amended by deleting the word “private land” appearing immediately after the word “disposition of” and substituting therefor with the words “an interest in land”.

Amendment of  
Section 44 of No.  
3 of 2012.

**18.** Section 44 of the Land Registration Act is amended—

(a) deleting subsection (3) and substituting therefor the following subsection—

(3) The execution of any instrument referred to in section (1) by a corporate body, association, cooperative society or other organisation shall be effected in accordance with the provisions of the relevant applicable

law and in the absence of provisions on execution of instruments, the execution shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

- (b) deleting subsection (4) and substituting therefor the following subsection—

(4) An instrument executed outside Kenya shall not be registered unless it has been endorsed or is accompanied by a certificate in the prescribed form completed by a notary public or such other person as the Cabinet Secretary may prescribe.

- (c) in subsection (5) by inserting the following paragraph (e) immediately after paragraph (d)—

(e) a copy of the certificate of incorporation, in the case of a corporate entity; or

Amendment of  
section 54 of No.  
3 of 2012.

- 19.** Section 54 of the Land Registration Act is amended by—

(a) in subsection (1) by deleting the word “leased” appearing immediately after the word “leased land”;

(b) in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—

(c) on any of the grounds set out under section 39(4).

(c) inserting the following new subsection immediately after subsection (5)—

(6) The Cabinet Secretary may prescribe regulations for the registration of long term-leases.

Amendment of

- 20.** Section 55 of the Land Registration Act is amended by



Section 55 of no. 3 of 2012. deleting the words “lessee that the lessee” appearing immediately after the words “by the” and substituting therefor the phrase “lessor that the lessor”;

Amendment of Section 56 of No. 3 of 2012.

21. Section 56 of the Land Registration Act is amended—

(a) by deleting subsection (4) and substituting therefor the following new subsection—

(4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.

(c) by inserting the following new subsection immediately after subsection (5)—

(5A) No certificate shall be required under subsection (4) if the charge relates to—

(a) a unit in a condominium;

(b) an office in a building; or

(c) a sub-lease where the lease is by virtue of any law subject to the full payment of the rent by the head-lessor.

(c) in subsection (6) by deleting the words “chargee of his or her” appearing in subsection (6) immediately after the word “exercise of the” and substituting therefor the word “chargee’s”.

Amendment of

22. Section 57(2) of the Land Registration Act is amended in



section 57 of No.  
3 of 2012.

section by deleting the word “charge” appearing immediately after the word “first” and substituting therefor the word “chargee’s”.

Amendment of  
section 58 of No.  
3 of 2012.

**23.** Section 76 of the Land Registration Act is amended—

- (a) in subsection (2) by deleting the words “the making” appearing in paragraph (c);
- (b) by inserting the following new subsection immediately after subsection (2)—

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.”

Amendment of  
Section 77 of No.  
3 of 2012.

**24.** Section 77(2) of the Land Registration Act is amended by deleting the word “it” appearing immediately after the word “with” and substituting therefor with the words “a restriction”.

Amendment of  
Section 78 of No.  
3 of 2012.

**25.** Section 78(1) of the Land Registration Act is amended in by deleting the word “that” appearing immediately after the word “order”.

Amendment of  
Section 79 of No.  
3 of 2012.

**26.** Section 79 of the Land Registration Act is amended—

- (a) in subsection (1)—
  - (i) by inserting the word “mistakes” immediately after the word “errors” appearing in paragraph (a);
  - (ii) inserting the following new paragraphs immediately after paragraph (c)—
    - (d) for purposes of updating the register;
    - (e) for purposes of correcting the name, address or

other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

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

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless—

(a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or

(b) it would for any other reason be unjust for the alteration not to be made.

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

(c) by inserting the following new subsection immediately after subsection (3)—

(3A) A person aggrieved by the decision of the Registrar under this section may apply to the Court for any necessary orders.

(d) by deleting the introductory statement in subsection (4) and substituting therefor the following new introductory statement—

(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall

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follow before rectifying or directing rectification under this section and without prejudice to the generality of the foregoing, the regulations may provide for—

Amendment of section 80 of No. 3 of 2012.

27. Section 80 of the Land Registration Act is amended in subsection (2) by deleting the phrase “who is in possession and had acquired the land, lease or charge for valuable consideration” appearing immediately after the word “proprietor”.

Amendment of section 83 of No. 3 of 2012.

28. Section 83 of the Land Registration Act is amended by deleting the word “may” appearing immediately after the word “party”.

Amendment of section 91 of No. 3 of 2012.

29. Section 91 of the Land Registration Act is amended—

(a) in subsection(1) by deleting the words “in undivided shares” appearing immediately after the word “persons”;

(b) deleting subsection (2) and substituting therefor the following subsection—

(2) Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.

(c) in subsection (4) by deleting the word “or” appearing at the end of paragraph (b) and substituting therefor the word “and”;

(d) deleting subsection (8) and substituting therefor the

following new subsection—

(8) The Registrar may upon receipt of adequate proof dispense with the consent under subsection (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably and the Registrar shall note on the register and on the instrument the reasons for dispensing with the consent.

(e) inserting the following new subsection immediately after subsection (8)—

(9) A person who is aggrieved by the decision of the Registrar may apply to the Court for the necessary orders.

Amendment of  
section 92 of No.  
3 of 2012.

**30.** Section 92 of the Land Registration Act is amended by inserting the following new proviso to the section—

Provided that a designated co-tenant shall be provided with the original title to the land.

Amendment of  
section 93 of No.  
3 of 2012.

**31.** Section 93 of the Land Registration Act is deleted and replaced by the following new section 93—

**93.** Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the Matrimonial Property Act.



Amendment of  
section 94 of No.  
3 of 2012.

**32.** Section 94 of the Land Registration Act is amended—

- (a) in subsection (1), by deleting the words “certificate of land” and substituting therefor the words “certificate of title or certificate of lease”;
- (b) by inserting the following new subsection immediately after subsection (4)—

(5) Any co-tenant aggrieved by the decision of the Registrar may apply to the Court for a review of that decision.

Amendment of  
section 102 of  
No.3 of 2012.

**33.** Section 102 of the Land Registration Act is amended in subsection (3) by deleting the words “or that it has been agreed between the payer and the payee that the fee may be paid in installments” appearing at the end of the subsection.

Amendment of  
section 103 of  
No. 3 of 2012

**34.** Section 103 of the Land Registration Act is amended—

- (a) in subsection (1)—
  - (i) by deleting the word “ownership” appearing immediately after the words “certificate of” in paragraph (c) subparagraph (i) and substituting therefor the words “title or certificate of lease”;
  - (ii) by deleting the word “a” appearing immediately after word “of” in paragraph (c) subparagraph (ii) and substituting therefor the word “an”;
  - (iii) by inserting the following new subparagraph immediately after subparagraph (iii) of paragraph (c)—

~~(iv) a dealing or a transaction using any of the~~



replaced register, certificate of title or certificate of lease;

(iv) by deleting the word “form” appearing in paragraph (d) immediately after the word “conceals” and substituting therefor the word “from”;

(b) in subsection (2) by deleting the word “public” appearing immediately after the word “unlawfully occupies”.

Amendment of  
section 105 of  
No. 3 of 2012.

35. Section 105 of the Land Registration Act is amended—

(a) in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph—

(a) in the case of an interest in land previously under the repealed Government Lands Act and the repealed Land Titles Act then—

(i) the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act in respect of the interest in land shall be deemed to be the register under this Act;

(ii) the last conveyance or assignment noted in the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act in respect of the interest in land shall be deemed to be evidence of ownership of the interest in land for purposes of issuing a certificate of title or a certificate of lease under this Act:

Provided that the Registrar may at any time prepare a register under this Act showing all subsisting particulars contained in the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act and issue to the proprietor a certificate of title or a certificate of lease in the prescribed form.

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

(2) In compiling the land register, the Registrar shall—

(a) register the relevant public land in the name of the county or national government in trust for the people resident in the county or national government;

(b) comply the direction of the Commission as contained in any Gazette notice made under section 15 of the Land Act; and

(c) include any special provisions relevant to the public land.

No. 6 of 2012.

Amendment of section 2 of No. 5 of 2012.

**36.** Section 2 of the National Land Commission Act is amended in section 2 by deleting the definition of “Board”.

Amendment of section 5 of No. 5 of 2012.

**37.** Section 5 of the National Land Commission Act is amended by—

(a) in subsection (2) by—

(i) deleting paragraph (c) and substituting therefor the following paragraph—

(c) ensure that public land under the management of the designated state agencies is sustainably managed for the intended purposes;

(ii) deleting paragraph (d) and substituting therefor the following paragraph—

(d) may develop and maintain an effective land information system for the management of public land.;

(iii) deleting paragraph (e);

(iv) deleting paragraph (f);

(b) deleting subsection (3).

(c) deleting subsection (4).

Amendment of  
section 15 of No. 5  
of 2012.

**38.** Section 15 of the National Land Commission Act is deleted and substituted by the following new section—

Historical land  
injustices.

15. (1) Pursuant to Article 67(3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

(2) For the purposes of this section, a historical land injustice means a grievance which—

(a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;

(b) resulted in displacement from their habitual place of residence;

(c) occurred between 15<sup>th</sup> June 1895 when

Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> August, 2010 when the Constitution of Kenya was promulgated;

- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

(3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

(a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;

(b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—

(i) the claim contradicts a law that was in force at the time when the injustice began; or

(ii) the claim is debarred under section 7 of the Limitation of Actions Act or any other law;

(c) the claimant was either a proprietor or occupant of the land upon which the claim is based;

(d) no action or omission on the part of the claimant amounts to surrender or renunciation of the right to the land in question; and

(e) it is brought within five years from the date of commencement of this Act.

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(4) A claim alleging historical land injustice shall be permissible if it was occasioned by—



- (a) colonial occupation;
- (b) independence struggle;
- (c) pre-independence treaty or agreement between a community and the government;
- (d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;
- (e) inequitable land adjudication process or resettlement scheme;
- (f) politically motivated or conflict based eviction;
- (g) corruption or other form of illegality;
- (h) natural disaster; or
- (i) other cause approved by the Commission.

(5) When conducting investigations under subsection (1) into historical land injustices the Commission may—

- (a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or
  - (b) by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.
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(6) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.

(7) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

(8) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice.

(9) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies—

- (a) restitution;
- (b) compensation, if it is impossible to restore the land;
- (c) resettlement on an alternative land;
- (d) rehabilitation through provision of social infrastructure;
- (e) affirmative action programmes for marginalized groups and communities;
- (f) creation of wayleaves and easements;
- (g) order for revocation and reallocation of the land;
- (h) order for revocation of an official

declaration in respect of any public land and reallocation;

- (i) sale and sharing of the proceeds;
- (j) refund to *bona fide* third party purchasers after valuation; or
- (k) declaratory and preservation orders including injunctions.

(10) Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.

(11) The provisions of this section shall stand repealed within ten years.

Repeal of section 18 of No. 5 of 2012.

39. The National Land Commission Act is amended by repealing section 18.

Amendment of First Schedule to No. 5 of 2012.

40. The First Schedule of the National Land Commission Act is amended—

(a) in paragraph (1)—

- (i) by deleting the words “in consultation with the Prime Minister” appearing in the opening sentence;
- (ii) by deleting sub-paragraph (b); and
- (iii) by deleting the proviso;

(b) by inserting the words “within seven days” immediately after the word “shall” appearing in paragraph (7).

(c) inserting the following new paragraph (8A) immediately after paragraph (8)—

(8A) If the President does not appoint the chairperson or members of the Commission as prescribed under paragraph (8), the approved nominees shall be taken to have been appointed upon the lapse of twenty one days.

Amendment to  
section 2 of No.6  
of 2012.

(d) by deleting paragraph (14);

41. Section 2 of the Land Act is amended—

(a) deleting the definition of “allocation of land” and substituting therefor the following definition—

“allocation of land” means the legal process of granting rights to public land;

(b) in the definition of Cabinet Secretary by inserting the word “to” immediately after the word “relating”;

(c) by inserting the following new definitions in their proper alphabetical sequence—

No. 13 of 2013

“agriculture or agricultural” has the meaning assigned to it by the Agriculture, Fisheries and Food Authority Act, 2013;

“customary land” means private land on which one or more members of the family have customary rights of ownership;

No. 13 of 2013

“Land Preservation Order” ban order served under the Agriculture, Fisheries and Food Authority, 2013;

“lawful improvements” means improvements which increase or improve the value of land which have been quantified by a qualified valuer in accordance with all applicable law and includes—

- (a) any permanent infrastructural developments including dams, reservoirs, water treatment plants;
- (b) any buildings;
- (c) any growing commercial trees or shrubs;
- (d) any water points, fences and other pastoral infrastructure that may be on the land.

“national spatial data infrastructure” means the combination of technology, data, institutional arrangements and people that enables the discovery, evaluation and use of geographical data for users from all sectors of the economy and the general citizenry;

“substantial transaction” means a transaction that involves the transfer, leasing or licensing of land to a local or foreign investor either alone or in a joint venture to carry out developments in agriculture and other approved ventures with direct developmental benefits for Kenya through—

- (a) a commitment for improving food security for Kenya through technology transfer leading to innovation, productivity increase and the requirement for a certain minimum percentage of the crops produced to be sold on local markets;
  - (b) infrastructural developments from which the public can benefit;
  - (c) demonstrable strong backward and forward linkages to other industries in Kenya;
  - (d) generation of substantial foreign exchange through import substitution and exports;
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(e) sustainable agricultural practices and sustainable forest management which can contribute to addressing climate change concerns;

(f) emphasis is on reference to Kenya and the application of Kenyan law without waiver of any rights of Kenya.

“state corporation” has the same meaning assigned to it by the State Corporations Act.

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Amendment to section 5 of No. 6 of 2012.

**42.** Section 5 of the Land Act is amended by inserting the following new subsection immediately after subsection (2)—

(3) Save as provided for in the Constitution, a registered proprietor shall not, for the purposes of obtaining planning permission, be obliged to surrender the freehold interest in exchange for leasehold.

Amendment of section 6 of the No. 6 of 2012.

**43.** Section 6 of the principle Act is amended by—

(a) deleting the marginal note and substituting therefor the following new marginal note—

Powers and functions of the Cabinet Secretary in land management.

(b) inserting the following new paragraphs immediately after paragraph (f)—

(g) provide policy direction regarding all classes of land in consultation with the Commission where appropriate;

(h) coordinate the development and implementation of a National Land Information System in collaboration with

the Commission;

(i) administer and undertake all dealings including registration of private land interests subject to Part VIII of this Act.

Amendment of  
section 8 of No. 6  
of 2012.

44. Section 8 of the Land Act is amended by—

- (a) re-numbering the existing provision as subsection (1);
- (b) by inserting the following new subsection immediately after subsection (1)—

(2) The Commission shall establish and maintain a register containing—

- (a) the particulars of all public land converted to private land by allocation;
- (b) the names and addresses of all persons whose land has converted to public through compulsory acquisition or reversion of leasehold;
- (c) particulars of community land converted into public; and
- (d) such other details as the Commission may consider necessary.

Amendment of  
section 9 of No. 6  
of 2012.

45. Section 9 of the Land Act is amended by—

- (a) in subsection (2) by deleting the word “alienation” appearing in paragraph (a) and substituting therefor the word “allocation”;
- (b) deleting subsection (4).

Amendment of  
section 12 of No.  
6 of 2012.

46. Section 12 of the Land Act is amended—

(a) in subsection (1) by deleting the introductory part and substituting therefor the following—

(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—

(b) in subsection (3) by inserting the words “upon the request of the national or a county government” immediately after the word “shall”;

(c) in subsection (7) by deleting the expression “(16)” and substituting therefor the expression “(17)”;

(d) in subsection (9) by inserting the words “and the Commission shall include in its annual report the status of implementation of this subsection” immediately after the words “as the case may be”.

Insertion of new  
section 12A in  
No. 6 of 2012.

47. The Land Act is amended by inserting the following new section immediately after section 12—

Controlled  
land.

12A.(1) In this part

“controlled land” means land in Kenya which is—

(a) within a zone of twenty-five kilometres from the inland national boundary of Kenya;

(b) within the first and second row from high water

mark of the Indian Ocean;

- (c) any other land as may be declared controlled land under any law or statute.

“ineligible person” means—

- (i) an individual who is not a Kenyan citizen;
- (ii) the government of a country other than Kenya or a political subdivision of a country other than Kenya, or any agency of such government or political subdivision, or
- (iii) a body corporate which has non-citizens as shareholders shall be deemed to be a non-citizen.”

“interest” has the meaning assigned to it in the Act and interest in land shall include transfer, lease, licence, charge, exchange, partition or other disposal of or dealing with any controlled land.

“corporation” means a body incorporated with or without a share capital under any written law in Kenya and the expression includes a limited liability partnership;

(2) No transaction in controlled land, including a transfer for a consideration or by way of trusts, gift *inter vivos* or otherwise to an ineligible person, shall be dealt with without the prior written approval of the Cabinet Secretary.

(3) In deciding whether to approve or not approve an application, the Cabinet Secretary shall seek the

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Amendment of  
section 13 of No.  
6 of 2012.

approval of the relevant authorities

**48.** Section 13 of the principle Act is amended by—

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

(1) Before the expiry of the leasehold tenure, the Commission shall—

(a) within five years, notify the lessee, by registered mail, of the date of expiry of the lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes; and

(b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.

(b) inserting the following new subsection immediately after subsection (1)—

(1A) Where a lease is not granted after an application under subsection (1), the Commission shall give the lessee the reasons for not granting the lease, in writing.

Amendment of  
section 15 of No.  
6 of 2012.

**49.** Section 15 of the Land Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note—

Reservation and development of public land.

(b) by deleting the words “may, in consultation with the national government and the county governments” appearing in subsection (1) and substituting therefor the words “shall, upon request by the national or county government”.

(c) in subsection (2) by deleting the phrase “and shall not be subject to allocation or development” appearing at the end of the subsection.

Amendment of section 16 of No. 6 of 2012.

50. Section 16 of the Land Act is amended in subsection (1) by deleting the opening sentence and substituting therefor the following—

(1) Upon request by the national or county government, the Commission may, by order in the Gazette—

Amendment of section 23 of No. 6 of 2012.

51. Section 23 of the Land Act is amended—

(a) in subsection (1)—

(i) deleting the word “grant” wherever it occurs;

(ii) deleting the word “grantor” wherever it occurs;

(iii) deleting the word “grantee” appearing in paragraph (b);

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

(2) A lease or licence for public land shall be issued by the Commission and shall be registered by the Chief Lands Registrar.

Amendment of section 24 of No. 6 of 2012.

52. Section 24 of the Land Act is amended by—

(a) deleting the word “grant” appearing immediately after the

word “every”;

(b) deleting the word “grantee” wherever it occurs.

Amendment of  
section 25 of No.  
6 of 2012.

53. Section 25 of the Land Act is amended—

(a) in subsection (1) by deleting the word “determination” appearing in paragraph (a) and substituting therefor the word “termination”;

(b) in subsection (2) by deleting the word “arbitration” and substituting therefor the phrase “reference to an independent professional valuer who shall be appointed by the Commission through an open, transparent and competitive process as per the public procurement law”.

Amendment of  
section of 34 of  
No. 6 of 2012.

54. Section 34 of the Land Act is amended by inserting the following new subsection immediately after subsection (5)—

(6) If the office or authority responsible for survey proposes to survey the boundaries of any land that is subject to any interests or cautions, for purposes of geo-referencing, the office will give reasonable notice to the holders of the interests or to the relevant cautioners and will make adjustments on the cadastral map, cadastral plan and the acreage without any obligation to pay compensation.

Amendments to  
section 38 of No.  
6 of 2012.

55. Section 38 of the Land Act is amended—

(a) by deleting the marginal note and substituting therefor the following marginal note—

Validity of contracts in sale of land.

(b) in subsection (1)—

- (i) by inserting the words “Other than as provided by this Act or by any other written law” at the beginning of the provision.
- (ii) by deleting the word “unless” appearing immediately after the word “land”.
- (c) by deleting subsection (2) and substituting therefor the following new subsection-
  - (2) Subsection (1) shall not apply to—
    - (a) a contract made in the course of a public action;
    - (b) the creation or operation of a resulting, implied or a constructive trust; or
    - (c) any agreement or contract made or entered into before the commencement of this Act, provided that—
      - (i) the verbal contracts shall be reduced to writing within two years from the date of enactment of this Act; and
      - (ii) the Cabinet Secretary shall put a notice of the requirement to reduce the contracts in writing, in a newspaper of nationwide circulation.”

Amendment of  
section 42 of No.  
6 of 2012.

56. Section 42(1)(b) is amended by deleting the article “a” appearing between the words “in” and “proceedings”.

Amendment of  
section 63 of No.  
6 of 2012.

57. Section 63 of the Land Act is amended by —

- (a) deleting the word “longer” appearing in the marginal note
-



and substituting therefor the word “shorter”

- (b) deleting subsection (3) and substituting therefor the following new subsection—

“(3) The term of a sublease shall not be longer than the term of the head lease.”

Amendment of  
section 65 of No.  
6 of 2012.

**58.** Section 65 of the Land Act is amended—

- (a) in subsection (1) by deleting the word “extend” appearing in paragraph (e) and substituting therefor the word “extent”;
- (b) in subsection(2) by inserting the words “and upon giving a seven days’ notice to the lessee” immediately after the words “reasonable time” appearing in paragraph (a).

Amendment of  
section 72 of No. 6  
of 2012.

**59.** Section 72 of the Land Act is amended in subsection (1) by deleting the word “not” appearing immediately after the words “and shall”.

Amendment of  
section 78 of no.  
6 of 2012.

**60.** Section 78 of the Land Act is amended—

- (a) in subsection (1) by deleting the words “including any charge made before the coming into effect of this Act and in effect at that time, any other charges of land which are specifically referred to in this Part”;
- (b) by inserting the following proviso immediately after subsection (1)—

Provided that—

- (a) the provisions of this Part shall not be construed so as to affect the validity of any entry in the register or any charge, mortgage other security instrument which was valid immediately before the commencement of this Act

and the entries in the register and the charges, mortgages or other instruments shall continue to be valid in accordance with their terms not withstanding their inconsistency with the provisions of this Part;

- (b) the provisions relating to the realization of any charge, mortgage or other instrument created before the commencement of this Act shall apply save for the requirement to serve notice to spouses and other persons who were not required to be served under the repealed Acts of Parliament.

Amendment of  
section 79 of  
No.6 of 2012.

**61. Section 79 of the Land Act is amended—**

- (a) in subsection (5) by deleting the words “prescribed in the register” in subsection (5) and substituting therefor the words “land register”;
- (b) in paragraph (a) of subsection (6) by inserting the words “plus interest as agreed by the chargor and the chargee” immediately after the words “obtained from the charge”;
- (c) by deleting subsection (9) and substituting therefor the following subsection—

(9) A chargor shall not possess or sell land whose title documents have been deposited by a chargee under an informal charge without an order of the court;

Amendment of  
section 81 of No.  
6 of 2012.

