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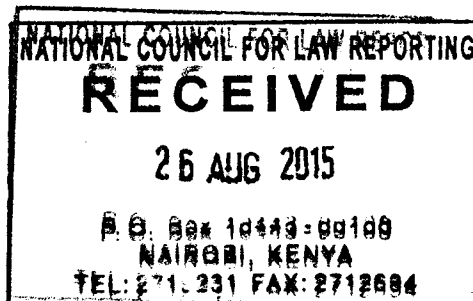
NAIROBI, 18th August, 2015

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The Land Laws (Amendment) Bill, 2015 3075



THE
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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—

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

Short title.

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

Amendment to section 2 of No.3 of 2012.

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

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

No. 6 of 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 paragraph (b);

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

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

No. 6 of 2012.

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

“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;

No. 19 of 2011.

(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;

“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;

“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.

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

- (a) in subsection (1), by deleting the words “Commission in consultation with the national and county governments” and substituting therefor with the words “Cabinet Secretary, in consultation with the Commission”;
- (b) in subsection (5), by deleting the word “Commission” appearing immediately after the words “by the” and substituting therefor with the word “Cabinet Secretary”.

Amendment of
section 6 No. 3 of
2012.

4. The Land Registration Act is amended by inserting the following new section immediately after section 6—

Insertion of new section 6A.

Procedure for constituting a registration unit.

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.

(2) The programme referred to in subsection (1) shall—

- (a) declare an area or areas of land to constitute a land registration unit;
- (b) identify the land to be adjudicated for purposes of registration;
- (c) request all persons with an interest in the land to attend a specified meeting; and
- (d) invite all persons with claims on the land to mark and indicate their boundaries prior to the meeting.

(3) Every land registration process shall conform to the following principles—

- (a) involvement and engagement of the people residing in the land by creating awareness on the adjudication process and taking an inventory of their land;
- (b) recording interests in land;
- (c) actual physical demarcation of the land and delineation of boundaries involving the people;
- (d) conferment of certificate of title to the proprietors; and
- (e) conclusion within the time specified in the *Gazette*.

(5) The residents of any unregistered area may apply to the Cabinet Secretary to have the whole or part of its land to be declared a registration unit in accordance with this section.

(6) The Cabinet Secretary shall, in consultation with Commission, make rules

for the conduct of the adjudication of land in the counties including—

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

Amendment of section 7 of No. 3 of 2012.

- (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; and
- (c) the encumbrance section;
- (d) the user of the land;
- (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.”

6. Section 8 the Land Registration Act is amended by deleting the word “Register” appearing the in the marginal note.

Amendment of section 8 of No. 3 of 2012.

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

Amendment of section 9 of No. 3 of 2012.

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

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

Amendment of section 12 of No. 3 of 2012.

(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”.

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

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

Qualifications for appointment of other land Registrars.

13A.(1) A person shall not qualify for appointment as Deputy Chief Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than ten years’ standing.

(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.

(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.

(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.

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

Amendment of section 14 of No. 3 of 2012.

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

11. Section 16 of the Land Registration Act is amended—

Amendment of
section 16 of No.
3 of 2012.

- (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.”

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

Amendment of
section 17 of No.
3 of 2012.

“(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.”

13. Section 18 of the Land Registration Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of
section 18 of No.
3 of 2012.

“(3) Except where it is noted in the register that the boundaries of a parcel have been fixed—

- (a) boundary disputes requiring determination by survey techniques such as the re-establishment of a missing boundary or re-alignment of a boundary shall be determined by the authority responsible for the survey of land;
- (b) any other disputes involving a parcel of land, except those related the registration of the parcels, shall be determined through Alternative

Dispute Resolution mechanisms, with the help of the authority responsible for survey of land in cases where boundaries may need to be altered;

- (c) in cases where dispute involves issues of registration, the dispute shall be determined by the Registrar;
- (d) the case of paragraph (a), (b), or (c), determination of a boundary and or parcel dispute shall be completed within a period not exceeding six months from the date of filing the dispute;
- (e) disputes relating to boundaries shall be filed with the authority responsible for survey while other land disputes shall at the Court.”