**62. Section 81 of the Land Act is amended—**

- (a) in subsection (1) by inserting the words “Unless otherwise provided in the charge instrument,” at the beginning of subsection (1);

(b) deleting subsection (4) and substituting therefor the following—

(4) Unless otherwise provided in the charge instrument, if the chargee, holding a charge created subsequent in time to one in favour of a prior chargee, lends money or money's worth on the security of a charge to a chargor and it later transpires that a prior chargee or the chargor himself acted dishonestly or fraudulently in procuring the charge, the prior chargee's right to repayment under the charge shall be postponed to the rights of the subsequent chargee.

Amendment of  
section 82 of No.  
6 of 2012.

**63.** Section 82 of the Land Act is amended—

- (a) in subsection (1) by deleting the words “ a chargor” appearing immediately after the word “Act” and substituting therefor the word “chargee”;
- (b) in subsection (2) by deleting the word “chargor” appearing in paragraph (b) and substituting therefor the word “chargee”.

Amendments of  
section 84  
of No. 6 of 2012.

**64.** Section 84 of the Land Act is amended—

- (a) by deleting the marginal note and substituting therefor the following marginal note—

Variation of charge.

- (b) In subsection (5) by inserting the words “on the register” immediately after the words “endorsed on” appearing in paragraph (a).

Amendment of  
section 87 of No.  
6 of 2012.

**65.** The Land Act is amended by deleting section 87 and substituting therefor the following section—

**87.** If a charge contains a condition, express or implied that chargee prohibits the chargor from, transferring, assigning,

leasing, or in the case of a lease, subleasing the land, without the consent of the chargee, no transfer, assignment, lease or sublease shall be registered until the written consent of the chargee has been produced to the Registrar.

Amendment of section 88 of No. 6 of 2012.

66. Section 88 of the Land Act is amended in subsection (1) by deleting the word “at” appearing immediately after the word “improvements” in paragraph (c).

Amendment of section 90 of No. 6 of 2012.

67. Section 90 of the Land Act is amended—

- (a) in subsection (1) by inserting the word “in” immediately after the words “continues to be”;
- (b) in subsection (3) by deleting the words “two months” appearing immediately after the word “within” and substituting therefor the words “ninety days”.

Amendment of section 91 of No. 6 of 2012.

68. Section 91 of the Land Act is amended by deleting the words “this section” and substituting therefor the words “subsection (1)(c) of this section.

Amendment of section 92 of No. 6 of 2012.

69. Section 92 of the Land Act is amended in subsection (7) by inserting the word “the” immediately after the words “incurred by”.

Amendment of section 93 of No. 6 of 2012.

70. Section 93 of the Land Act is amended—

- (a) in subsection (1) by deleting the words “unless the charge instrument expressly provides to the contrary” appearing immediately after the word “shall”;
- (b) in subsection (3) by deleting the words “in possession” appearing in paragraph (a);

(c) by deleting subsection (5) and substituting therefor the



following subsection—

(5) The provisions of this section shall only apply to a receiver of income appointed under this section and not to receivers appointed under any other instrument to which the chargor may be subject.

Amendment of  
section 94 of No.  
6 of 2012.

71. Section 94 of the Land Act is amended—

(a) in subsection (2) by deleting the words “and any forcible entry” appearing immediately after the word “peaceably” and substituting therefor the words “or by use of reasonable force”;

(b) in subsection (2) by inserting the following new proviso at the end of the subsection—

“Provided that this power of entry shall only be exercised after obtaining a court order.”

(c) in subsection (7) by deleting the words “apply to” appearing immediately after the words “order as” and substituting therefor the words “applies to”.

Amendment of  
section 95 of No.  
6 of 2012.

72. Section 95 of the Land Act is amended—

(a) in subsection (3) by deleting the word “withdraw” appearing in paragraph (c)(ii) and substituting therefor the word “withdrawal”;

(b) in subsection (4) by deleting the expression “sections 102 and 104” appearing immediately after the words “provisions of” and substituting therefor the expression “section 94”;

Amendment of

73. Section 96 of the Land Act is amended in subsection (3) by

section 96 of No. 6 of 2012. inserting the word “of” immediately after the word “out” appearing in paragraph (b).

Amendment of section 98 of No. 6 of 2012.

74. Section 98 of the Land Act is amended—

- (a) in subsection (1) by inserting the word “or” immediately after the word “whole” appearing in paragraph (a);
- (b) in subsection (3) by deleting the words “A sale of” appearing at the beginning of the provision and substituting therefor the words “A transfer of”;
- (c) by inserting the following new subsections immediately after subsection (4)—

(5) In a sale by a private contract, the chargee shall be entitled to rely on a valuation carried out by a valuer who is registered with the institute of Surveyors of Kenya and the report shall in the absence of a manifest error, be conclusive in relation to the market price:

Provided that the valuation report shall at the time of sale be not more than six months old.

(6) A transfer by charge shall have priority over all entries made after the transfer of the charge undertaking the sale and the chargee shall stand discharged upon the registration of the transfer.

(7) Where it is noted in the register that a second charge by the chargor ranks *pari passu* to the charge submitting the transfer, the instrument of transfer by the charge shall include a duly executed consent of the charge with a *pari passu* charge consenting to the sale.

(8) For the purposes of this section, land, a lease, or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.

(9) If at any time the charger is entitled to and wishes to repay the money secured by the charge, and the charge is absent, cannot be found or if the registrar is satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Court, in trust, for the person entitled to the money, and after which the obligations of the charger under the charge shall cease.

(10) Upon the deposit referred to in subsection (9), the Registrar shall cancel the registration of the charge and the Court shall pay the amount deposited to the chargee if the chargee applies for it within six years of the deposit, and where the chargee does not apply for the amount within the stated period, it shall be deposited with the Unclaimed Financial Assets Authority as an unclaimed asset.

Amendment of  
section 103 of  
No. 6 of 2012.

75. Section 103 of the Land Act is amended in subsection (1) by—

- (i) deleting the expression “85(3)(a) and (b)” appearing immediately after the words “in section” and substituting therefor the expression “90(3)”;
- (ii) inserting the words “to the extent that the spouse was required to give consent to the creation of the charge but did not give consent” immediately after the word “chargor” appearing in paragraph (c); and
- (iii) deleting paragraph (d);

Amendment of  
section 104 of  
No. 6 of 2012.

76. Section 104 of the Land Act is amended—

- (a) in subsection (1) by deleting the word “available” appearing immediately after the words “available remedies” in subparagraph (i) of paragraph (b);
- (b) in subsection (2) by deleting the words “authorize an order” appearing immediately after the words “refuse to” and substituting therefor the words “grant an order under subsection (1)”;
- (c) in subsection (4) by deleting word “must” and substituting therefor the words “may at any time before the charged property is sold”.

Amendment of  
section 107 of  
No. 6 of 2012.

77. Section 107 of the Land Act is amended—

- (a) in subsection (1) by deleting the word “public” appearing immediately after the words “acquisition of”;
- (b) by deleting subsection (4) and substituting therefor the following subsection—

“ (4) In the event that the Commission has not undertaken the acquisition in accordance with subsection (3) for the reasons stated in subsection (3) within thirty days, it shall give to the acquiring authority the reasons for the decline and the conditions that must be met.”

- (c) in subsection (7) by deleting the expression “ sections 110 to 143” appearing after the words “purposes of” and substituting therefor the expression “sections 107 to 133”.



Amendment of  
section 111 of  
No. 6 of 2012.

**78.** Section 111 by inserting a new subsection immediately after subsection (1)—

(1A) The acquiring body shall deposit with the Commission the compensation funds in addition to survey fees, registration fees, and any other costs before the acquisition is undertaken.

Amendment of  
sections 117 of  
No. 6 of 2012.

**79.** Section 117 of the Land Act is amended—

(a) by deleting the marginal note and substituting therefor the following marginal note—

“Payment of interest.”

(b) in subsection (1) by deleting the words “rate prevailing bank rates” and substituting therefor the words “base lending rate set by the Central Bank of Kenya and prevailing at that time;

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

“(2) If additional compensation is payable under section 119 there shall be added to the amount of the additional compensation interest thereon at the base lending rate set by the Central Bank of Kenya and prevailing at that time, from the time when possession was taken or compensation was paid, whichever is earlier.”

Amendment of  
sections 118 of  
No. 6 of 2012.

**80.** Section 118 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

“Final survey.”

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Amendment of sections 119 of No. 6 of 2012.

81. Section 119 of the Land Act is amended by—

(a) deleting the marginal note and substituting therefor the following marginal note—

“Condition for payment of compensation.”

(b) inserting the following new paragraph immediately after paragraph (a)—

“(b) by deleting section 119 and substituting with the following new section—

Condition for payment of compensation

**119.** Payment of compensation shall be made only upon the exercise of due diligence which shall include final survey and the determination of acreage, boundaries, ownership and value.

Amendment of sections 120 of No. 6 of 2012.

82. Section 120 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

“Formal taking of possession.”

Amendment of sections 121 of No. 6 of 2012.

83. Section 121 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

“Surrender of documents of title.”

Amendment of sections 122 of No. 6 of 2012.

84. Section 122 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

“Acquisition of other land on account of severance.”

Amendment of sections 123 of

85. Section 123 of the Land Act is amended by deleting the

No. 6 of 2012. marginal note and substituting therefor the following marginal note—

“Withdrawal of acquisition.”

Amendment of sections 124 of No. 6 of 2012.

**86.** Section 124 of the Land Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note—

“Power to obtain temporary occupation of land.”

(b) in subsection (3) by deleting the words “the first offer of” appearing immediately after the words “may after paying” and substituting therefor the word “full”.

Amendment of sections 125 of No. 6 of 2012.

**87.** Section 125 of the Land Act is amended by

(a) deleting the marginal note and substituting therefor the following marginal note—

“Payment of compensation.”

(b) by deleting subsection (2).

Amendment of sections 126 of No. 6 of 2012.

**88.** Section 126 of the Land Act is amended by—

(a) deleting the marginal note and substituting therefor the following marginal note—

“Compensation for damages.”

(b) deleting the expression “120” appearing in paragraph (b) and substituting therefor the expression “124 (3)”.

Amendment of section 134 of No. 6 of 2012.

**89.** Section 134 of the Land Act is amended —

(a) by deleting subsection (1) and substituting therefor the

following subsection—

“(1) The National Government shall implement settlement programmes to provide access to land for shelter and livelihood.”

(b) in subsection (3) by deleting it to read “The national government shall administer the settlement programmes in consultation with the Commission and the respective county governments”

(c) by deleting subsection (4) and substituting therefor the following new subsection—

“(4) Identification of beneficiaries shall be carried out and verified by a sub-county selection committee appointed by the Cabinet Secretary comprising of the following persons—

- (a) the deputy county commissioner;
- (b) the sub-county administrator;
- (c) a representative of the Commission;
- (d) a national government representative, who shall be the secretary;
- (e) a representative of persons with special needs;
- (f) a representative of women;
- (g) a youth representative; and
- (h) a representative of elders;

Provided that—

- (i) the persons appointed under paragraphs (e),
- 
-



(f), (g) and (h) shall be nominated by the area member of the National Assembly; and

(ii) a chairperson shall be appointed at the first sitting of the committee from the persons appointed under paragraphs (e), (f), (g) and (h).

(d) in subsection (5) delete and insert “ the Commission shall reserve public and for the establishment of approved settlement programmes, and where public land is not available, the board of trustees shall purchase or acquire land for such purposes”

(e) in subsection 6 by inserting the words “of the Constitution” immediately after the expression “Article 10”;

(f) by deleting subsection (7) and substituting therefor the following subsection—

(7) Any land acquired in a settlement scheme established under this Act or any other law shall be subdivided and a transfer shall only be allowed through a process of succession”.

(g) in subsection (8) by deleting the words “the Commission and” appearing immediately after the words “from time to time.”

Amendment of  
section 135 of  
No. 6 of 2012

**90.** Section 135 of the Land Act is amended—

(a) in subsection (1) by deleting the words ““administered by the National Land Commission” appearing in subsection (1) and substituting therefor the words “administered by a board of Trustees known as the Land Settlement Fund Board of Trustees”;

(b) by inserting the following new subsections immediately after subsection (1)—

(1A) The Board of Trustees shall be a body corporate with perpetual succession and a common seal, and which shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) doing or performing such other things or acts necessary for the proper performance of the functions of the Agency under this Act and which may lawfully be done or performed by a body corporate.

(1B) The Board of Trustees shall consist of—

- (a) the Cabinet Secretary responsible for land matters who shall be the chairperson;
  - (b) the Cabinet Secretary responsible for National Treasury;
  - (c) the Cabinet Secretary responsible for agriculture;
  - (d) the Cabinet Secretary responsible for the environment and natural resources;
  - (e) the Cabinet Secretary responsible for Internal Security; and
-

(f) a representative of the Commission.

(1C) The Board of Trustees shall—

(a) be responsible for the provision of access to land—

(i) to squatters;

(ii) to displaced persons;

(iii) for development projects;

(iv) for conservation; or

(v) such other causes that may lead to movement and displacement of persons;

(b) purchase private land for settlement programmes;

(c) coordinate the provision of shelter and a livelihood to persons in need of settlement programmes; and

(d) perform any other function that may enhance the development and promotion of settlement programmes.

(c) in subsection (2) by deleting the word “Commission” wherever it occurs and substituting therefor the words “Board of the Land Settlement Fund Trustees”;

(d) in subsection (3) by deleting paragraph (c);

(e) by deleting subsection (5) and substituting therefor the following new subsection—

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“(5) In carrying out its functions under Part IX of this Act, the Board of the Land Settlement Fund Trustees shall consult the relevant county government where applicable.”

Amendment of section 139 of No. 6 of 2012.

**91.** Section 139 of the Land Act is amended—

(a) in subsection (2) by deleting the words “local authority having jurisdiction in the area were” appearing in paragraph (b) and substituting therefor the words “county government having jurisdiction in the area where”;

(b) by renumbering the subsections as appropriate.

Amendment of section 140 of No. 6 of 2012.

**92.** Section 140 of the Land Act is amended—

(a) in subsection (2) by deleting the words “local authority having jurisdiction in the area were” appearing in paragraph (b) and substituting therefor the words “county government having jurisdiction in the area where”;

(b) by inserting the word “an” immediately after the words “may make” appearing in subsection (3).

Amendment of section 141 of No. 6 of 2012

**93.** Section 141(1) of the Land Act is amended by deleting the word “and” appearing in paragraph (a) immediately after the word permit and substituting therefor the word “any”.

Repeal of section 142 of No. 6 of 2012.

**94.** The Land Act is amended by repealing section 142.

Amendment of section 146 of No. 6 of 2012.

**95.** Section 146 of the Land Act is amended in subsection (3) by deleting the words “to create” appearing immediately after the term “to create”.



Amendment of section 147 of No. 6 of 2012.

**96.** Section 147 of the Land Act is amended in subsection (2) by deleting the words “certificate of occupancy” and substituting therefor the words “certificate of title or certificate of lease” in paragraph (a).

Amendment of section 151 of No. 6 of 2012.

**97.** The Land Act is amended in section 151 by deleting the words “effected and” appearing immediately after the word “notice”.

Insertion of new section 152A to 152G into No. 6 of 2012.

**98.** The Land Act is amended by inserting the following new sections immediately after section 152.

Prohibition of unlawful occupation of land.

**152A.** A person shall not unlawfully occupy private, community or public land.

Evictions to be undertaken in accordance with the Act.

**152B.** An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.

Eviction Notice to unlawful occupiers of public land.

**152C.** The National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing, by notice in the *Gazette* and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

Eviction Notice to unlawful occupiers of community land.

**152D.** (1) The County Executive Committee Member responsible for land matters shall cause a decision relating to an eviction from unregistered community land to be notified to all affected persons, in writing, by notice in the *Gazette* and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

(2) In the case of registered community land, the procedure prescribed in section 152E shall apply.

Eviction Notice  
to unlawful  
occupiers of  
private land.

**152E** (1) if, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

(2) the notice under subsection (1) shall-

- (a) be in writing and in a national and official language;
- (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
- (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
- (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police

division of the area

Application to  
Court for relief.

**152F.** (1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections 152C, 152D and 152E, may—

- (a) confirm the notice and order the person to vacate;
- (b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;
- (c) suspend the operation of the notice for any period which the court shall determine; or
- (d) order for compensation.

Mandatory  
procedures  
during eviction.

**152G.(1)** Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures—

- (a) be preceded by the proper identification of those taking part in the eviction or demolitions;
- (b) be preceded by the presentation of the formal authorizations for the action;
- (c) where groups of people are involved, government officials or their representatives to

be present during an eviction;

- (d) be carried out in a manner that respects the dignity, right to life and security of those affected;
- (e) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
- (f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
- (g) include mechanisms to protect property and possessions left behind involuntarily from destruction;
- (h) respect the principles of necessity and proportionality during the use of force; and
- (i) give the affected persons the first priority to demolish and salvage their property.

(2) The Cabinet Secretary shall prescribe regulations to give effect to this section.

Disposal of  
property left  
after eviction.

**152H.** The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land.



Demolition of unauthorized structures.

**152I.** Where the erection of any building or execution of any works has commenced or been completed on any land without authority, the competent officer shall order the person in whose instance the erection or work began or was carried, to demolish the building or works, within such period as may be specified in the order,

Repeal of sections 153 of No. 6 of 2012.

**99.** The Land Act is amended by repealing section 153.

Amendment of section 155 of No. 6 of 2012.

**100.** Section 155 of the Land Act is amended—

- (a) in subsection (3) by deleting the word “if” appearing immediately after the word “that” and substituting therefor the words “the person”;
- (b) in subsection (4) by deleting the word “if” appearing immediately after the word “environment” appearing in paragraph (h) and substituting therefor the word “of”.
- (c) in subsection (7) by deleting the word “if” appearing immediately after the word “Where”.

Amendment of section 159 of No. 6 of 2012.

**101.** The Land Act is amended by deleting section 159 and substituting therefor the following new section—

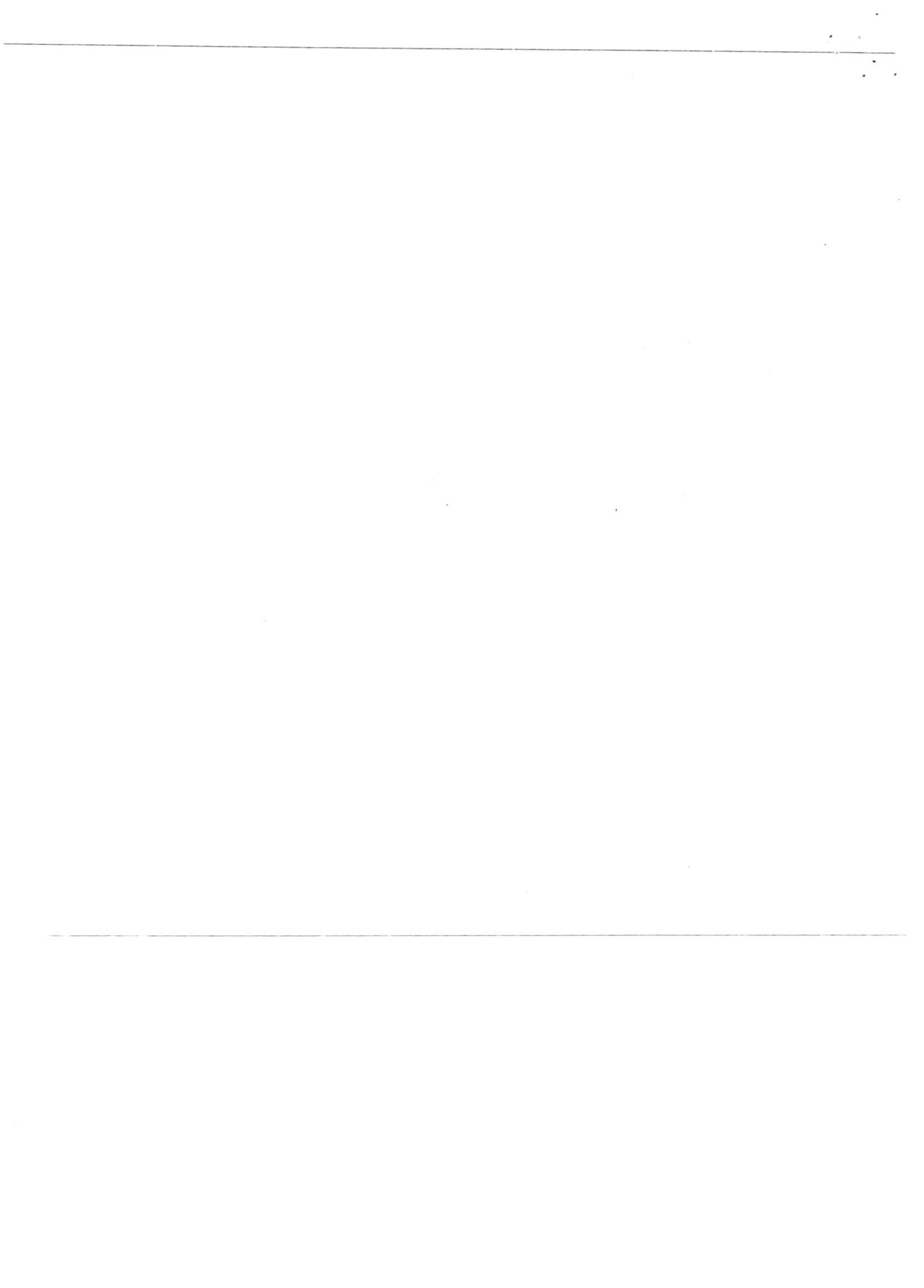
Minimum and maximum land holding acreages.

**159.(1)** Subject to Article 40 of the Constitution—

- (a) the minimum land holding acreage shall be subject to the provisions of Article 66(1) of the Constitution and the legislation envisaged therein.
- (b) the maximum land holding acreage shall be subject to Article 60(1) (a) and (c) of

the Constitution.

(2) The Cabinet Secretary shall publish guidelines on the penalties for non-compliance with the provisions of this section.



MINUTES OF THE 1<sup>ST</sup> SITTING OF THE MEDIATION COMMITTEE ON THE  
COMMUNITY LAND BILL, 2015 AND LAND LAWS (AMENDMENT) BILL, 2015  
HELD ON TUESDAY 5<sup>TH</sup> JULY, 2016 IN COMMITTEE ROOM 5, MAIN  
PARLIAMENT BUILDINGS AT 12 NOON

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
3. The Hon. Francis GanyaChachu, MP
4. Sen. NaisulaLesuuda, MP
5. The Hon. Francis WaweruNderitu, MP
6. Sen. (Prof) John Lonyangapuo, MP
7. The Hon. Moses Ole Sakuda, MP
8. The Hon. Daniel Maazo, MP
9. Sen. AbubakarHarugura, MP

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MP

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

- |                       |  |
|-----------------------|--|
| 1. James Ginono       | First Clerk Assistant(National Assembly) |
| 2. Brenda Ogembo      | First Clerk Assistant (Senate)           |
| 3. Joshua Ondari      | Third Clerk Assistant(National Assembly) |
| 4. MuyodiEmmanuel     | Third Clerk Assistant(National Assembly) |
| 5. Dr. Johnson Okello | Deputy Director Legal Services(Senate)   |
| 6. Leonard Koech      | Legal Counsel(Senate)                    |
| 7. Christine Odhiambo | Legal Counsel I (National Assembly)      |
| 8. Mercy Wanyonyi     | Legal Counsel II (National Assembly)     |

MIN.NO. MC/2016/01

PRELIMINARIES

The Clerk called the meeting to order at 12.25 pm, with a word of prayer from the Hon. Moses Ole Sakuda, MP. Thereafter he welcomed the Members and requested them to introduce themselves.

MIN.NO. MC/2016/02

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Francis GanyaChachu, MP and Seconded by the Hon. Francis WaweruNderitu, MP.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Preliminaries/Introduction
4. Election of Chairperson and Vice-Chairperson
5. Communication from the Chair



6. **Setting Terms of Reference**
7. Any Other Business
8. Date of Next Sitting
9. Adjournment

**MIN.NO. MC/2016/03**

**ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON**

The Committee through consensus unanimously agreed that Sen. Lenny Kivuti, MP and the Hon. Alex Mwiru, MP be elected Chairman and the Vice Chairman respectively.

**MIN.NO. MC/2016/04**

**COMMUNICATION FROM THE CHAIRMAN AND VICE-CHAIRPERSON**

The Chairman and the Vice Chairman thanked Members for the opportunity and the Confidence they have shown them. Further optimism was expressed in the committee's need in finalizing the matters before it within two weeks so as to give both Houses enough time to adopt the agreed versions of the Bill before the Constitutional deadline of 27<sup>th</sup> August 2016.

It was noted that this is the first time in the history of both Houses that all clauses in a Bill have been rejected in totality during Second Reading, that the Liaison Committee of the Senate held a meeting and deliberated whether to hold a public hearing or not after which all Senators were invited for a seminar at Crown Plaza Hotel on Wednesday 29<sup>th</sup> June, 2016 in order to be informed on why the Bills were rejected in totality. In the meeting the Senate Legal department provided a bill digest on all the three Bills i.e Physical Planning Bill, 2015, Community Land Bill, 2015 and the Land Laws (Amendments) Bill, 2015. The key issue singled out by the Legal Department as being contentious was the presence of the Cabinet Secretary, Ministry of Lands and Physical Planning in all the clauses and also gender issues on marital land ownership.

The Committee was informed that the Senate had put an advertisement in the newspapers calling for public participation but they later withdrew the advert after they were advised that it was not the mandate of the Senate Committee on Lands and Natural Resources to hold a public hearing and since that opportunity was not availed it was now the responsibility of the Mediation Committee to conduct the public participation even though the national Assembly had conducted the same when considering the Bills and invitations should be done directly to major Land stakeholders mainly the Ministry of Land and Physical Planning, National Land Commission, Institution of Surveyors of Kenya and the Council of Governors.

**MIN.NO. MC/2016/05**

**TERMS OF REFERENCE**

The Committee deliberated on the terms of reference as attached and resolved that the following are agreeable Terms of Reference;

- a) Conduct a review of the rejected Community Land Bill (National Assembly Bill No. 45 of 2015) with a view to develop an agreed version
- b) Conduct a review of the rejected Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) with a view to develop an agreed version

- c) Conduct stakeholder consultations on the two bills as may be necessary
- d) Prepare the requisite reports and report to both Houses within two weeks.

**Upon further deliberations it was resolved as hereunder, That:-**

1. The Chairman and the Vice Chairman issue communication to their respective Houses on the decision taken by the Mediation Committee to call for public participation on the two Bills, so that member of both Houses can participate during the said process.
2. Direct invitations be done to the major land stakeholder's i.e the Ministry of Land and Physical Planning, National Land Commission, Institution of Surveyors of Kenya and the Council of Governors requesting them to present specific amendments during the public participation based on the bills as adopted by the National Assembly.
3. An advertisement be done to major newspaper requesting for submission of memoranda on the Bills from members of the public on or before Wednesday 13<sup>th</sup> July, 2016 and participation in the Public Participation on the same date.
4. A matrix on the two Bills under consideration be prepared by Friday 15<sup>th</sup> July, 2016.

**MIN.NO. MC/2016/06**

**ANY OTHER BUSINESS**

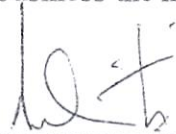
The Committee resolved to hold a one-day conference on 15<sup>th</sup> July 2016 in order to consider the stakeholders proposals on the said Bills and provide reports to both Houses within 2 weeks.

**MIN.NO. MC/2016/07**

**ADJOURNMENT**

There being no other business the meeting was adjourned at 1.30 pm.

SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

21/7/2016





MINUTES OF THE 3<sup>RD</sup> SITTING OF THE MEDIATIONLAND LAWS (AMENDMENT) BILL  
2015 HELD ON WEDNESDAY 13<sup>TH</sup> JULY, 2016 IN MINI CHAMBERS, COUNTY HALL, AT  
11:00 AM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
3. The Hon. Moses Ole Sakuda, MP
4. Sen. Naisula Lesuuda, MP
5. The Hon. Francis Waweru Nderitu, MP
6. The Hon. Daniel Maazo, MP
7. Sen. George Khaniri, MP
8. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Francis GanyaChachu, MP
2. Sen. (Prof) John Lonyangapuo, MP

IN ATTENDANCE

1. The Hon. Julius Ndegwa, MP
2. Sen. Peter Mositet, MP
3. The Hon. John Kihagi, MP

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

1. Mr. James Ginono First Clerk Assistant (National Assembly)
2. Ms. Brenda Ogembo First Clerk Assistant (Senate)
3. Mr. Joshua Ondari Third Clerk Assistant (National Assembly)
4. Mr. Muyodi Emmanuel Third Clerk Assistant (National Assembly)
5. Dr. Johnson Okello Deputy Director Legal Services (Senate)
6. Mr. Leonard Koech Legal Counsel (Senate)
7. Ms. Christine Odhiambo Legal Counsel I (National Assembly)
8. Ms. Mercy Wanyonyi Legal Counsel II (National Assembly)

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Prof. Jacob Kaimenyi Cabinet Secretary
2. Ms. Mariamu El Maawy Principal Secretary
3. Mr. Peter Kahuho Secretary Lands
4. Mr. Augustine Masinde Director Physical Planning
5. Mr. Francis Orioki Director Land Registration Officer
6. Mr. Terry Gathagu C.S.L
7. Ms. Lucy Wanja Legal Advisor
8. Mr. Stephen Kibungei Legal Advisor
9. Mr. Paul NdunguAg. Director Survey

COUNCIL OF GOVERNORS

1. Hon. Peter Munya Chairman (Governor Meru County)
2. Hon. Dr Julius Makau Malombe Governor Kitui County
3. Hon. Kivutha Kibwana Governor Makeni
4. Hon. John M. Mruttu Taita Taveta County
5. Ms. Medline Mirumba Legal Officer
6. Ms. Eva Sawe Legal Officer
7. Ms. Rosemary Nyaramba Legal Officer
8. Ms. Meboh Abuor Legal Officer



### NATIONAL LAND COMMISSION

- |                           |                              |
|---------------------------|------------------------------|
| 1. Prof. Mohammed Swazuri | Chairman                     |
| 2. Mr. Silas Kinoti       | Commissioner                 |
| 3. Ms. Mercy Njamwee      | Director                     |
| 4. Mr. Samuel Odari       | Deputy Director Adjudication |

### INSTITUTION SURVEY OF KENYA

- |                        |                             |
|------------------------|-----------------------------|
| 1. Ms. Emily Njeru     | Chair Land Surveyor Chapter |
| 2. Mr. Dennis Deus     |                             |
| 3. Mr. Stephen Ambani  |                             |
| 4. Mr. Moses Kiambuthi |                             |
| 5. Mr. Robert Koech    |                             |

### RECONCILE

- |                         |                         |
|-------------------------|-------------------------|
| 1. Mr. Shadrack Omondi  | Chief Executive Officer |
| 2. Mr. Peter Ken Otieno |                         |
| 3. Ms. Angela Nyamongo  | Legal Advisor           |

### HAKI JAMII

1. Ms. Pauline Vata
2. Ms. Linda Ikenye

### KENYA WILDLIFE CONSERVANCIES ASSOCIATION

- |                          |                         |
|--------------------------|-------------------------|
| 1. Mr. Dickson Ole Kaelo | Chief Executive Officer |
| 2. Mr. Geoffrey Ayuka    | Legal Advisor           |
| 3. Ms. Gladys Wangia     | Legal Advisor           |

### MIN.NO. MC/2016/13

### PRELIMINARIES

The chairperson called the meeting to order at 11.00 am, with a word of prayer from the Hon. Alex Mwiru, MP. Thereafter he welcomed the Members.

### MIN.NO. MC/2016/14

### ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Moses Ole Sakuda, MP and Seconded by the Hon. Francis Waweru Nderitu, MP.

### AGENDA

1. Prayer
2. Adoption of the Agenda
3. Preliminaries/Introduction
4. Communication from the Chair
5. Public Hearing on the Land Laws (Amendments) Bill, 2015
6. Any Other Business
7. Date of Next Sitting
8. Adjournment

### MIN.NO. MC/2016/15

### MEETING WITH STAKEHOLDERS ON THE LAND LAWS (AMENDMENTS) BILL, 2015

1. Ministry of Lands and Physical Planning

The Cabinet Secretary, Prof. Jacob Kaimenyi presented before the Committee the Ministry of Lands and physical Planning proposed amendments to the Land Laws (Amendments) 2015 as annexed in the minutes.

The Committee assured the Cabinet Secretary that it will take note of the proposals from the Ministry as presented and requested them to forward any other proposals not later than close of Business on 14<sup>th</sup> July 2016.

**2. Council of Governors**

The Chairman of the Council of Governors (CoG) Hon. Peter Munya presented before the Committee the CoG proposed amendments to the Land Laws (Amendments) 2015 as annexed in the minutes.

The Committee assured the CoG that it will take note of the proposals as presented and requested them to forward any other proposals not later than close of Business on 14<sup>th</sup> July 2016.

**3. National Land Commission**

Mr. Silas Kinoti, Commissioner, National Land Commission presented before the Committee the proposed amendments to the Land Laws (Amendments) 2015 as annexed in the minutes.

The Committee assured the Commissioner that it will take note of the proposals as presented and requested them to forward any other proposals if any not later than close of Business on 14<sup>th</sup> July 2016.

**4. Institute of Surveyors Kenya**

Mr. Stephen Ambani, the Chairman, Institution Survey of Kenya presented before the Committee the proposed amendments to the Land Laws (Amendments) 2015 as annexed in the minutes.

The Committee assured the Chairman ISK that it will take note of the proposals as presented and requested them to forward any other proposals if any not later than close of Business on 14<sup>th</sup> July 2016.

**5. Hakijamii**

Ms. Pauline Vata presented and tabled before the Committee the proposed amendments to the Land Laws (Amendments) 2015 as annexed in the minutes. She further informed the Committee as follows:- that

- a) The word unlawful occupier used in clause 97-section 152(b), which amends section 152 of Land Act, should be defined.
- b) Sub clause should be put on clause 97 subsection 152(g) of the Land Act which requires court orders to be produced before eviction is done; and
- c) Evictions and settlement should be done in a separate legislation.

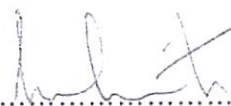
The Committee assured Hakijamii that it will take note of the proposals as presented and requested them to forward any other proposals if any not later than close of Business on 14<sup>th</sup> July 2016.

MIN.NO. MC/2016/16

ADJOURNMENT

There being no any other business and the time being the 2.35 pm the Sitting was adjourned.

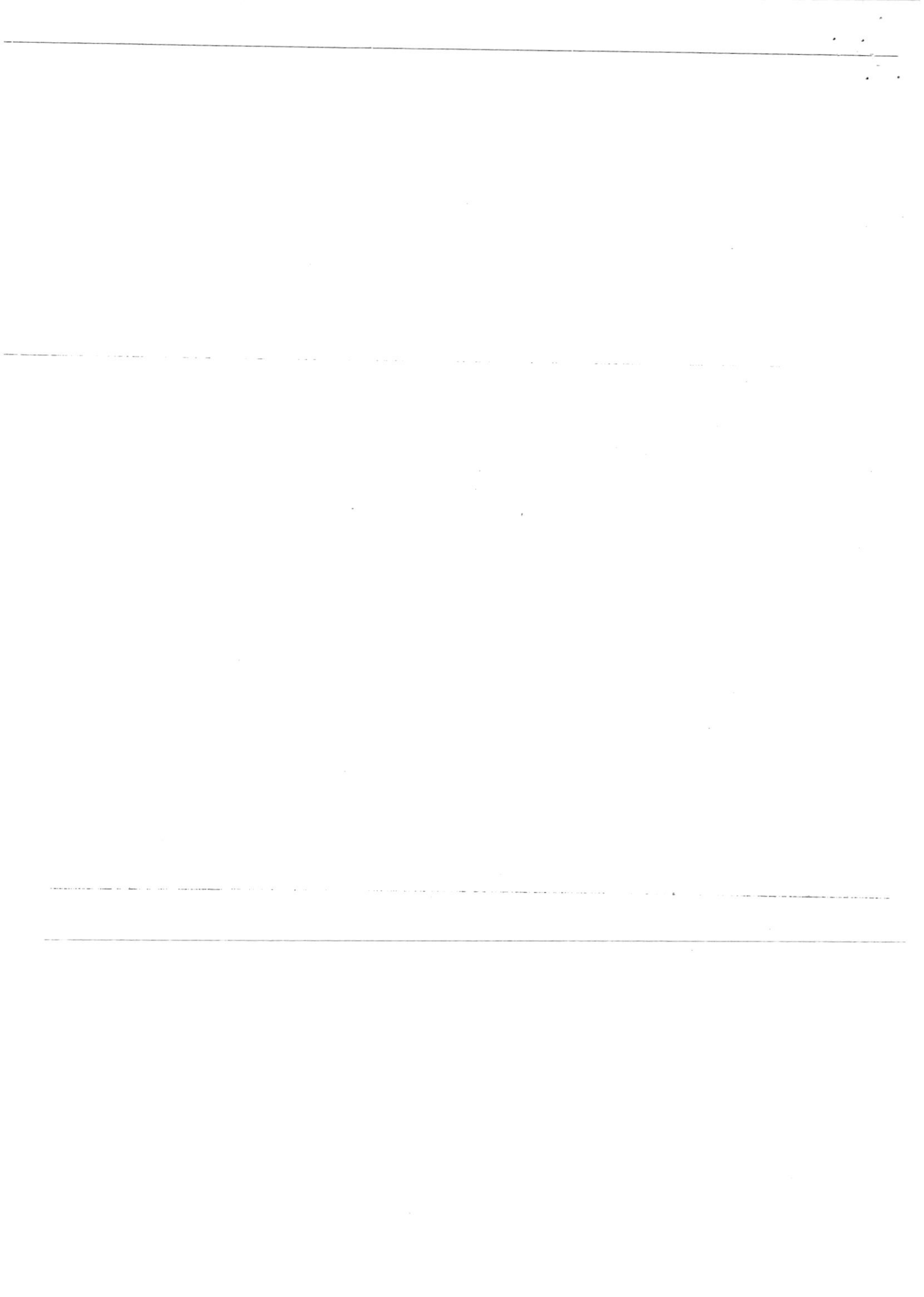
SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/07/2016



MINUTES OF THE 7<sup>TH</sup> SITTING OF THE MEDIATION LAND LAWS  
(AMENDMENT) BILL, 2015 HELD ON MONDAY 18<sup>TH</sup> JULY, 2016 BOGOL INYA  
HALL, WESTON HOTEL NAIROBI AT 4:00 PM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. Sen. Naisula Lesuuda, MP
3. The Hon. Francis Waweru Nderitu, MP
4. The Hon. Moses Ole Sakuda, MP
5. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Alex Mwiru, MP (Vice Chairperson.)
2. The Hon. Francis Ganya Chachu, MP
3. Sen. (Prof) John Lonyangapuo, MP
4. The Hon. Daniel Maazo, MP

IN ATTENDANCE

**National Assembly/ Senate Secretariat**

- |                           |   |
|---------------------------|---|
| 1. Mr. James Ginono       | First Clerk Assistant (National Assembly) |
| 2. Ms. Brenda Ogembo      | First Clerk Assistant (Senate)            |
| 3. Mr. Joshua Ondari      | Third Clerk Assistant (National Assembly) |
| 4. Mr. Muyodi Emmanuel    | Third Clerk Assistant (National Assembly) |
| 5. Dr. Johnson Okello     | Deputy Director Legal Services (Senate)   |
| 6. Mr. Leonard Koech      | Legal Counsel (Senate)                    |
| 7. Ms. Christine Odhiambo | Legal Counsel I (National Assembly)       |
| 8. Ms. Mercy Wanyonyi     | Legal Counsel II (National Assembly)      |
| 9. Ms. Sarah Rukwaro      | Serjeant at Arms                          |

MIN.NO. MC/2016/27

PRELIMINARIES

The chairperson called the meeting to order at 4.00 pm, with a word of prayer from the Chairperson.

MIN.NO. MC/2016/28

CONSIDERATION OF THE LAND LAWS  
(AMENDMENT) BILL, 2015

The Committee considered clause by clause of the Land Laws (Amendment) Bill, 2015 as passed by the National Assembly and singled out the main reason of the rejection of the Bill in totality by



the Senate was the assignment of the Cabinet Secretary, Ministry of Lands and Physical Planning in functions meant for National Land Commission.

The Senate also noted that the Land Laws (Amendment) Bill appeared to be an attempt to amend the constitution indirectly.

Following the clause-by-clause consideration of the Bill, the Committee did not point out any clause which needed further amendments –

**Long Title**

Adopted as it is in the Bill.

**Short Title**

Adopted as it is in the Bill.

**Clause 2**

Adopted as it is in the Bill.

**Clause 3**

Adopted as it is in the Bill.

**Clause 4**

Adopted as it is in the Bill.

**Clause 5**

Adopted as it is in the Bill.

**Clause 6**

Adopted as it is in the Bill.

**Clause 7**

Adopted as it is in the Bill.

**Clause 8**

Adopted as it is in the Bill.

**Clause 9**

Adopted as it is in the Bill

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Clause 10

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**Clause 22**

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**Clause 31**

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Clause 94

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Clause 100

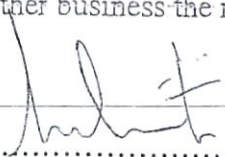
Adopted as it is in the Bill.

MIN.NO. MC/2016/29

ADJOURNMENT

There being no other business the meeting was adjourned at 4:45 pm.

SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/7/2016

MINUTES OF THE 8<sup>TH</sup> SITTING OF THE MEDIATION LAND LAWS (AMENDMENT) BILL, 2015 HELD ON MONDAY 18<sup>TH</sup> JULY, 2016 BOGOL INYA HALL, WESTON HOTEL NAIROBI AT 5:00 PM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. Sen. Naisula Lesuuda, MP
3. The Hon. Francis Waweru Nderitu, MP
4. The Hon. Moses Ole Sakuda, MP
5. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Alex Mwiru, MP (Vice Chairperson.)
2. The Hon. Francis Ganya Chachu, MP
3. Sen. (Prof) John Lonyangapuo, MP
4. The Hon. Daniel Maazo, MP

IN ATTENDANCE

National Assembly/ Senate Secretariat

- |                           |   |
|---------------------------|---|
| 1. Mr. James Ginono       | First Clerk Assistant (National Assembly) |
| 2. Ms. Brenda Ogembo      | First Clerk Assistant (Senate)            |
| 3. Mr. Joshua Ondari      | Third Clerk Assistant (National Assembly) |
| 4. Mr. Muyodi Emmanuel    | Third Clerk Assistant (National Assembly) |
| 5. Dr. Johnson Okello     | Deputy Director Legal Services (Senate)   |
| 6. Mr. Leonard Koech      | Legal Counsel (Senate)                    |
| 7. Ms. Christine Odhiambo | Legal Counsel I (National Assembly)       |
| 8. Ms. Mercy Wanyonyi     | Legal Counsel II (National Assembly)      |
| 9. Ms. Sarah Rukwaro      | Serjeant at Arms                          |

MIN.NO. MC/2016/30

PRELIMINARIES

The chairperson called the meeting to order at 5.05 pm, with a word of prayer from the Chairperson.

MIN.NO. MC/2016/31

CONSIDERATION OF THE PROPOSED  
AMENDMENTS TO THE LAND LAWS  
(AMENDMENT) BILL, 2015 BY  
STAKEHOLDERS

The Committee considered the proposed amendment to the Land Laws (Amendment) Bill, 2015 by the stakeholders and resolved as follows –

The Committee noted that the Land Laws (Amendment) Bill, 2015 had incorporated new terms not found in the Land Registration Act as it had been developed incorporating the following constitutional bills, the Minimum and Maximum Acreage Bill, the Evictions Bill and the Historical Injustices Bill.

The Committee noted that the amendments proposed in this Bill would aide in streamlining the management of land and removes any existing duplication of functions.

**Long title**                      Adopted as in the Bill

**CLAUSE 1**                      Adopted as in the Bill

**CLAUSE 2**

**THAT** clause 2 be amended by-

- (a) deleting the word “means” in the definition of caution appearing in section 2 of the Land Registration Act paragraph and replacing therefor with the word “includes”; and
- (b) in sub-clause (i) by inserting the following new definitions in their proper alphabetical sequence-

---

“eviction” means the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise.

---

The committee noted that the Constitution did not provide for the term eviction and the term used in the Act was “eviction” not “forced eviction”.

**CLAUSE 3**

**THAT** clause 3 of the Bill be amended-

- (a) by deleting paragraph (a) and substituting therefore the following new paragraph by inserting the word “and the county government ” immediately after the words “the

Cabinet Secretary in consultation with the Commission”.

### CLAUSE 3A

THAT clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-

#### 3A

Amendment of section 6 No. 3 of 2012	(aa) For purposes of administration and effective land management the county government and National Land Commission will have access to all documents maintained in the registration units.
---	--

The Committee noted that the request to have the National Land Commission (NLC) keep a register of all community, private and public land was not feasible as this is not a function assigned to NLC in the Constitution. The Committee resolved to provide an amendment enabling access to registration records by the NLC and county governments for own internal use. The committee noted that this access should be restricted to national government facilitating usage of the data and not giving copies to the two institutions.

CLAUSE 4            Adopted as in the Bill

The Committee rejected the proposed amendments as sufficient consultation with the Commission had already been provided for.