14. Section 19 of the Land Registration Act is amended—

Amendment of section 19 of No. 3 of 2012.

- (a) in subsection (1) by deleting the words “give notice to the owners an occupiers of land adjoining the boundaries in question of the intention to ascertain and fix the boundaries” and substituting therefor the words “request the authority responsible for land survey to ascertain and fix the boundaries”;
- (b) in subsection (2) by deleting the words “after giving all persons appearing in the register an opportunity of being heard, cause to be defined by the survey, the precise position of the boundaries in question” appearing immediately after the word “shall” and substituting therefor the words “after receiving an approved plan from the office or authority responsible for land survey showing and confirming that the boundaries in question have been fixed”.

15. Section 26 of the Land Registration Act is amended—

Amendment of section 26 of No. 3 of 2012.

- (a) deleting the marginal note and substituting therefor with the following—
“Challenge to entries in the Register”;
- (b) deleting subsection (1) and substituting therefor the following section—

(1) 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) of fraud or misrepresentation to which the person is proved to be a party; or
- (b) that the rights of the proprietor have been acquired illegally.

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

Amendment of section 28 of No. 3 of 2012.

- (a) deleting paragraph (a);
- (b) deleting paragraph (b);
- (c) deleting paragraph (f) and substituting therefor the following—
- (d) short term lease where the lessees are in actual occupation;
- (e) deleting paragraph (j);
- (f) 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 defined in such manner as the Registrar deems necessary.

17. Section 30 of the Land Registration Act is amended—

Amendment to section 30 of No. 3 of 2012.

- (a) in subsection (1) by inserting the words “whose name appears in the register immediately after the words “proprietor of land”;
- (b) in subsection (2)(b) by deleting the expression “twenty-five” and substituting therefor the expression “twenty-one”.

18. Section 33 of the Land Registration Act is amended—

Amendment of section 33 of No. 3 of 2012.

- (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) in subsection (4) by inserting the words “damaged or destroyed ” immediately after the word “lost”;
- (d) 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.

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

Amendment of section 35 of No. 3 of 2012.

- (a) in subsection (1) by deleting the words “purporting to be” appearing immediately after the word “document”;
- (b) in subsection (4) by deleting the words “and any such process, if issued, shall bear thereon a statement that it is issued with leave of Court” appearing immediately after the word “suffice”.

20. Section 36 of the Land Registration Act is amended—

Amendment of section 36 of No. 3 of 2012.

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

(3) 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—

- (i) in no such case shall the sum of the additional fees, exceed five times the original registration fees payable;
 - (ii) the Chief Land Registrar may exercise discretion to remit any additional fee payable by virtue of this section in whole or in part.
- (b) by inserting the following new subsections immediately after subsection (4)—

(5) The Registrar may, if satisfied that any person through willful default, has failed to register any instrument which is registerable under this Act, by notice in writing, order such person to present such instrument for registration, and together with the registration fees and any additional fee payable under subsection (4) which shall become due and payable whether the instrument is presented for registration or not.

(6) A person who fails to comply with an order of the Registrar under subsection (4) within one month of the service of the notice commits an offence and shall be liable, on conviction, to a fine not exceeding one thousand shillings.

(7) The Registrar may put a restriction on the register forbidding further registration until the instrument required to be registered under subsection (5) is presented for registration.

(8) 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.

(9) 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.

(10) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the

Registrar may refuse registration until the Registrar has heard and determined the rights of parties interested.

(11) 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.

(12) 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.

(13) Subject to the subsection (12), any instrument or document for which application for registration is made during the suspension period other than that affecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

(14) 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 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.

21. Section 38 of the Land Registration Act is amended—

Amendment of
section 38 of No.
3 of 2012.

- (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 (a).

22. Section 39 of the Land Registration Act is amended by—

Amendment of
section 39 of No.
3 of 2012.

- (a) by deleting sub section (2) and substituting therefor the following subsection—

(2) No certificate shall be required under subsection (1) if the instrument relates to a sublease where the lease is by virtue of any law subject to full payment of the rent by the head-
lessor.

- (b) by inserting the following new subsections immediately after subsection (2)—

(3) Where there is a condition under any law requiring consent to be obtained prior to the creation of a disposition, the Registrar shall not register an instrument effecting a transaction unless there is proof that the consent has been obtained.