CLAUSE 5            Adopted as in the Bil

CLAUSE 6            Adopted as in the Bill

CLAUSE 7            Adopted as in the Bill

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The Committee rejected the Ministry's amendments noting that the proposed amendment would negate other professions from serving as land registrars, which was unacceptable.

CLAUSE 8            Adopted as in the Bill

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CLAUSE 9            Adopted as in the Bill

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CLAUSE 10 Adopted as in the Bill

CLAUSE 11

THAT clause 11 of the Bill be amended by deleting paragraph (a).

The Committee noted that the amendment in the Bill proposed to delete spousal rights in Section 28 of the Land Registration Act. The Committee noted that this was potentially a challenge if spousal rights were not adequately secured by the matrimonial properties act. The Secretariat was charged with bringing the provisions of the Matrimonial Properties Act to the next meeting to enable the Committee review the provisions in the Act securing spousal property rights against the proposals made in the Bill.

CLAUSE 12 Adopted as in the Bill

CLAUSE 13 Adopted as in the Bill

CLAUSE 14 Adopted as in the Bill

CLAUSE 15 Adopted as in the Bill

#### INSERTION OF A NEW CLAUSE 15A OF THE BILL

The Committee adopted the proposed amendment, as the NLC Act would be amended to delete the establishment of County Land Management Boards. The Committee noted that NLC should establish administrative structures devolve its functions and not establish other independent bodies to carry out its assigned constitutional functions.

The Committee therefore adopted the proposed amendment as follows –

THAT the Bill be amended by inserting the following new clause immediately after clause 15-

15A

---

Amendment of section 39 (2) of No. 3 of 2012	Section 39 of Land Registration Act is amended in sub section (2) by deleting the words “relevant County Land Management Board” appearing after the words “give by the” and substituting therefor the words “national or county government”.
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CLAUSE 16 Adopted as in the Bill

CLAUSE 17 Adopted as in the Bill

CLAUSE 18            Adopted as in the Bill  
CLAUSE 19            Adopted as in the Bill  
CLAUSE 20            Adopted as in the Bill  
CLAUSE 21            Adopted as in the Bill  
CLAUSE 22            Adopted as in the Bill  
CLAUSE 23            Adopted as in the Bill  
CLAUSE 24            Adopted as in the Bill  
CLAUSE 25            Adopted as in the Bill  
CLAUSE 26            Adopted as in the Bill  
CLAUSE 27            Adopted as in the Bill  
CLAUSE 28            Adopted as in the Bill  
CLAUSE 29            Adopted as in the Bill  
CLAUSE 30            Adopted as in the Bill  
CLAUSE 31            Adopted as in the Bill  
CLAUSE 32            Adopted as in the Bill  
CLAUSE 33            Adopted as in the Bill  
CLAUSE 34            Adopted as in the Bill  
CLAUSE 35            Adopted as in the Bill  
CLAUSE 36

THAT clause 36 be amended in sub-clause (a) by deleting the word "and" appearing in paragraph (i) and substituting therefor the word "public".

---

The Committee noted that this was correction of a typographical error.

The Committee resolved to delete (d) and replace it with "NLC may develop and maintain an effective land information system for management of public land." The committee noted that the restriction to public land was based on the functions assigned to NLC by the constitution including the fact that any public land once registered would be transferred to the land register

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and accordingly would no longer be within the remit of NLC.

CLAUSE 37            Adopted as in the Bill

CLAUSE 38            Adopted as in the Bill

CLAUSE 39            Adopted as in the Bill

CLAUSE 40            Adopted as in the Bill

CLAUSE 41            Adopted as in the Bill

CLAUSE 42            Adopted as in the Bill

The Committee held several deliberations on this amendment but resolved to adopt the proposals as per the bill as land registration is singularly a national government function.

CLAUSE 43            Adopted as in the Bill

CLAUSE 44            Adopted as in the Bill

CLAUSE 45            Adopted as in the Bill

CLAUSE 46            Adopted as in the Bill

CLAUSE 47

THAT clause 47 of the Bill be amended by deleting sub-clause (c). The Committee noted the importance of this amendment and accepted the proposed amendments on securing pre-emptive rights.

CLAUSE 48            Adopted as in the Bill

CLAUSE 49            Adopted as in the Bill

CLAUSE 50            Adopted as in the Bill

CLAUSE 51            Adopted as in the Bill

CLAUSE 52            Adopted as in the Bill

CLAUSE 53            Adopted as in the Bill

CLAUSE 54            Adopted as in the Bill

CLAUSE 55            Adopted as in the Bill

CLAUSE 56            Adopted as in the Bill

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CLAUSE 57	Adopted as in the Bill
CLAUSE 58	Adopted as in the Bill
CLAUSE 59	Adopted as in the Bill
CLAUSE 60	Adopted as in the Bill
CLAUSE 61	Adopted as in the Bill
CLAUSE 62	Adopted as in the Bill
CLAUSE 63	Adopted as in the Bill
CLAUSE 64	Adopted as in the Bill
CLAUSE 65	Adopted as in the Bill
CLAUSE 66	Adopted as in the Bill
CLAUSE 67	Adopted as in the Bill
CLAUSE 68	Adopted as in the Bill
CLAUSE 69	Adopted as in the Bill
CLAUSE 70	Adopted as in the Bill
CLAUSE 71	Adopted as in the Bill
CLAUSE 72	Adopted as in the Bill
CLAUSE 73	Adopted as in the Bill
CLAUSE 74	Adopted as in the Bill
CLAUSE 75	Adopted as in the Bill
CLAUSE 76	Adopted as in the Bill
CLAUSE 77	Adopted as in the Bill

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CLAUSE 78	Adopted as in the Bill
CLAUSE 79	Adopted as in the Bill
CLAUSE 80	Adopted as in the Bill
CLAUSE 81	Adopted as in the Bill

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- CLAUSE 82            Adopted as in the Bill
- CLAUSE 83            Adopted as in the Bill
- CLAUSE 84            Adopted as in the Bill
- CLAUSE 85            Adopted as in the Bill
- CLAUSE 86            Adopted as in the Bill
- CLAUSE 87            Adopted as in the Bill
- CLAUSE 88            Adopted as in the Bill

The committee noted that settlement schemes are done on public land and accordingly NLC has a role in the management of settlement schemes. The Committee noted that this role was adequately provided for in clause 88(b) of the Bill.

- CLAUSE 89            Adopted as in the Bill

The committee noted that the Board was all-inclusive and that NLC in its submissions to the committee was not against the composition of the Board. The Committee further noted that the cabinet secretary in consultation with the NLC would establish the Board.

The Committee also deliberated on the matter of including a representative from the Council of Governors but noted that funding for the purchase of land would come from the consolidated fund and would be undertaken as a national function and as such there was no need to include a representative from the Council of Governors.

- CLAUSE 90            Adopted as in the Bill
- CLAUSE 91            Adopted as in the Bill
- 
- CLAUSE 92            Adopted as in the Bill
- 
- CLAUSE 93            Adopted as in the Bill
- 
- CLAUSE 94            Adopted as in the Bill
- CLAUSE 95            Adopted as in the Bill
- CLAUSE 96            Adopted as in the Bill
- CLAUSE 97

THAT clause 97 of the Bill be amended by inserting the following new paragraph in clause 152  
G-

(j) the Cabinet Secretary shall prescribe regulations to give effect to this section.

- CLAUSE 98            Adopted as in the Bill  
CLAUSE 99            Adopted as in the Bill  
CLAUSE 100          Adopted as in the Bill

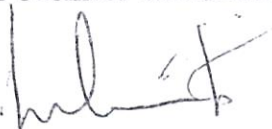
The Committee noted that the Constitution did not set a minimum or maximum acreage that a person could hold and instead and this would be informed, when necessary, by land use planning concerns as determined by government.

MIN.NO. MC/2016/32

ADJOURNMENT

There being no other business the meeting was adjourned at 8.00 pm.

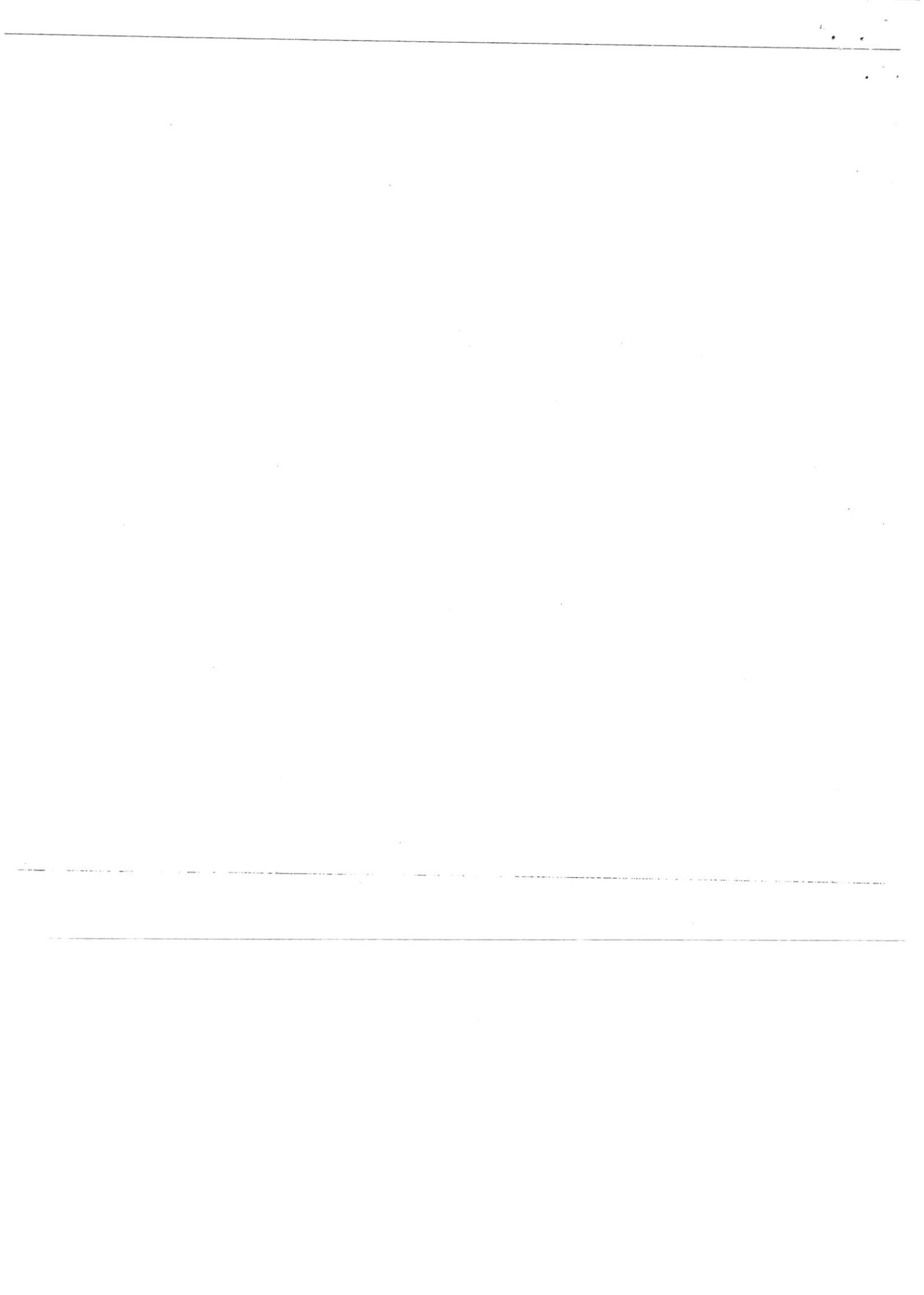
SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/7/2016



MINUTES OF THE 12<sup>TH</sup> SITTING OF THE MEDIATION COMMITTEE ON THE  
LAND LAWS (AMENDMENT) BILL, 2015 HELD ON WEDNESDAY 27<sup>TH</sup> JULY, 2016  
IN THE BOARDROOM OF 4<sup>TH</sup> FLOOR PROTECTION HOUSE PARLIAMENT  
BUILDINGS AT 9.00 AM

PRESENT

- 1.Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
- 3.The Hon. Moses Ole Sakuda, MP
- 4.The Hon. Francis Waweru Nderitu, MP
- 5.The Hon. Dan Maanzo, MP
- 6.Sen. Naisula Lesuuda, MP
- 7.The Hon. Francis Ganya Chachu, MP
- 8.Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

- 1.Sen. (Prof) John Lonyangapuo, MP
- 2.Sen. George Khaniri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

1. Mr. James Ginono First Clerk Assistant (National Assembly)
2. Ms. Brenda Ogembo First Clerk Assistant (Senate)
3. Ms. Mwanate Shaban Second Clerk Assistant (Senate)
4. Mr. Joshua Ondari Third Clerk Assistant (National Assembly)
5. Mr. Emmanuel Muyodi Third Clerk Assistant (National Assembly)
6. Mr. Leonard Koech Legal Counsel (Senate)
7. Ms. Mercy Wanyonyi Legal Counsel II (National Assembly)
8. Mr. Rodgers Muinde Audio Officer

MIN.NO. MC/2016/49

PRELIMINARIES

The chairperson called the meeting to order at 9.15 am with a word of prayer.

MIN.NO. MC/2016/50

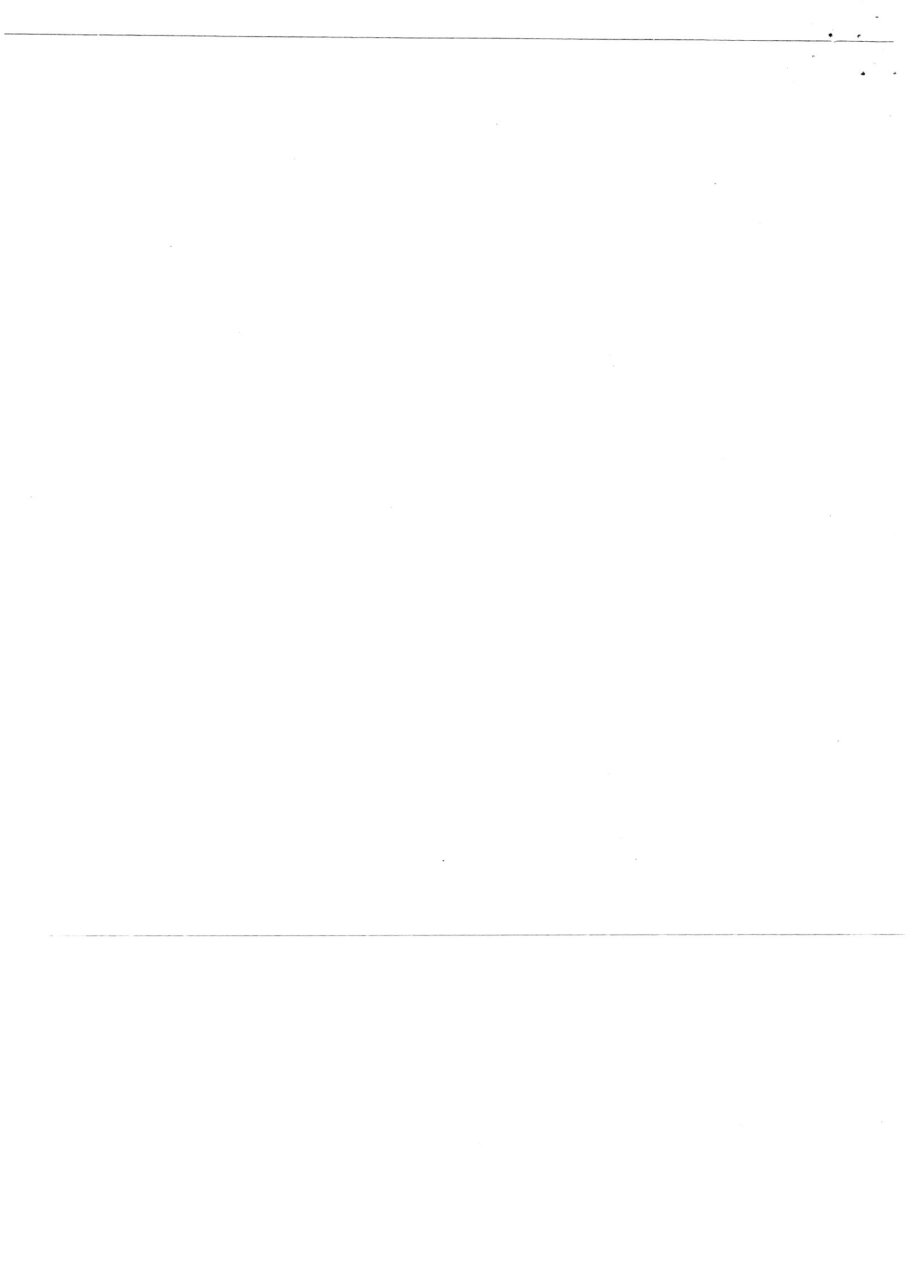
ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by Sen. Hargura Godana, MP and Seconded by the Hon. Francis Ganya Chachu, MP.

AGENDA

1. Preliminaries/Introduction
2. Adoption of the Agenda
3. Communication from the Chair
4. Confirmation of Minutes
5. ~~Matters a rising~~
6. Review and Adoption of the Report on the Land Laws (Amendments) Bill, 2015





7. Any other Business

8. Date of Next Sitting and Adjournment

MIN.NO. MC/2016/51      CONFIRMATION OF MINUTES

The minutes of the 11<sup>th</sup> sitting held on Tuesday 26<sup>th</sup> July, 2016 were adopted as a true recording of the deliberations of the Committee after being proposed by proposed by Sen. Hargura Godana, MP and Seconded by the Hon. Francis Ganya Chachu, MP and signed by the Vice-Chairman.

MIN.NO. MC/2016/52      REVIEW AND ADOPTION OF THE REPORT ON LAND LAWS (AMENDMENTS) BILL, 2015

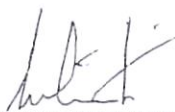
The Committee considered the report on the Land Laws (Amendment) Bill, 2015 and resolved as hereunder:-

- a) The Committee deliberated on Clause 11 of the Bill and confirmed that spousal rights were adequately secured by the Matrimonial Proprieties Act.
- b) That Clause 3(a) be amended to read as follows “ for purposes of administration and effective land management the county government and National Land Commission will have access to all documents maintained in the registration units for internal use only”
- c) This is to ensure that access is restricted to National government facilitating usage of data and not giving copies to the county government and the National Land Commission.

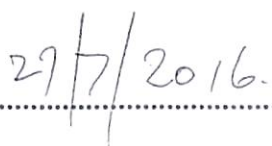
After the above amendments the report on the Land Laws (Amendment) Bill, 2015 was unanimously adopted by the Committee Members present after being proposed by the Hon. Francis Waweru Nderitu, MP and seconded by the Sen. Godana Hargura, MP and was signed jointly by the Chairman and the vice Chairman.

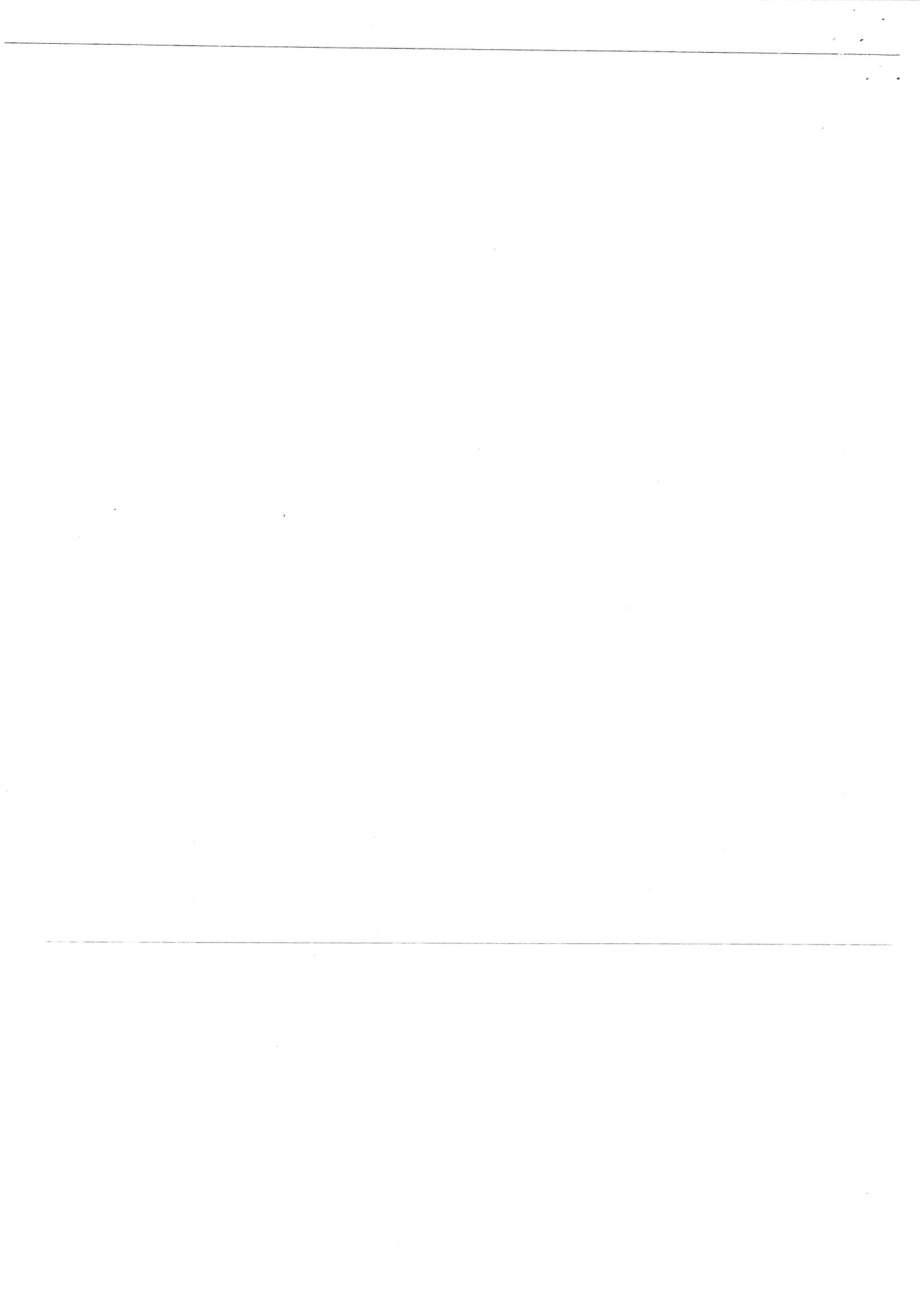
MIN.NO. MC/2016/53      ADJOURNMENT

There being no other business and the time being 9.40 am the Sitting was adjourned.

SIGNED.....

SEN, LENNY KIVUTI MP (CHAIRPERSON)

DATE.....



# ANNEX 1

## STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

### STAKEHOLDERS' VIEWS ON THE LAND LAWS (AMENDMENT) BILL 2015

#### (NATIONAL ASSEMBLY BILLS N.O 55 OF 2015)

#### AMENDMENT ON THE LAND REGISTRATION ACT

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
1.	PART 2C- PRELIMINA RY	C.O.G	Re-instatement of paragraph (b) where a caution means a caveat.		. Caution is used in various senses to signify forms of security while a caveat refers to a buyer beware notice.  Definition in (a) refers to caveat. Carried..	Delete the word 'mean;' with include.



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
2.	CLAUSE 2	<b>Economic and Social Rights Centre</b>	<p>The following definitions should be added:-</p> <p>Forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”</p> <p>Unlawful occupier means a person who takes possession of land or structures without the tacit or express consent of the owner or without any right in law to take possession of such land or structure.</p> <p>Owner means a person or organ of</p>	<p>The Bill fails to define the following key terms which are important for the provisions of eviction and resettlement:</p> <ol style="list-style-type: none"> <li>1. Forced Eviction</li> <li>2. Unlawful Occupant</li> <li>3. Owner</li> <li>4. consultation</li> </ol>	<p>These only express attributes to certain actions and reference to persons. They do not confer special legal meaning.</p> <p><b>Reject.</b></p>	<p>Reject.</p> <p>Define <b>eviction...</b></p>


	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>state who holds lawful title in the land in question</p> <p><b>Consultation:</b> Means the process whereby the affected persons on their own or through their representatives are provided adequate information and an opportunity to be heard and to participate in the decision making process on matters involving any proposed eviction so that they can protect their legitimate collective interests and include appropriate documentation and feedback mechanism.</p>			
3.	CLAUSE 3	C.O.G		1)The institutional issues where the constitution of Kenya in Article 67(2) read	The task of constituting land registration units is	Reject.

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
				<p>together with section 233 of the National Land Policy that mandates National Land Commission to maintain a register of all public ,private and community land in Kenya.</p> <p>Therefore section 6 of the Land Registration Act was an entry point for actualizing this policy provision by securing the National Land Commission as an agent of both levels of governments that proposes and directs the manner in which adjudication is done a recording of rights</p>	<p>Not an NLC task under Article 67(2).</p> <p>Regardless the supreme court advisory directs collaboration in developing and implementing such a system. Accept.</p>	

CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			affected.		
	NLC	-Amending section 6 of the Land Registration Act by adding the words "county government and" just before the word "the Commission"	Registration of land happens mainly on public land (Public land leaseholds) and in land formerly held in trust for communities before adjudication (freeholds) by county governments.  There is therefore a need to consult the county governments in the establishment of registration units.	-County governments are already included in the consultation process. Reject.	
	<b>Institution of Surveyors of Kenya</b>	Amend section 6 (1) by removing consultation and adding, " <u>upon the advice of the National Land Commission</u> ", immediately after	This amendment effectively removes the agency role of NLC and introduces the role of CS in the registration as	The use of the terminology "advice" and "consultation" have	



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			Cabinet Secretary.	principal. It is our considered opinion that whereas article 67(2) (c) however mandates the NLC to advise the national government on comprehensive programme for registration of title in land throughout Kenya. The proposed amendments therefore seek to bring about clarity on who should initiate the registration process and also comply with the Constitution.	been used interchangeably.  -The process should ideally start with the CS. Reject.	
4.	CLAUSE 4	C.O.G	Delete clause 4 of the Omnibus Bill and retain Section 7 as it is in LRA 2012.	The amended clause gives procedure for adjudication of land through direction of Cabinet Secretary and takes away the constitutional	-NLC's constitutional function has not been abrogated. Reject.	

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
				function of NLC in article 67(2) (c)		
		<b>Institution of Surveyors of Kenya</b>	Retained the proposed amendments.	Whereas roles to maintain land registry is transferred from Commission, this shall bring clarity and consistency with the Constitution and also since the National Government has machinery to guarantee title.	ISK support the provision. Noted.	
5.	<b>CLAUSE 5</b>	<b>C.O.G</b>	Delete clause 5 of Omnibus and retain section 7 of LRA as it is.	Section 5 gives the land registrar powers to tamper with the history of land rights in the register on their own motion and they can also be ordered to tamper by Cabinet Secretary.  The danger is we cannot be able to trace the processes and	-A land register in paragraph (a) of the same section 7 provides for maintenance of a land register in a form to be determined. All convenient formats	

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
				<p>procedures and the history of land rights in the register.</p> <p>It will have negative implications on the future implementation of historical land injustices</p>	<p>will be considered.</p> <p><b>Approve proposal.</b></p>	
6.	CLAUSE 7	<p>1. Ministry of Lands</p> <p>2. The National Lands Commission</p>	<p>1. Amend Section 13A (1) of the Land Registration Act by deleting the “comma” appearing after the word “standing” and substituting therefor a “full stop” and deleting the words “a land surveyor, a land economist or an expert in any other relevant field”.</p> <p>2. Amend Section 13A (2) of the Land Registration Act by deleting the “comma” appearing after word “administration” and substituting therefor a “full stop” and deleting the words “a land surveyor, a land economist or an expert in any other relevant field”.</p> <p>3. Amend Section 13A (3) of the Land Registration Act by deleting</p>	<p>Registration of title is a legal process, it requires somebody versed <b>in law</b>. Land Registration has a department that deals with registration and issuance of titles which are legal documents it requires to be headed and administered by a lawyer. Giving the responsibility to other experts who are consequently involved in the process would occasion a</p>	<p>-Land registration entails a legal process, however other professionals dealing in land matters are versed with these processes.</p> <p><b>Reject.</b></p>	



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			the "comma" appearing after word "Kenya" and substituting therefor a "full stop" and deleting the words "a land surveyor, a land economist or an expert in any other relevant field".	conflict of interest.		
7.	<b>CLAUSE 8</b> on General Powers of Land Registrars	<b>C.O.G</b>	Delete clause 8 of the Land Laws (Amendment) Bill.	Section 8 creates a smooth path of registration through the Cabinet Secretary therefore removing the role of the County Government and NLC.	-The clause provides for an annual report on land registration to be submitted by the Chief Land Registrar to the Commission and the CS.  <b>Reject.</b>	
8.	<b>CLAUSE 11</b> on Overriding interests	<b>-Institution of Surveyors of Kenya</b> <b>-COG</b>	Delete paragraph (a) of the proposed amendments.	The proposed amendments are not in line with article 68 (v, iii, vi) of the constitution as well as Marriage Act and	-Retaining paragraph (a) would negate protection of	



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
		(Similar proposals for amendments)		matrimonial property. PROPOSAL REMOVES THE REQUIREMENT OF SPOUSAL RIGHTS OVER MATRIMONIAL PROPERTY.	matrimonial property envisioned in Article 68(c)(iii) which seeks to protect the matrimonial home.  <b>Accept.</b>	
9.	<b>Insert a new Clause immediately after CLAUSE 15 amending Section 39(2) of the Land Registration Act</b>	<b>-Ministry of Lands and County Land Management Board's Chair Forum.</b>	.Amend Section 39 (2) of the Land Registration Act by deleting the words "relevant County Land Management Board" appearing after the words "given by the" and substituting therefor the words "national or county government".	Section 18 of the National Land Commission Act (dealing with County Land Management Boards) has been proposed to be repealed. As such, consent should be obtained from the national or county governments since in Section 39(1) of the Land Registration Act the certificate produced certifies	The Board processes various land applications as defined in Article 67 and other functions as directed by the Commission.  <b>Reject.</b>	

CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			that there is no rent owing to the national or county government.		
<b>AMENDMENT TO THE NLC ACT.</b>					
11.	<b>CLAUSE 35</b>	<b>NLC and County Land Management Board Chair's Forum.</b>	-Retain the definition of the word "Board" As it appears In the National Land Commission Act	-Board refers to the County Land Management Board as a structure level of the National Land Commission. They are established and operational. They represent the decentralization of NLC services at the county level.	-This board conducts the processing of applications for allocation of land. Pursuant to Article 67(2)(g) where NLC has the mandate to assess tax on land in areas designated by law.  <b>Accept</b>
12.	<b>CLAUSE 36</b>	<b>Institution of Surveyors of Kenya</b>	-Amend Section 5(2)(c) of the NLC Act by Substituted with " ensure that "public" and land under the management of the designated state agencies is sustainability managed the		-The typographical error is noted.  <b>Accept</b>

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			intended purposes.			
13.		NLC	Retain subsection (2) (d) of section 5 of the NLC Act.	The National Land Commission should develop and maintain a land information system to effectively administer and manage public land	The NLC also coordinates CLMB's at the county level.  <b>Committee to advise.</b>	
14.	<b>CLAUSE 37</b>	<b>Ministry of Lands</b>	-Amend Section 15 of National Land Commission Act by deleting subsection (2), (3) and (4).	The definition of historical land injustice, what may be claimed and what is permissible is too wide and has far reaching effects as it may open a pandora box which may not be contained	(2), (3), and (4) defines what a historical injustice is, grounds of admitting claims and permissible claims over historical land injustices. Reject	



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
15.	CLAUSE 38- on County Land Management Boards	NLC	Retain section 18 of the NLC Act.	The boards are operational and are making positive contribution in land administration and management at county level.	Proposal should be considered with clause 35.  <b>Accept</b>	
16.	CLAUSE 42- on Power of CS in relation to Land Management	NLC	Delete this new insertion that amends section 6(b) of the Land Act by inserting new paragraph (i) that reads “to administer and undertake all dealings including registration of private land interests subject to <u>Part VIII of this Act</u> ” ✓	The function of registration is already given as a sole responsibility of the Cabinet Secretary.	-This is an express statement of reference as to such responsibility by the CS.  <b>Reject</b>	
		<b>Institution of Surveyors of Kenya</b>	Amend (i) to read “administer and undertake registration of private land interests, in consultations with the County Government”  Harmonize the definitions of lease in the Land Act, 2012 and Land Registration Act, 2012	The undertaking and administration of all dealings in private land leaves out the roles of county governments, who are also empowered under Urban Areas and Cities Act, 2011.	-County governments align integrated development plans to county strategies and plans. The process of	



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
					registration is distinct from this.	<b>Reject</b>
<b>AMENDMENTS TO LAND ACT</b>						
17.	<b>CLAUSE 46</b> on Allocation of public land	<b>C.O.G</b>	Retain the section as is in Land Act	The responsibilities of the county government and the NLC in policy making. This offends the provisions of article 6(2) of the constitution that envisage the collaborative role between the two levels of government in policy formulation. The undertaking and administration of all dealings in private land leaves out the roles of the county governments.	-County governments are also responsible for implementation. -On dealings in private land, the CS is also required to consult relevant authorities before approval.	<b>Reject</b>

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
18.	CLAUSE 47 Pre-emptive rights	NLC and ISK	There is need to do away with the new inserted subsections (3-5) and re-introduce back section 13(1) of the Land Act.	If these amendments were to go through as they are with the new subsections, so many Kenyans will lose their already developed land. Preservation of pre-emptive rights is the only sure way of preventing anarchy in the land sector	-Pre-emptive rights have been limited and can indeed subject a person to loss of rights upon failure to observe deadlines.  <b>Accept</b>	
19.	CLAUSE 60 Informal charges	Ministry of Lands	-Amend Section 79 of the Land Act by inserting a new subsection immediately after subsection (9)-  “(10) Every person registered as an owner of matrimonial home shall ensure that spousal rights are noted in the register, where applicable”.  The Act is amended by deleting the new proposed proviso to Section 94 of	-Section 28(a) of the Land Registration Act which provides for spousal rights over matrimonial property as an overriding interest has been proposed to be deleted. In order to protect the rights of spouses, this subsection which was in the original draft should be re-introduced.	-The protection of rights over matrimonial property remains safeguarded where spousal consent is still required to effect a charge.	

CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
		the Land Act		<b>Reject</b>	
19. <b>CLAUSE 78</b> - Grant of Land in lieu of award	<b>Ministry of Lands</b>	-Amend Section 117(1) of the Land Act by deleting the words "rate prevailing banks rates" and substituting therefor the words "rate commensurate with the land compensation guidelines". -Amend Section 117(2) of the Land Act by deleting the words "Central Bank of Kenya and prevailing" and substituting therefor the words "rate commensurate with the land compensation guidelines".	Pegging the rate of interest payable to Central Bank of Kenya prevailing rate may be too high for the government especially where there are many people to be compensated at any given time.	-The prevailing market rate is the standard for making compensation. <b>Reject</b>	
20. <b>CLAUSE 88</b> Settlement Programmes	<b>-NIC</b> <b>-ISK</b>	- Retain the provisions of the Land Act as they are in sections 134-135 of the Land Act or retain the new proposals in the amendments as "delegated" functions by the Commission to the Cabinet Secretary.	Settlement Programmes are done on public land. Public land is administered by the Commission. Even for land purchased for settlements, it will still be public land for the Commission to set up settlements. If any other organization has to deal with it, it should be by way of delegation and with mechanisms put in law for	-There are provisions to have the Commission consulted. <b>Reject</b>	



CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			checks and balances.		
38.	CLAUSE 89 Institution of Surveyors of Kenya	Remove the proposal.	Our observation is that the board of trustees is dominated by the executive arm of the government and is likely not to achieve its independence. There is need to craft an independent board of trustees independent chaired by NLC.	-No proposals for alternative inclusion into the Board. <b>Reject</b>	
39.	CLAUSE 108 AND 109 Institution of Surveyors of Kenya	Delete the entire section and either develop an independent legislation or seek a way of repealing the Constitution of Kenya Article 68 (c) (i).	The minimum land holdings fall under the planning docket and so from time to time different countries can come up with their regulations to limit the land sizes below which cannot subdivide so as to control urban sprawl and maintain economic land units.	-Article 40 of the Constitution guarantees the right to acquire and hold property. Provisions on the philosophy behind minimum land holding acreage	



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
				The issue of maximum land sizes on the hand is not practical and contradicts the principle of free land markets and attempting to come up with maximum land holdings is against the spirit of the investment and capitalism. The proposed mechanism under section 123 of the NLP should be to “control” how much land one can own.	needs to be reviewed	
40.	CLAUSE 97(152) (2)	Economic and Social Rights Centre	MANDATORY PROCEDURES DURING EVICTION Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures-	The bill has some provisions on mandatory provisions but they are not conclusive we therefore propose the following amendments which are consistent with international law (ICESCR)	Detailed procedure can be provided by Regulations.  <b>Committee to advice.</b>	

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>(a) be preceded by the proper identification of those taking part in the eviction or demolitions;</p> <p>(b) be preceded by the presentation of the formal authorizations which must be in form of a court order authorized by law;</p> <p>(c) where groups of people are involved, government officials or their representatives to be present during an eviction;</p>	<p>that Kenya has ratified to and form part of the constitution in accordance to article 2(5)</p>		

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>(d) full details of the proposed alternative, if any, shall be given to the occupiers of the land;</p> <p>(e) where no alternatives exist, all measures shall be taken to minimize the adverse effects of evictions; and</p> <p>(f) be done transparently, openly and with full compliance with the Constitution and international human rights principles;</p> <p>(g) not take place in bad</p>			

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>weather, at night, during festivals or religious holidays, prior to an election or prior to or during national examinations;</p> <p>(h) be carried out in a manner that respects the dignity, right to life and security of those affected;</p> <p>(i) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children , the elderly, and persons</p>			



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>with disabilities;</p> <p>(j) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;</p> <p>(k) include mechanisms to protect property and possessions left behind involuntarily from destruction, arbitrary and illegal appropriation, occupation or use; and</p> <p>(l) fairness, freedom of expression, openness and accountability.</p>			

CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
		<p>The provisions under subsection (1) (d) and (e) shall not apply in the case of evictions from private land.</p> <p>No order for eviction from public land shall be granted when it is clear to the Court that such an order would result in rendering a person affected by evictions homeless.</p>			
<p><b>CLAUSE 97 (152) (J)</b></p>	<p><b>Economic And Social Rights Centre</b></p>	<p>The act should drafted as follows:- The National Land Commission shall, in cases where evictions are deemed lawful and where the person or persons evicted are rendered homeless, ensure that such persons are provided with appropriate resettlement in accordance with the provisions of this Act and any other law for the time being governing re-settlement programs.</p> <p>(2) The National Land Commission shall maintain a register of all persons subjected to eviction</p>		<p><b>Committee advice.</b></p>	<p><b>to</b></p>

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>provisions of this Act, other relevant existing laws and the internationally recognized guidelines and principles Following an eviction and resettlement exercise, the National Land Commission shall facilitate the handing over of the infrastructure present at the resettlement site.</p> <p>Where eviction is inevitable, the National Land Commission shall develop a resettlement plan that shall incorporate provisions for sufficient resources and opportunities to the affected persons, possible compensation for losses incurred during the eviction and support during the transition period. In carrying out the resettlement of persons subjected to evictions, the National Land Commission shall, ensure that the rights of women, children, and other</p>			

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			vulnerable groups are protected, including their right to property ownership and access to resources			
	CLAUSE 97 (152) (k)	Economic and Social Rights Centre	<p>The clause should be drafted as follows:- The National Land Commission shall, in cases where evictions are deemed lawful and where the person or persons evicted are rendered homeless, ensure that such persons are provided with appropriate resettlement in accordance with the provisions of this Act and any other law for the time being governing re-settlement programs.</p> <p>(2) The National Land Commission shall maintain a register of all persons subjected to eviction and benefitted from its resettlement programmes. The National Land Commission shall undertake resettlement of persons subjected to evictions in a just and equitable manner and in accordance with the provisions of this Act and international law standards</p>	The bill does not provide guiding principles for evictions which are necessary	Committee advice.	to



	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>The National Land Commission shall make special efforts to ensure the equal participation of women, minority and other vulnerable groups in all planning and implementation processes and in the distribution of basic services and supplies.</p> <p>In undertaking resettlement of persons affected by evictions ,the National Land Commission shall without discrimination, take measures to ensure that –</p> <ul style="list-style-type: none"> <li>(a) members of the same family are not separated;</li> <li>(b) the people affected by evictions and their property are protected and secured;</li> <li>(c) essential medical services are accessible and that on-going treatment is not disrupted as a result of resettlement;</li> <li>(d) psychological and</li> </ul>			

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>counselling services are provided;</p> <p>(e) special attention is paid to people with special needs;</p> <p>(f) essential food, potable water and sanitation are provided;</p> <p>(g) basic shelter and housing is provided;</p> <p>(h) education for children and child care facilities are provided; and essential livelihood resources are availed.</p> <p>No resettlement of evicted persons shall take place unless such resettlement is consistent with the provisions of this Act, other relevant existing laws and the internationally recognized guidelines and principles</p> <p>Following an eviction and resettlement exercise, the National Land Commission shall facilitate the handing over of the infrastructure present at the resettlement site.</p>			

	CLAUSE	INSTITUTION	PROPOSAL	JUSTIFICATION	OBSERVATION BY THE LEGAL OFFICE	COMMITTEE RESOLUTION
			<p>Where eviction is inevitable, the National Land Commission shall develop a resettlement plan that shall incorporate provisions for sufficient resources and opportunities to the affected persons, possible compensation for losses incurred during the eviction and support during the transition period. In carrying out the resettlement of persons subjected to evictions, the National Land Commission shall, ensure that the rights of women, children, and other vulnerable groups are protected, including their right to property ownership and access to resources</p>			

ANNE II

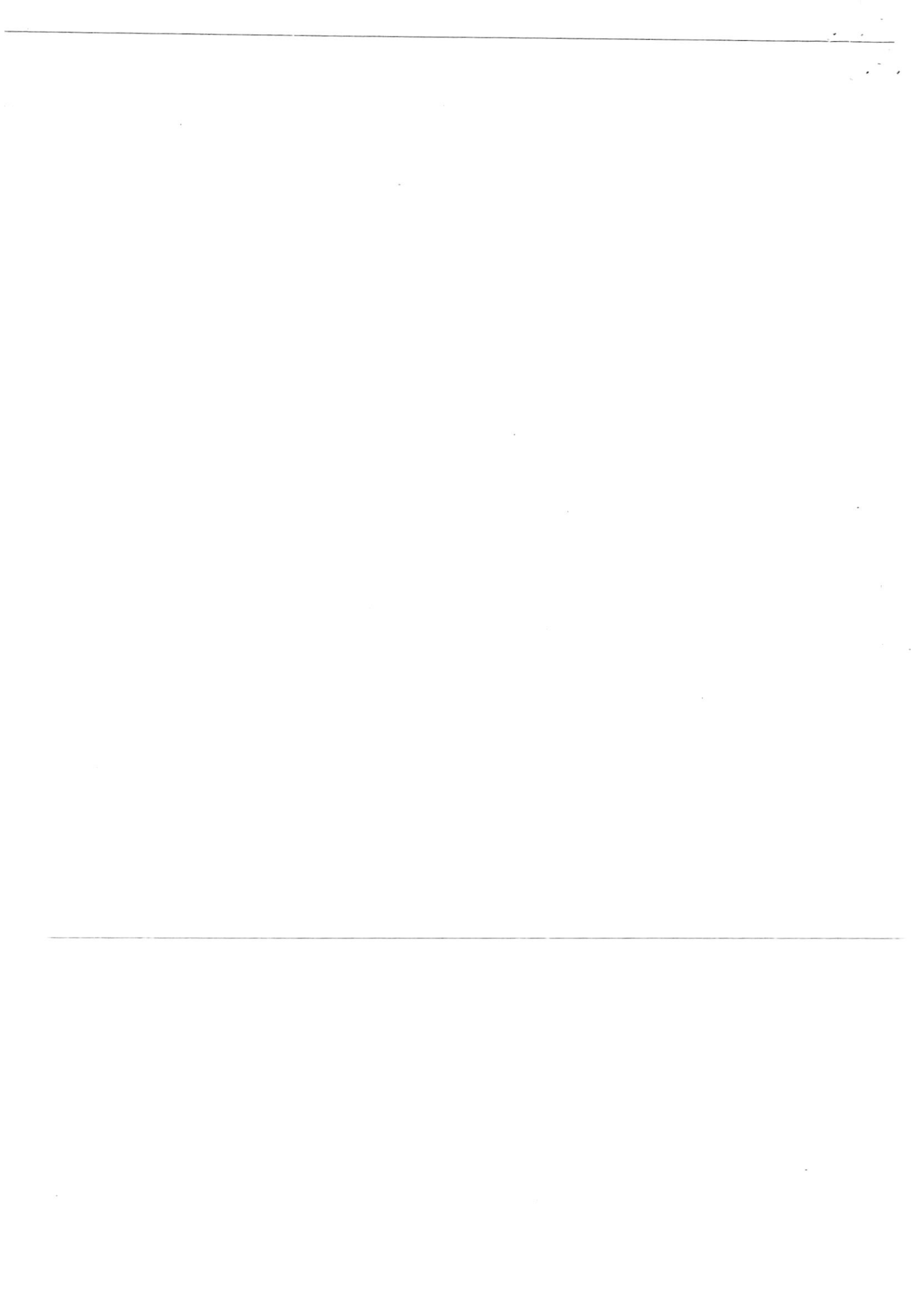
STAKEHOLDERS' VIEWS ON THE LAND LAWS (AMENDMENT) BILL, 2015 (NATIONAL ASSEMBLY BILLS NO. 55 OF 2015)

Submission made by Mohi 2016. 13/07/2016  
*[Signature]*

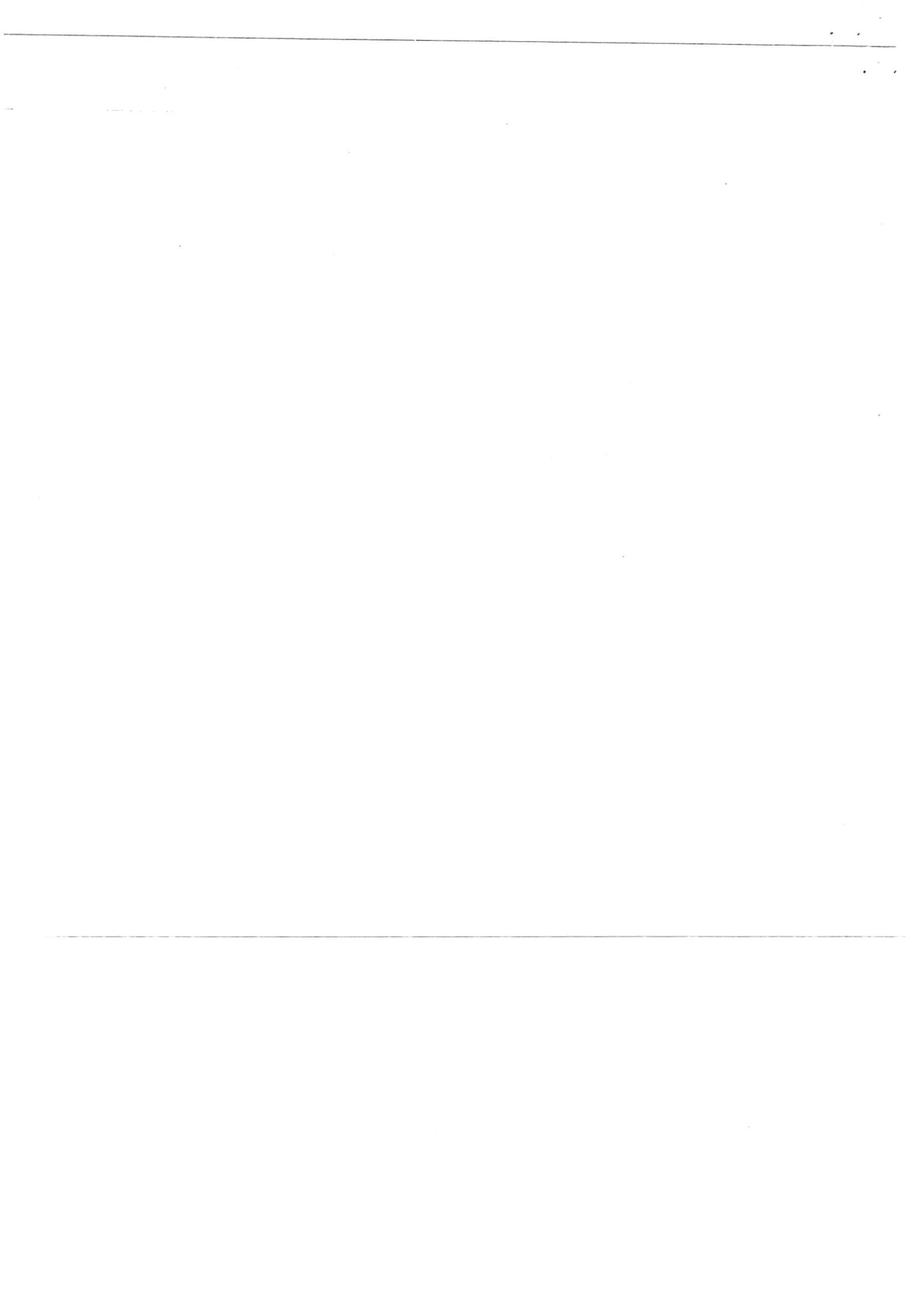
STAKEHOLDER - MINISTRY OF LANDS AND PHYSICAL PLANNING

	CLAUSE	PROPOSED AMENDMENT	RATIONALE
1.	Clause 7 – Qualification for appointment of other land Registrars	Amend Section 13A (1) of the Land Registration Act by deleting the “comma” appearing after word “standing” and substituting therefor a “full stop” and deleting the words “a land surveyor, a land economist or an expert in any other relevant field”.	Registration of title is a legal process, it requires somebody versed in law. Land Registration as a department that deals with registration and issuance of titles which are legal documents it requires to be headed and administered by a lawyer. Finally, the process leading to the issuance of titles has the involvement of the other experts being land economist, surveyors and others experts and therefore by giving them a responsibility to issue titles we shall be opening the door for conflict of interest.
2.	Clause 7 – Qualification for appointment of other land Registrars	Amend Section 13A (2) of the Land Registration Act by deleting the “comma” appearing after word “administration” and substituting therefor a “full stop” and deleting the words “a land surveyor, a land economist or an expert in any other relevant field”.	Registration of title is a legal process, it requires somebody versed in law. Land Registration as a department that deals with registration and issuance of titles which are legal documents it requires to be headed and administered by a lawyer. Finally, the process leading to the issuance of titles has the involvement of the other experts being land economist, surveyors and others experts and therefore by giving them a responsibility to issue titles we shall be opening the door for conflict of interest.





3.	Clause 7 – Qualification for appointment of other land Registrars	Amend Section 13A (3) of the Land Registration Act by deleting the “comma” appearing after word “Kenya” and substituting therefor a “full stop” and deleting the words “a land surveyor, a land economist or an expert in any other relevant field”.	Registration of title is a legal process, it requires somebody versed in law. Land Registration as a department that deals with registration and issuance of titles which are legal documents it requires to be headed and administered by a lawyer. Finally, the process leading to the issuance of titles has the involvement of the other experts being land economist, surveyors and others experts and therefore by giving them a responsibility to issue titles we shall be opening the door for conflict of interest.
4.	Insert a new Clause immediately after Clause 15 amending Section 39(2) of the Land Registration Act	Amend Section 39 (2) of the Land Registration Act by deleting the words “relevant County Land Management Board” appearing after the words “given by the” and substituting therefor the words “national or county government”.	Section 18 of the National Land Commission Act (dealing with County Land Management Boards) has been proposed to be repealed. As such, consent should be obtained from the national or county governments since in Section 39(1) of the Land Registration Act the certificate produced certifies that there is no rent owing to the national or county government.
5.	Clause 37 – Historical Land Injustices	Amend Section 15 of National Land Commission Act by deleting subsection (2), (3) and (4).	The definition of historical land injustice, what may be claimed and what is permissible is too wide and has far reaching effects as it may open a pandora box which may not be contained.
6.	Clause 39 – First Schedule to the National Land Commission Act	Amend First Schedule by deleting the new proposed amendment of inserting Paragraph 8A	Paragraph 8 of the First Schedule suffices.




7.	Clause 60 – Informal Charges	Amend Section 79 of the Land Act by inserting a new subsection immediately after subsection (9):- “(10) Every person registered as an owner of matrimonial home shall ensure that spousal rights are noted in the register, where applicable”.	Section 28(a) of the Land Registration Act which provides for spousal rights over matrimonial property as an overriding interest has been proposed to be deleted. In order to protect the rights of spouses, this subsection which was in the original draft should be re-introduced.		
8.	Clause <del>60</del> <sup>70</sup> – Power of the chargee to take possession of the charged land	The Act is amended by deleting the new proposed proviso to Section 94 of the Land Act	The proposed proviso would make it difficult for lending institutions to exercise the chargee's of taking possession of charged land where there is default on the part of the charger.		
9.	Clause 78 – Grant of Land in lieu of award	Amend Section 117(1) of the Land Act by deleting the words “rate prevailing banks rates” and substituting therefor the words “rate commensurate with the land compensation guidelines”.	Pegging the rate of interest payable to Central Bank of Kenya prevailing rate may be too high for the government especially where there are many people to be compensated at any given time.		
10	Clause 78 – Grant of Land in lieu of award	Amend Section 117(2) of the Land Act by deleting the words “Central Bank of Kenya and prevailing” and substituting therefor the words “rate commensurate with the land compensation guidelines”.	Pegging the rate of interest payable to Central Bank of Kenya prevailing rate may be too high for the government especially where there are many people to be compensated at any given time.		



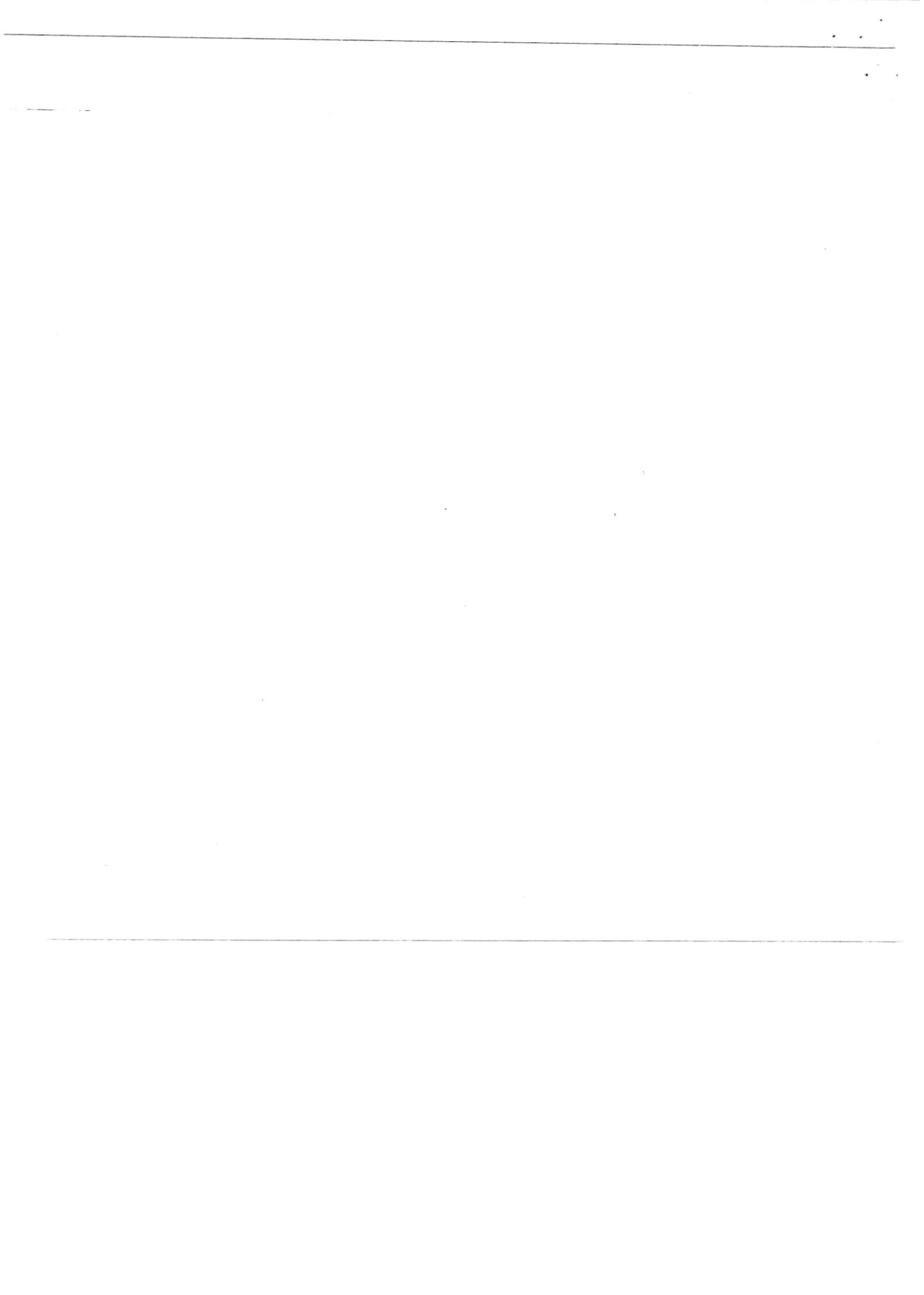


## ANNEX III

Submission made  
by Co 9 on 13/07/2016  


### SUMMARY OF KEY ISSUES RAISED IN THE OMNIBUS BILL 2015

1. Section 6 reverses the gains on land reforms, opens room for cabinet secretary to control all categories of land. Issues of land transactions covering sub divisions, change of use and general development control are controlled transactions by the county governments.
2. Section 13 the amendments on pre-emptive rights are a recipe for chaos and deprivation; the lessee forfeits pre-emptive right to land if he/she does not apply for renewal before the lease expires.  
This clause justifies taking away of land by the CS.  
It removes the responsibility of county governments to deliberate and make decision on renewal of leases within its area of jurisdiction.  
Amendment of Section 2 D deletion of Section 18 of NLC Act servers the very link between county governments to NLC on management over land with its jurisdiction.
3. CLMBs are devolved units of NLC and provide useful land management units for the counties governments.  
Amendments to Section 5 removes posterity aspect of land by removing future generation
4. Section 5 and 18 of NLC Act 2012 and the operational mechanisms for giving effect to Article 67(2) f, g & h relating or amending these Sections leaves NLC with no framework for actualizing the constitution.
5. Section 15 amending this Section kills the Kenyan dream of correcting historical injustices and renders Article 67 (3) of the constitution void.
6. Amendment to schedule 1 of NLC Act reduces the position of commissioners to that of any state organ under a ministry.  
Removes the role of the President and the public from scrutinizing the commissioners prior to appointment.
7. New clause in Section 54 give CS powers to make regulations regarding leases registration



# THE OMNIBUS LAND BILL 2015

## LAND LAWS ( AMENDMENT) BILL,2015(OMNIBUS LAW)

### Amendments to Land Registration Act (LRA)

SECTION OF OMNIBUS LAW	LAW BEING AMENDED	SECTION BEING AMENDED	PROPOSED AMENDMENT	ISSUE	RECOMMENDATION
PART I-- PRELIMINARY	Land Regisgtration Act, 2012	paragraph b	delete paragraph b on the interpretation of a caution		Reinstatement of paragraph b where a caution means a caveat.
Section 3	Land Regisgtration Act, 2012	Section 6(1)	Deletes the words "commission in consultation with National and County Governments and substituting therefore with the words Cabinet secretary in consultation with the commission	1)The institutional issues where the Constitution of Kenya 2010 in Article 67 (2)(c ) read together with section 233 of the National Land Policy that mandates National Land Commission to maintain a register of all public, private and community land in Kenya. Therefore section 6 of the Land Registration Act was an entry point for actualizing this policy provision by securing the National Land Commission as an	



				<p>agent of both levels of government that proposes and directs the manner in which adjudication is done and recording of rights effected.</p> <p>2) This amendment removes this agency role of the National Land Commission and sneaks in the role of Cabinet Secretary in the registration as a Principal</p>	
Section 4		Section 6 – Registration Units	<p>Inserts a new section 6A.(1) Pursuant to Article 67(2)(c) of the Constitution, the Cabinet Secretary shall develop and publish in the Gazette a comprehensive programme throughout Kenya, for the registration of titles in land</p>	<p>Gives procedure for adjudication of land through direction of cabinet secretary and takes away the constitutional function of NLC in article 67(2)c</p>	<p>Delete Section 4 of the Omnibus Bill and retain section 6 as it is in LRA 2012.</p>
Section 5	Land Registration Act (LRA)	Section 7(1)	<p>Deletes the word Commission wherever it appears and substituting therefor the word Cabinet secretary</p> <p>Introduces two very dangerous sections:</p>	<p>Gives the land registrar powers to tamper with the history of land rights in the register on their own motion and they can also be ordered to tamper with the Cabinet</p>	<p>Delete section 5 of omnibus and retain section 7 of LRA as it is</p>

			<p>-Registration shall be effected by an entry in the register in such form as may from time to time be prescribed by the Cabinet Secretary, and by cancellation of the entry, if any, which it replaces</p> <p>- Subject to the provisions of this Act, the Registrar may at any time, open a new edition of a register showing only the subsisting entries and omitting therefrom all entries that have ceased to have effect.</p> <p>- The Registrar may cancel any entry in the register which have ceased to have effect</p>	<p>Secretary.</p> <p>The danger is we cannot be able to trace the processes and procedures and the history of land rights in the register.</p> <p>-will have negative implications on on future implementation of historical land injustices</p>		
Section 8	Land registration Act	Section 12	Introduces new position of the county Land Registrar.	creating a smooth path of registration through the Cabinet Secretary therefore removing the role of the County Government and NLC	deletion of section 8 of the Omnibus law	
Section 13	Land registration Act	Section 18(3)	Deletes 18(3) of the LRA substituting this section by making the department of survey the absolute authority in the determination of	contradicts the Constitution of Kenya fourth schedule Part 2 function 8 (b) and (c) thus boundaries are		

			boundaries both fixed and general. There could be a mischief as there are plans to amend the survey act to anchor this purported absolute authority in the department of survey (cap 299)	the responsibilities of counties as the institutional arrangement enshrined in the constitution	
Section 15	Land Registration Act	section 26	(b) deleting subsection (1) and substituting therefor the following section— The rights of a proprietor, whether acquired on first registration or subsequently including through an order of court shall not be liable to be defeated except on the grounds—  (a) Fraud or misrepresentation to which a person is proved to be a party; (b)The rights of the proprietor have been acquired illegally;	Omits the word 'unprocedural and corrupt schemes' in the amendment;	Retain section 26 of LRA as it is
Section 16	Land Registration Act (LRA)	Section 28	(a)Deleting paragraph 'a' and 'b' (b)Deleting paragraph 'f' and substitute with 'short term leases' where the lessee in actual possession		Retain section 28 of the LRA 2012 as it is
Section 25	Land registration Act	Section 54	introduce new clause under	long term lease is	

			section 54, by stating the CS may prescribe regulation for registration of long term leases	created mainly in public land by the commission, the proposed regulation is a manner of sneaking the CS back into public land, thus ensuring the Commission cannot undertake its role in creating leases on public land on behalf of the county government and the national government.	
Section 27	Land Registration Act	Section 56	Requires no certificate for sub-lease a field has been created for condominium and flats. Developesr to transfer unit without paying to owed up rent and rates to county government.	This affects revenue base for counties but attractive to property developers	
<b>Ammendments to NLC Act</b>					
<b>SECTION OF OMNIBUS LAW</b>	<b>LAW BEING AMENDED</b>	<b>SECTION BEING AMENDED</b>	<b>PROPOSED AMENDMENT</b>	<b>ISSUE</b>	<b>RECOMMENDATION</b>
section 41	NLC Act	Section 2	deleting the definition of boards (these boards are the CLMB)		retain the interpretation as contained in the NLC Act section 2(1)
section 42	NLC Act	section 5	deleting paragraph (c) an substituting the following	" this deletes the original section that	retain as it is in the NLC section 5



			<p>paragraph  "... ensure that public land under the management of state agencies is sustainably managed for intended purposes</p>	<p>states ""... ensure that public land under the management of state agencies is sustainably managed for intended purposes and future generation</p>	
section 42	NLC Act	section 5	<p>deleting paragraph (d) (e ) and (f) and subsection 3 and 4</p>	<p>the effect IN THIS IS DELETING ;  -the function of NLC IN LIMS  -the function of the NLC IN ADR  -the function of the NLC in all aspect of unregistered community/trust land administration as appointed agent of the county government</p> <p>The effect of the above is to take away the mechanism of implementing Article 67(2) f,g, and h as the national land policy aspire to see the limiting of action on land matters by the MOLHUD.</p>	

section 43	NLC ACT	section 15	deleting section 15 and substituting it with new section	<p>Section 43 of Omnibus law is trying to sabotage the actualization of realization of addressing historical land injustice claims by killing the very important legal framework that will ensure the investigation and adjudication of historical land injustice claim with finality.</p> <p>The prescription in section 43 cannot amount to a legal framework developed through a participatory process of addressing historical land injustice claim.</p>	Retain as section 15 of NLC Act
section 44	NLC Act	section 18	repeal (delete) or taking away the CLMB without offering an alternative on how the functions of the NLC are to be devolved and decentralized closer to the	Interferes with the functions of the county governments with regard to land management, allocation and	<p>Retain of section 18 of the NLC Act.</p> <p>The CLMBs should be added more functions previously performed</p>

			public.	development control which they discharge through the CLMB.  Further by deleting this section severe the linkage of nation government with the county government on management of public land	by the Land Control Boards.
Section 45	NLC Act	First Schedule	Totally amends the procedures for appointment of the chairperson and commissioner and replaces the selection panel with PSC.	This ensures the handpicking of people susceptible to government manipulation.  It also removes the role of the public in vetting these office bearers	
<b>Amendments to Land ACT</b>					
<b>SECTION OF OMNIBUS LAW</b>	<b>LAW BEING AMENDED</b>	<b>SECTION BEING AMENDED</b>	<b>PROPOSED AMENDMENT</b>	<b>ISSUE</b>	<b>RECOMMENDATION</b>
Section 46	Land Act	section 6	Introduces a private land category under the management of CS.	There has been a misconception that this category has not been catered for in the law as the NLC role is spelt out in the NLC Act. This amendment opens up the CS control in all categories of land	Retain the section as is in the Land Act

				<p>and reintroduce institution that Kenyans have done away with</p> <p>The above make the CS the authority in policy direction in all classes of land that subjudicates , the responsibilities of the county governments and the NLC in policy making . this offends the provisions of Article 6(2) of the Constitution that envisage the collaborative role between the two levels of government in policy formulation</p> <p>The undertaking and administration of all dealings in private land leaves out the roles of the county governments.</p>		
section 53	Land Act	Section 13	substituting the following new section	Since no one knows the effective date of	Retain section 13 as it is in the Land Act	



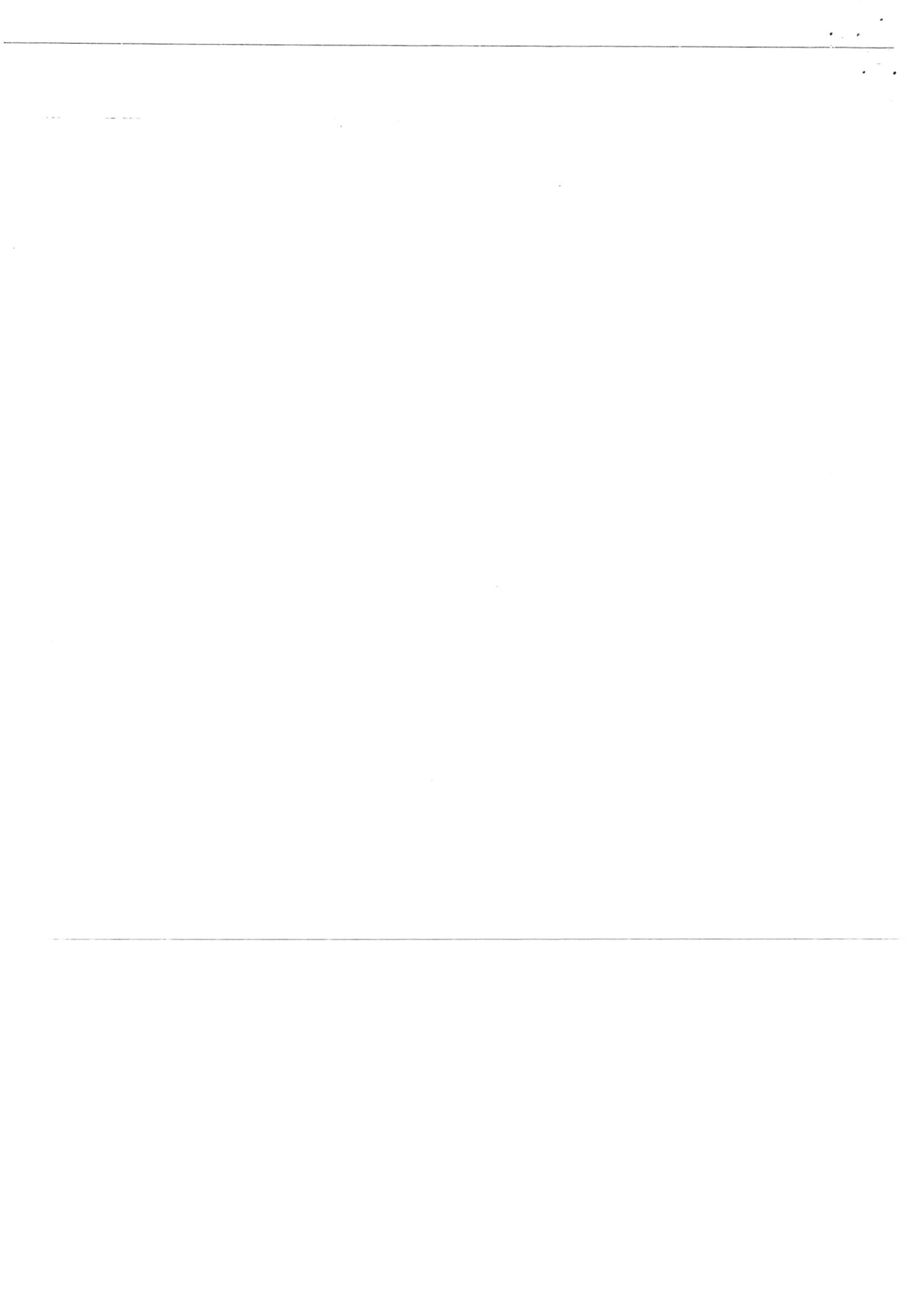
			<p>(1A)(1B) AND (1C) –Pre-emptive rights to allocation</p>	<p>these proposal, this clause is dangerous as the exact date and day of expiry is not known. This will be an opening for facilitating the taking away of leases from lessees by the cabinet secretary, from individuals and county government.</p> <p>By replacing the functions of the NLC as to renewal of leases is a Pandora box for elite capture. This removes the responsibilities of the county government in the consultation process and in revising the leasehold conditions</p>	
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## CONCLUSIONS

1. Section 6 reverses the gains on land reforms , opens room for cabinet secretary to control all categories of land. Issues of land transactions covering sub divisions, change of use and general development control are controlled transactions by the county governments.
2. ~~Amendment of Section 13 of Land Act on pre-emptive rights are a recipe for chaos and deprivation; The lessee forfeits pre-emptive right to land if he/she does not apply for renewal before the lease expires.~~

This clause justifies taking away of land by the CS.

It removes the responsibility of county governments to deliberate and make decision on renewal of leases within its area of jurisdiction.
3. Amendment of Section 2 D deletion of Section 18 of NLC Act servers the very link between county government to NLC on management over land with its jurisdiction.
- CLMBs are devolved units of NLC and provide useful land management units for the counties governments.
4. Amendments to Section 5 of NLC Act removes posterity aspect of land by removing future generation
5. Section 5 and 18 of NLC Act 2012 and the operational mechanisms for giving effect to Article 67(2) f, g & h relating or amending these Sections leaves NLC with no framework for actualizing the constitution.
6. Amending section 15 of NLC Act kills the Kenyan dream of correcting historical injustices and renders Article 67 (3) of the constitution stale.
7. Amendment to schedule 1 of NLC Act reduces the position of commissioners to that of any state organ under a ministry.
- Removes the role of the President and the public from scrutinizing the commissioners prior to appointment.
8. New clause in Section 54 of Land Registration Act give CS powers to make regulations regarding leases registration by this inserting the county governments and the NLC cannot perform its role on creating bases under its jurisdiction.



ANNEX IV

Submission made  
by the NLC  
on 13/07/2016

*[Signature]*



NATIONAL LAND COMMISSION  
SUBMISSIONS ON THE LAND LAWS (AMENDMENT) BILL, 2015  
(NATIONAL ASSEMBLY BILLS NO. 55 OF 2015)



**STAKEHOLDERS' VIEWS ON THE LAND LAWS (AMENDMENT) BILL, 2015 (NATIONAL ASSEMBLY  
BILLS NO. 55 OF 2015)**

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
<p><b>3 (a) – Amending section 6 of the Land Registration Act</b></p>	<p><b>National Land Commission</b></p>	<p><b>-Contention</b></p> <p>The proposed bill substitutes the primary function of constituting a registration unit from the Commission to Cabinet secretary but ignores the need to also consult the county governments.</p> <p><b>-Proposed amendments</b></p> <p>Add the words “county government and” ... just before the word commission. The section should therefore read; <i>“For the purposes of this Act, the Cabinet Secretary, in consultation with the county government and the Commission, may by order in the gazette, constitute an area or areas of land to be a land registration unit and may at any time vary the limits of any such units”.</i></p> <p><i>Am. CR (1) (a) (b) and CR (2) and CR (3)</i></p> <p><b>-Rationale</b></p> <p>Declaration/constituting of registration unit is a basic action towards setting up of registry offices (that’s devolving services) and also a necessity where adjudication is to be established. Registration of land happens mainly on public land (Public land leaseholds) and in land formerly held in trust for communities before adjudication (freeholds) by county governments. There is therefore a need to consult the county governments as equal stakeholder in establishment of registration units and setting up of registries in counties.</p>

**7 Amendment  
of section 13 of  
the land  
registration  
Act-**

**Contention**

Proposed bill has introduced land surveyors, land economist or an expert in any other relevant field as persons qualified to be Deputy Chief Land registrars, thus making land registration not a preserve of advocates.

**Proposed amendments**

In 13 A (1) delete words coming after ...ten years standing.

(2), delete all words coming after .....five years standing,

(3) delete all words coming after ... High Court of Kenya.

**Rationale**

It would be good to professionalise the function of land registration and hence limit it to advocates of the high court. There are so many lawyers who can join this field. Besides, land registrars should be qualified to attest documents and should be commissioners of oaths. By having all of them as advocates, it will be easy to develop a uniform scheme of service for registrars with a common academic background.

Land Registrars should also qualify to be members of LSK for purposes of professional checks and balances. Surveyors, land economists and land administrators have their own clear roles and professional lines in land administration and management, hence there is no need of pushing them into land registration.

**20- Land rent clearance and consents**

**Contention**

Deletion of subsection (4) of Section 56 of the Land Registration Act and substituting therefor the following new subsection—

(4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.

**Proposal**

Retain subsection 4 as it is in the current Land Registration Act section 56.

**Rationale**

Deleted subsection does away with the fact that consents to charge and rent clearances certificates should be obtained from the **Commission**. *Section 28(1) of the Land Act states that rent, royalties and payments reserved under any lease shall be a debt owed to the Commission.* Consents and rent clearances are only given on public leased land. The leases thereof created are conditional and one of the conditions is to pay to the lessor (in this case the Commission on behalf of county or national governments) the prescribed rent for the duration of the lease. The other condition in the lease is that no transfer, charge or subdivision shall be done without the consent of the lessor (the Commission). The new introduced subsection (4) is an open ended subsection that does not confer the responsibility of issuing rent clearances and consents to any institution. It is creating ambiguity. It kind-of supports the disagreement between the Ministry of Lands & Physical Planning and the Commission on who should issue consents and rent clearance certificates. This is evidenced by the continued disagreement on these two functions even after the Supreme Court Advisory and a Committee of experts giving further interpretation clearly advised that land rent collection of the Commission.



<p><b>35- definition of "Board"</b></p>		<p><b>Contention</b></p> <p>Deleting the definition of the word "Board"</p> <p><b>Proposal</b></p> <p>Retain the definition of the word "Board"</p> <p><b>Rationale</b></p> <p>Board refers to the County Land Management Board as a structure level of the National Land Commission. The Boards are already established and they are fully operational. They represent the decentralization of NLC services at the county level in compliance with Article 6(3) of the Constitution, and sections 4(2) and 18 of the NLC Act.</p>		
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<p><b>36 Additional functions of the Commission</b></p>		<p><b>Contention</b></p> <ul style="list-style-type: none"> <li>-Amending Section 5 of the NLC Act by deleting in subsection (2) paragraphs (d) on development and maintenance of an effective land information management system,</li> <li>-Deleting subsection (2) paragraph (f) on alternative dispute resolution mechanism in land disputes handling and management.</li> </ul> <p><b>Proposal</b></p> <p>Retain subsection (2) (d) of section 5 of the NLC Act</p> <p><b>Rationale</b></p> <p>The National Land Commission should develop and maintain a land information system to effectively administer and manage public land and to efficiently undertake the functions given in Article 67 (2) (a)-(h) of the COK. A NLIMS is a digital record that is very crucial in research, advising on land policy, solving disputes, assessing tax, advising on comprehensive land registration among other vital decisions. At present, the Commission is at advanced stages in establishing the NLIMS (including a pilot launch already done)</p> <p>Retain subsection (2) (f) of Section 5 of the NLC Act</p> <p><b>Rationale</b></p> <p>The CoK expects the National Land Commission to encourage the application of <i>Traditional Dispute Resolution (TDR) mechanisms in land conflicts - Article 67(2) (f)</i>. TDR is one of the ADR mechanisms.</p>	
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<p><b>38- on County Land Management Boards</b></p>		<p><b>Contention</b></p> <p>Amendment by Repeal of section 18 of the NLC Act on County Land Management Boards</p> <p><b>Proposal</b></p> <p>Retain section 18 of the NLC Act</p> <p><b>Rationale</b></p> <p>This section is on establishment and composition of the county land management board which is a lower level of the NLC at the county. This is in line with Article 6(3) of the CoK which states; <i>“A national state organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of services”</i>. NLC services are critical at the county level in line with devolution. The boards are operational and are making positive contribution in land administration and management at county level.</p>	
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42		<p><b>Contention</b></p> <p>Proposed amendment to section 6(b) of the Land Act by inserting new paragraph (i) that reads <i>“to administer and undertake all dealings including registration of private land interests subject to Part VIII of this Act”</i></p> <p><b>Proposal</b></p> <p>Delete this new insertion</p> <p><b>Rationale</b></p> <p>It is basically vague. There are various stakeholders in the administration and in dealings related to private land category. The county governments have the planning role, development control and survey aspects; NLC has the dispute resolution role, Urban and Cities Boards are involved, NEMA etc. The paragraph does not add value since, elsewhere in the Act, the function of registration is already given as a sole responsibility of the Cabinet Secretary.</p>
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<p>47- pre-emptive rights</p>	<p><b>Contention</b></p> <p>Introduction of new subsections after subsection (2) of Section 13 of the Land Act. The new subsection takes away the pre-emptive rights of the previous lease holder after the expiration of the lease.</p> <p><b>Proposal</b></p> <p>There is need to do away with the new inserted subsections (3-5) and re-introduce back section 13(1) of the Land Act.</p> <p><b>Rationale</b></p> <p>No Kenyan owns land expecting to loose it whether it is leasehold or not. Kenyans owning leaseholds have legitimate expectations that they hold the land for ever unless transmitted elsewhere willingly or compulsorily acquired. That is why they develop and pass it on to decedents regardless of the remaining term. Besides, the amendments do not take care of the current scenarios where so many leases have already expired but Kenyans hold onto the land without applying for extension either through ignorance or due to tedious procedures of processing extensions.</p> <p>Previously, there has not been enough public awareness creation on leaseholds and the dangers of not extending/renewing leases. Some people had 33 year leases that expired long ago and yet they go on developing the land without fear of losing it. If these amendments were to go through as they are with the new subsections, so many Kenyans will loose their already developed land.</p> <p>It is public knowledge that some people are going round searching for land whose leases have expired, invading them while others are destroying records on expired leases with the expectation of applying for these pieces of land. Preservation of pre-emptive rights is the only sure way of preventing anarchy in the land sector.</p>
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<p>76-87 Compulsory Acquisition</p>		<p>To be subjected to the new Bill being done on compulsory acquisition</p>
<p>88 – Settlement programmes</p>		<p><b>Contention</b></p> <p>The proposals given in section 88 - 89 have taken away the function of the Commission on creation and administering settlement programmes and given the primary role to the Cabinet Secretary; thus sustaining the old order that has always been there.</p> <p><b>Proposal</b></p> <p>Retain the provisions of the Land Act as they are in sections 134-135 of the Land Act or retain the new proposals in the amendments as “delegated” functions by the Commission to the Cabinet Secretary.</p> <p><b>Rationale</b></p> <p>Settlement Programmes are done on public land. Public land is administered by the Commission. Even for land purchased for settlements, it will still be public land for the Commission to set up settlements. If any other organization has to deal with it, it should be by way of delegation and with mechanisms put in law for checks and balances.</p>

ANNEX V

by ISK. 13/07/2016  


STAKEHOLDERS' VIEWS ON THE LAND LAWS (AMENDMENT) BILL, 2015 (NATIONAL ASSEMBLY BILLS NO. 55 OF 2015)

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
<b>Amendments to the Land Registration Act, 2012</b>		
3	Institution of Surveyors of Kenya	<p><u>Provision</u>                      Amends section 6 (1) of the Land Registration Act, 2012 on Registration units                      Gives powers to the Cabinet Secretary to constitute a registration area, in consultation with the NLC</p> <p><u>Our proposal</u>                      Amend 6 (1) by removing consultation and adding, "upon the advice of the National Land Commission", immediately after Cabinet Secretary</p> <p><u>Rationale</u>                      This amendment effectively removes the agency role of the NLC and introduces the role of CS in the registration as principal. It is our considered opinion that whereas Article 67 (2) (c) however mandates the NLC to advise the national government on comprehensive programme for the registration of title in land throughout the Kenya. The proposed amendments therefore seek to bring about clarity on who should initiate the registration process and also comply with the Constitution.</p>
4	Institution of Surveyors of Kenya	<p><u>Proposal</u>                      Amends section 7 on Land Registry. The amendments give CS roles over Land Registries. It also introduces new subsections (4), (5) and (6), which introduces additional features into the land registration as well as manner in which the same can be effected</p> <p><u>Our proposal</u></p>



CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
		<p>Retain the proposed amendments</p> <p><u>Rationale</u> Whereas roles to maintain land registry is been transferred from the Commission, this shall bring clarity and consistency with the Constitution and also since the National Government has machinery to guarantee title.</p>
7	Institution of Surveyors of Kenya	<p><u>Proposed amendments</u> Amends section 13 and introduces new section (13A) that seeks to introduce positions of Deputy Chief Land Registrar, County Land Registrars and Land Registrars as well as their qualifications</p> <p><u>Our proposal</u> Amend new section 13 A (1) (2) and (3) by deleting " or any other expert" replacing with " Land Administrator and Physical Planner" and members of the relevant professional association</p> <p><u>Rationale</u> The new positions of land registrars are acceptable especially in light of the devolution. Our proposal is therefore to ensure that only those who are have undergone relevant training are considered for the proposition.</p>
10	Institution of Surveyors of Kenya	<p><u>Provision</u> Amends section 17 on the approval for further surveys a) Deleting subsection (3) and substituting with "(3) the office or authority responsible for the survey of land shall submit to the Commission a copy of the cadastral maps relating to <u>public</u> land and the Commission shall a depository of the maps"</p> <p><u>Proposal</u> Amend by inserting, "within a period to be determined" after public land</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
		<p><u>Rationale</u> The proposal seeks to clarify and entrench the mandate of the NLC on the public land. Our proposal therefore seeks to provide a definite period for the Commission to receive the maps.</p>
11	Institution of Surveyors of Kenya	<p><u>Provision</u> Amendment of section 28 on overriding interests by deleting paragraphs (a) and (f) on spousal rights over matrimonial property and leases or agreements for leases for term not exceeding two years, periodic tenancies and indeterminate tenancies</p> <p>The Section also introduces the following new provision;</p> <p>“ Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such as manner as the Registrar deems necessary</p> <p><u>Our proposal</u> Delete paragraph (a) of the proposed amendments</p> <p><u>Rationale</u> The proposed amendments are not in line with Article 68 (v, iii, vi) of the Constitution as well as Marriage Act and matrimonial property.</p>
<b>b) Amendments to the National Land Commission</b>		
35 & 38	Institution of Surveyors of Kenya	<p><u>Provision</u> Amends section 2 &amp; 18 by proposing repealing of the County Land Management Boards (CLMB).</p> <p><u>Our proposal</u></p>



CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
		<p>We support the proposed amendments. However we propose that the NLC are given chance to devolve their services to the Counties like other Constitutional commissions including the EACC. This could be done through engagement of competent staff in the Counties.</p> <p><u>Rationale</u>  The main concern since their establishment, the boards have not had a clear mandate on their operations and have been perceived as interfering with the functions of the county governments with regard to land management, allocation and development control which they discharge through the CLMB. Furthermore, the current boards do not have the envisaged autonomy.</p> <p>The boards end up taking up roles that should be undertaken by the CEC Lands and professionals under them. This also comes in light of the Land Control Boards which have not been repealed.</p> <p>Our proposal therefore seeks to streamline the roles of the NLC and also provide for their devolution of their services.</p>
36	Institution of Surveyors of Kenya	<p><u>Proposal</u>  Amends 5 (2) (c) (d) (e) (f), 2, 3 &amp; 4;</p> <p>We propose amendments as follows:</p> <p>5(2) (c) Substituted with "ensure that <b>"Public"</b> and land under the management of the designated state agencies is sustainably managed for the intended purposes.</p> <p>We propose that NLC be allowed to develop and encourage Alternative Dispute Relation mechanisms.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
38	Institution of Surveyors of Kenya	<p>Support removal of sections:</p> <p>(d) develop and maintain an effective land information management system at national and county levels;</p> <p>(e) manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and</p> <p>(f) Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.</p> <p><u>Rationale</u> These extra functions, save for 5 2 (f), emanate from Article 67(3) where any other function may be prescribed. The proposed amendments shall therefore bring about clarity on the mandates of the NLC in line with the Constitution.</p> <p><u>Provision</u> Amends First schedule on the appointments of Chairperson and Members by among others giving mandate to the Public Service Commission and not a Select panel appointed by the President</p> <p><u>Our proposal</u> Amend the section by inserting a new section (h) to read as follows " a nominee of the Institution of Surveyors of Kenya"</p> <p><u>Rationale</u> Whereas the NLC is an independent commission under Article 249(b), article 250 (2) (a) does not expressly stipulate who initiates the process. There has been a challenge is coming up with a representative selection panel in the past.</p>



CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
		The additional proposal is to ensure that the land sector professionals are represented.
<b>c) Amendments to the Land Act, 2012</b>		
42	Institution of Surveyors of Kenya	<p><u>Provision</u>  The section amends section 6 by stipulating powers of the Cabinet Secretary over all categories of land and introduces the new paragraphs:</p> <p>(g) provide policy direction regarding all classes of land in consultation with the Commission where appropriate;</p> <p>(h) coordinate the development and implementation of a National Land Information System in collaborate with the Commission;</p> <p>(i) Administer and undertake all dealings including registration of private land interests subject to Part VIII</p> <p><u>Our proposal</u>  Amend (i) to read "Administer and undertake registration of private land interests, in consultation with the County Government"</p> <p>Harmonize the definitions of lease in the Land Act, 2012 and Land Registration Act, 2012</p> <p><u>Rationale</u>  The undertaking and administration of all dealings in private land leaves out the roles of county governments, who are also empowered under Urban Areas and Cities Act, 2011.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
New amendment	Institution of Surveyors of Kenya	<p><u>Section 6 (e):</u> It provides for the regulation of the land sector professionals by the Cabinet Secretary</p> <p><u>Our proposal</u> Delete the provisions</p> <p><u>Rationale</u> This will be taken care of by respective laws e.g Survey Act, Cap 299, Valuers Act Cap 532 and Estate Agents Act, Cap 533.</p>
47	Institution of Surveyors of Kenya	<p><u>Provision</u> The section amends (13) and provides for framework for renewal of land leases upon expiry</p> <p><u>Our proposal</u> Delete the proposed amendments or clarify that the mandate for extending the leases on the private land is a preserve of the Cabinet Secretary and the renewing the leases on the public land is the preserve of the National Land Commission.</p> <p>Insert new section (e) to read: "the lessee may initiate the process of renewing the lease by applying to the National Land Commission"</p> <p><u>Comment</u> There is need for this to be clarified so that it does not interfere on the constitutional roles of National Land Commission with regard to public land.</p> <p>Furthermore, the new provision seeks to give the lessee an opportunity to initiate the renewal process without being prompted by NLC.</p>
48 (c)	Institution of	<u>Provision</u>



CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
	Surveyors of Kenya	<p>Amends section 15 (2) by deleting the phrase - and shall not be subject to allocation and development appearing at the end of the subsection. This amendment effectively means that the public land once it has been reserved can be reallocated.</p> <p><u>Our proposal</u> The proposed amendments is agreeable with us</p> <p><u>Rationale</u> ISK presumes that the proposed amendment seeks to unlock large tracks idle public land for productive use.</p>
73 (5)	Institution of Surveyors of Kenya	<p><u>Provision</u> Amend Section 9 (5) by replacing "Institute" with "Institution"</p>
88	Institution of Surveyors of Kenya	<p><u>Provision</u> Amends section 134 on establishment of settlement scheme. The amendments effectively transfers settlement function to National Government</p> <p><u>Our proposal</u> Delete the amendments</p> <p><u>Rationale</u> The question is who is providing the land for settlement programmes? Is the source public land in which case it would be the NLC and the County Governments on which public land vests or will the land be acquired compulsorily for private land in which case the administrator is the CS hence the National Government.</p>
89	Institution of	<p><u>Provision</u></p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
	Surveyors of Kenya	<p>Amends section 135 on the land settlement fund. The amendment replaces administration of land settlement fund (LSF Fund) formerly under NLC with a board of trustee (Land Settlement fund board of trustees) and also replaces the chairman of settlement plot allocation committee with County Commissioner</p> <p><u>Our proposal</u> Remove the proposal.</p> <p><u>Rationale</u> Our observation is that the board of trustees is dominated by the executive arm of Government and is likely not to achieve its independence. There is need to craft an independent board of trustees independent chaired by NLC</p>
108&109	Institution of Surveyors of Kenya	<p><u>Provision</u> The section was amended further by introducing a new sections to read as follows;</p> <p>(159) (1) subject to Article 40 of the Constitution –</p> <ul style="list-style-type: none"> <li>a) The minimum land holding acreage shall be subject to the provisions of Article 66 (1) of the Constitution and the legislation envisaged therein</li> <li>b) The maximum land holding acreage shall be subject to Article 60 (1) (a) and (c) of the Constitution</li> </ul> <p>(2) the Cabinet Secretary shall publish guidelines on the penalties for non-compliance with the provisions of this section</p> <p><u>Our proposal</u> Delete the entire section and either develop an independent legislation or seek for a way of repealing the Constitution of Kenya Article 68 (c) (i).</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
		<p><u>Rationale</u></p> <p>The minimum land holdings fall under the planning docket and so from time to time different counties can come up with their regulations to limit the land sizes below which cannot subdivide so as to control urban sprawl and maintain economic land units.</p> <p>The issue of maximum land sizes on the other hand, is not practical and contradicts the principle of free land markets and attempting to come up with maximum land holdings is against the spirit of the investment and capitalism. The proposed mechanism under sec 123 of the NLP should be to "control" how much land one can own.</p>



## Land Laws Amendment Bill, 2015

## Provisions on Eviction and Resettlement section 97( 152A- 152I)

Marginal Topic	Citation/Section	Issues	Proposed Amendments/Comments
Amendment to section 2 of No. 3 of 2012	Section 2	The bill fails to define the following key terms which are important for the provisions of eviction and resettlement: 1. Forced Eviction 2. Unlawful Occupant 3. Owner 4. consultation	<b>Forced eviction</b> is "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection"  <b>Unlawful occupier</b> means a person who takes possession of land or structures without the tacit or express consent of the owner or without any right in law to take possession of such land or structure.  <b>Owner</b> means a person or organ of state who holds lawful title in the land in question  <b>Consultation:</b> Means the process whereby the affected persons on their own or through their representatives are provided adequate information and an opportunity to be heard and to participate in the decision making process on matters involving any proposed eviction so that they can protect their legitimate collective interests and include appropriate documentation and feedback mechanism
Mandatory procedures during evictions	Sec 97-152G	The bill does not have provisions of procedures <b>prior</b> to evictions on public land	<b>PROCEDURE PRIOR TO EVICTIONS ON PUBLIC LAND:</b> (1) Subject to the provisions of any other law relating to evictions of a person from unlawful occupation of public land, the National Land Commission shall undertake adequate consultations on the proposed evictions with the duly designated representatives of the affected persons and families.

ANNEX VI



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**Land Laws Amendment Bill, 2015**

**Provisions on Eviction and Resettlement section 97( 152A- 152I)**

			<p>In fulfilling the requirements of subsection (1) the consultations shall include holding of public hearings that may provide the affected persons an opportunity to-</p> <ul style="list-style-type: none"> <li>(a) challenge the eviction decision;</li> <li>(b) present an alternative proposal ; or</li> <li>(c) articulate their demands and development priorities.</li> </ul> <p>Where an agreement cannot be reached on a proposed alternative among concerned parties, the National Land Commission may constitute a mediation committee comprising representatives of the National Land Commission and the affected families or communities with a view to finding an amicable solution.</p> <p>Notwithstanding any approval, permit or court order granted under this Act or any other law in force in Kenya , where a proposed eviction affects more than fifty households, the National Land Commission in co-operation with the relevant government agencies for the time being in charge of environmental management , land and housing shall undertake a holistic and comprehensive environmental, economic and social impact assessment and a resettlement action plan prior to evictions, which shall</p>



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Provisions on Eviction and Resettlement section 97( 152A- 152I)

			<p>include but not limited to—</p> <ul style="list-style-type: none"> <li>(a) establishing the prevailing land tenure system;</li> <li>(b) establishing a cut-off date for a renumeration process;</li> <li>(c) evaluating, enumerating and recording of individuals, families and their assets;</li> <li>(d) examining the proposed eviction plans and alternatives;</li> <li>(e) considering the magnitude of displacement;</li> <li>(f) examining information on the full resource base of the affected population, including income derived from informal sector and non-formal activities, and from common property;</li> <li>(g) examining the extent to which groups will experience total or partial loss of assets;</li> <li>(h) examining the public infrastructure and social services that will be affected;</li> <li>(i) dissemination by the</li> </ul>
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**Land Laws Amendment Bill, 2015**

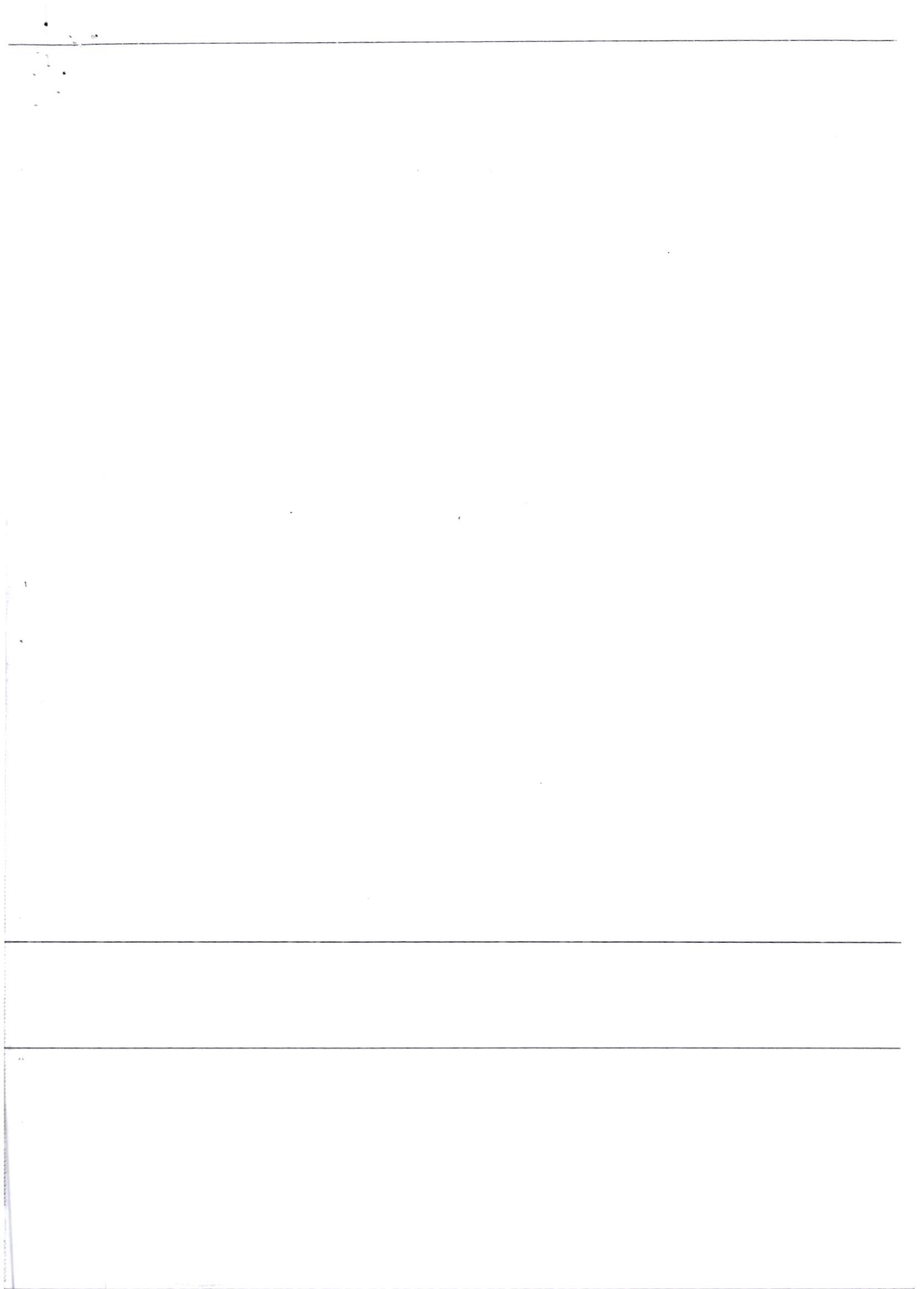
**Provisions on Eviction and Resettlement section 97( 152A- 152I)**

			<p>authorities of relevant information in advance including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;</p> <p>(j) involving institutions such as community organizations that can assist with designing and implementing the resettlement programmes;</p> <p>(k) consideration of the views of the affected people to any proposed resettlement options;</p> <p>(l) giving attention to special interest groups including people with disabilities, the elderly, youth, women and children; and opportunity for alternative dispute resolution and legal redress.</p>
			<p>Where an eviction is envisaged as a result of a development-based project the party proposing the project shall undertake an environmental, economic and social impact assessment that shall include, among others, exploration of alternatives and strategies for minimizing harm and taking into</p>

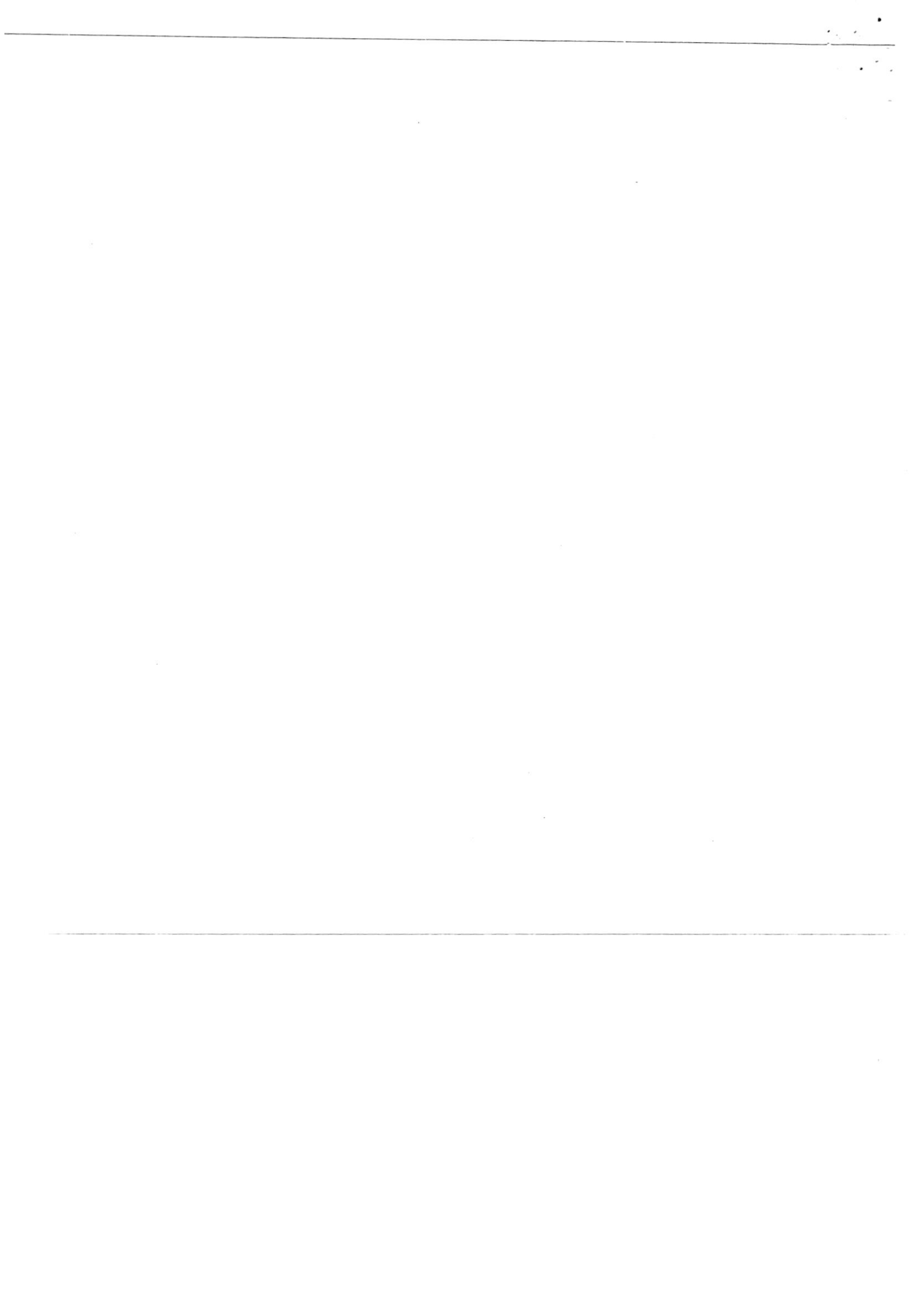


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Land Laws Amendment Bill, 2015

Provisions on Eviction and Resettlement section 97( 152A- 152I)

			account the differential impacts of evictions on women, children, the elderly and other vulnerable groups.
Mandatory provisions during evictions	97-152G	The bill has some provisions on mandatory provisions but they are not conclusive we therefore propose the following amendments which are consistent with international law (ICESCR) that Kenya has ratified to and form part of the constitution in accordance to article 2(5)	<p><b>MANDATORY PROCEDURES DURING EVICTION</b></p> <p>Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures-</p> <ul style="list-style-type: none"> <li>(a) be preceded by the proper identification of those taking part in the eviction or demolitions;</li> <li>(b) be preceded by the presentation of the formal authorizations which must be in form of a court order authorized by law;</li> <li>(c) where groups of people are involved, government officials or their representatives to be present during an eviction;</li> <li>(d) full details of the proposed alternative, if any, shall be given to the occupiers of the land;</li> <li>(e) where no alternatives</li> </ul>



Land Laws Amendment Bill, 2015

Provisions on Eviction and Resettlement section 97( 152A- 152I)

			<p>exist, all measures shall be taken to minimize the adverse effects of evictions; and</p> <p>(f) be done transparently, openly and with full compliance with the Constitution and international human rights principles;</p> <p>(g) not take place in bad weather, at night, during festivals or religious holidays, prior to an election or prior to or during national examinations;</p> <p>(h) be carried out in a manner that respects the dignity, right to life and security of those affected;</p> <p>(i) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children , the elderly, and persons with disabilities;</p>
			<p>(j) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;</p>



Land Laws Amendment Bill, 2015

Provisions on Eviction and Resettlement section 97( 152A- 152I)

			<p>(k) include mechanisms to protect property and possessions left behind involuntarily from destruction, arbitrary and illegal appropriation, occupation or use; and</p> <p>(l) fairness, freedom of expression, openness and accountability.</p> <p>The provisions under subsection (1) (d) and (e) shall not apply in the case of evictions from private land.</p> <p>. No order for eviction from public land shall be granted when it is clear to the Court that such an order would result in rendering a person affected by evictions homeless.</p>
<p>We propose an additional section on resettlement procedures after an eviction</p>	<p>Proposed 152 J</p>	<p><b>PROVISIONS RELATING TO RESETTLEMENT</b></p>	<p>The National Land Commission shall, in cases where evictions are deemed lawful and where the person or persons evicted are rendered homeless, ensure that such persons are provided with appropriate resettlement in accordance with the provisions of this Act and any other law for the time being governing resettlement programs.</p> <p>(2) The National Land Commission shall maintain a register of all persons subjected to eviction and benefitted from its resettlement programmes.</p>
			<p>The National Land Commission shall undertake resettlement of persons subjected to evictions in a just and</p>





**Land Laws Amendment Bill, 2015**

**Provisions on Eviction and Resettlement section 97( 152A- 152I)**

			<p>equitable manner and in accordance with the provisions of this Act and international law standards</p> <p>The National Land Commission shall make special efforts to ensure the equal participation of women, minority and other vulnerable groups in all planning and implementation processes and in the distribution of basic services and supplies.</p> <p>In undertaking resettlement of persons affected by evictions ,the National Land Commission shall without discrimination, take measures to ensure that –</p> <ul style="list-style-type: none"> <li>(a) members of the same family are not separated;</li> <li>(b) the people affected by evictions and their property are protected and secured;</li> <li>(c) essential medical services are accessible and that on-going treatment is not disrupted as a result of resettlement;</li> <li>(d) psychological and counselling services are provided;</li> </ul>
			<ul style="list-style-type: none"> <li>(e) special attention is paid to people with special needs;</li> <li>(f) essential food, potable water and sanitation are provided;</li> </ul>



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			<p>(g) basic shelter and housing is provided;</p> <p>(h) education for children and child care facilities are provided; and essential livelihood resources are availed.</p> <p>No resettlement of evicted persons shall take place unless such resettlement is consistent with the provisions of this Act, other relevant existing laws and the internationally recognized guidelines and principles Following an eviction and resettlement exercise, the National Land Commission shall facilitate the handing over of the infrastructure present at the resettlement site.</p> <p>Where eviction is inevitable, the National Land Commission shall develop a resettlement plan that shall incorporate provisions for sufficient resources and opportunities to the affected persons, possible compensation for losses incurred during the eviction and support during the transition period. In carrying out the resettlement of persons subjected to evictions, the National Land Commission shall, ensure that the rights of women, children, and other vulnerable groups are protected, including their right to property ownership and access to resources</p>
<p>We Propose a section on guiding</p>	<p>Section 152K</p>	<p><b>The bill does not provide on</b></p>	<p>The General principles that guide evictions in Kenya shall be on the</p>



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**Provisions on Eviction and Resettlement section 97( 152A- 152I)**

<p>principles on evictions</p>		<p>guiding principles for evictions which are necessary</p>	<p>basis that:-</p> <ul style="list-style-type: none"> <li>(a) every person has inherent dignity and the right to have that dignity respected and protected;</li> <li>(b) every person has the right to accessible and adequate housing and to reasonable standards of sanitation;</li> <li>(c) no person may be deprived of his or her property except in accordance with the provisions of the Constitution and all applicable laws and no law may permit arbitrary deprivation; and every person has the right to administrative action that is expeditious, efficient, reasonable and procedurally fair;</li> <li>(d) every person has the right to</li> </ul>



Land Laws Amendment Bill, 2015

Provisions on Eviction and Resettlement section 97( 152A- 152I)

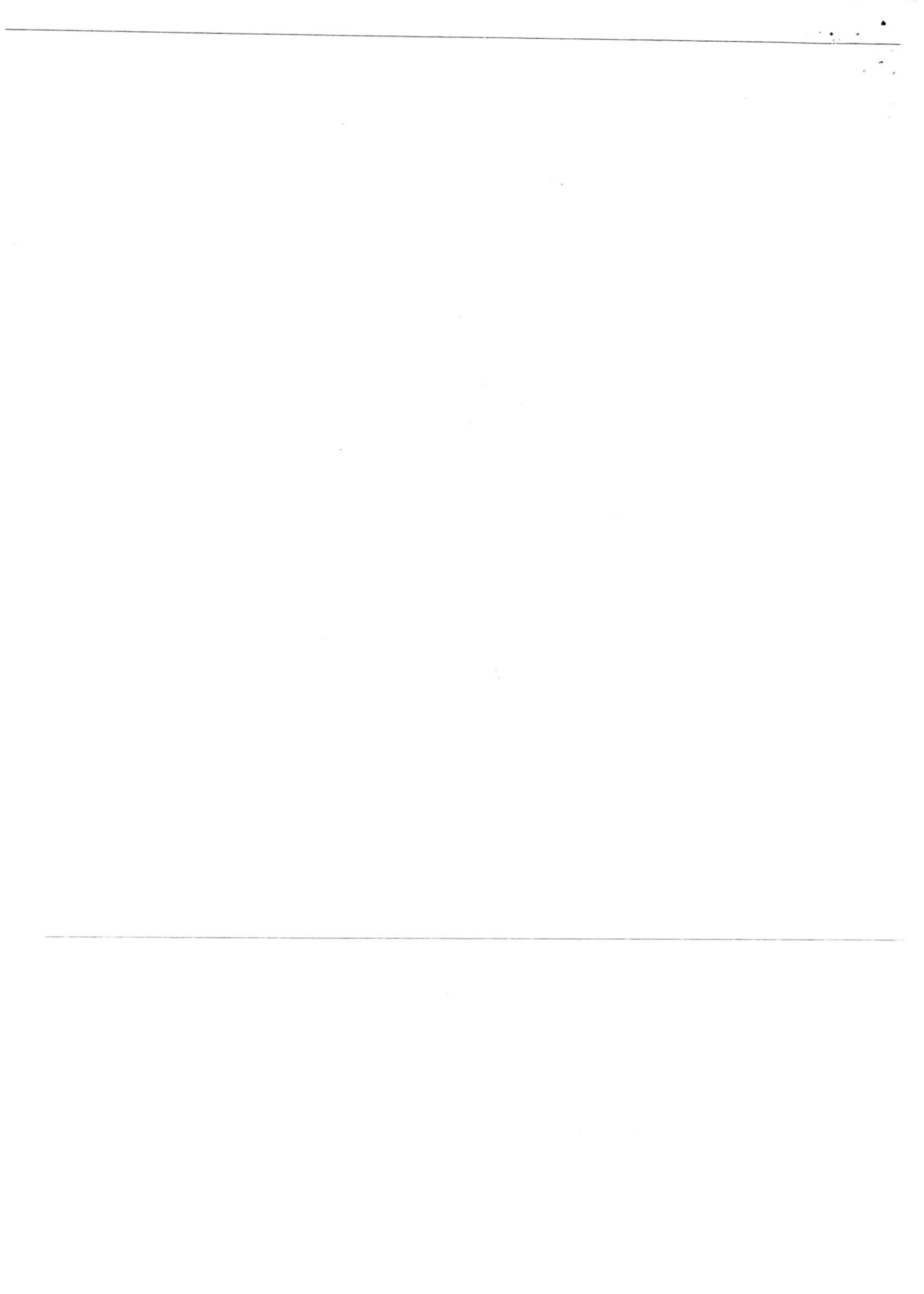
			<p>freedom and security of the person which includes the right not to be subjected to any form of violence from either public or private sources and not to be subjected to torture in any manner, whether physical or psychological and not to be treated or punished in a cruel, inhuman or degrading manner; and</p> <p>(e) no person may be evicted from their home, or have their home demolished without following the procedures under this Act .</p>
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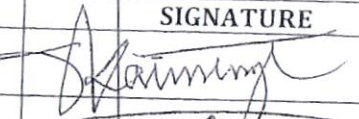


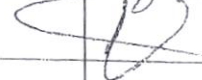


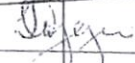

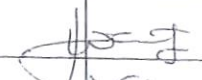






ATTENDANCE LIST

MEDIATION COMMITTEE ON COMMUNITY LAND BILL, 2015 & LAND LAWS (AMENDMENTS) BILL, 2015

WEDNESDAY 13TH JULY, 2016

NO	NAME	ORGANISATION	DESIGNATION	CONTACT	SIGNATURE
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