(4) The Registrar may dispense with such consent—

- (a) in a case where the consent is required pursuant to a contractual obligation and the Registrar is satisfied that such consent cannot be obtained;
- (b) in any other case pursuant to a court order.

(5) The Registrar shall record in the Register the reasons for dispensing with such consent.

23. 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 43 of No. 3 of 2012.

24. Section 44 of the Land Registration Act is amended—

Amendment of Section 44 of No. 3 of 2012.

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

(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; o

25. Section 54 of the Land Registration Act is amended by—

Amendment of section 54 of No. 3 of 2012.

(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.

26. Section 55 of the Land Registration Act is amended by 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 55 of no.
3 of 2012.

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

Amendment of
Section 56 of No.
3 of 2012.

(a) in subsection (4) by deleting the words “to him or her” appearing at the end of subsection (4);

(b) 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”.

28. Section 57(2) of the Land Registration Act is amended in section by deleting the word “charge” appearing immediately after the word “first” and substituting therefor the word “chargee’s”.

Amendment of
section 57 of No.
3 of 2012.

29. Section 76 of the Land Registration Act is amended—

Amendment of
section 58 of No.
3 of 2012.

(a) in subsection (2) by deleting the words “the making” appearing in paragraph (c);

(b) 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.”

30. 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 77 of No. 3 of 2012.

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

Amendment of Section 78 of No. 3 of 2012.

32. Section 79 of the Land Registration Act is amended—

Amendment of Section 79 of No. 3 of 2012.

(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.

(c) by deleting subsection (3) and substituting therefor the following subsection—

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

- (d) in subsection (4) by deleting the expression “subsection (2)” appearing immediately after the word “under” and substituting therefor the expression “subsection (1)”.

33. 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 80 of No. 3 of 2012.

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

Amendment of section 83 of No. 3 of 2012.

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

Amendment of section 91 of No. 3 of 2012.

- (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 shall, upon receipt of adequate proof may dispense with the consent under sub-section (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably, 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.

36. Section 92 of the Land Registration Act is amended in subsection (1) by deleting the words “copy of the” appearing immediately after the words “receive a”.

Amendment of section 92 of No. 3 of 2012.

37. Section 93 of the Land Registration Act is amended—

Amendment of section 93 of No. 3 of 2012.

(a) in subsection (1)—

(i) by deleting the introductory part of subsection (1) and substituting therefor the following—

(1) 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 the spouses—

(ii) by deleting the words “joint tenants” appearing in paragraph (a) and substituting therefor the words “tenants in common”;

(iii) deleting the words “certificate of ownership or the certificate of customary ownership” appearing in paragraph (a)(i) immediately after the words “in the” and substituting therefor the term “certificate of title or certificate of lease”;

(iv) by inserting the following new paragraph immediately after paragraph (b)—

(c) the spouse whose interest is not noted in the register may apply to the Registrar in the prescribed form to be noted in the register as having a matrimonial interest;

(b) by deleting subsection (2);

(c) by deleting the introductory part of subsection (3) and substituting therefor the following—

(3) Where a spouse who holds a matrimonial property in his or her name individually undertakes a disposition of that property—

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

(4) If the spouse undertaking the disposition deliberately misleads the lender, the assignee, or transferee following enquiries pursuant to subsection (3)(a), any spouse or spouses who have not given consent may at any time prior to the registration of the instrument of transfer or charge apply to court to stop the disposition.

- (e) by inserting the following new subsection—

(5) A consent of the spouse or spouses shall be in the prescribed form and shall be noted in the register.

38. Section 94 of the Land Registration Act is amended—

Amendment of section 94 of No. 3 of 2012.

- (a) in subsection (2) by deleting the words “ the Registrar” appearing immediately after the words “made to” and substituting therefor with the word “Court”;
- (b) in subsection (3) by deleting the word “Registrar” appearing immediately after the word “The” and substituting therefor with the word “Court”.
- (c) in subsection (4) by deleting the word “Registrar” and substituting therefor the with word “Court” wherever it occurs;
- (d) by inserting the following new subsection immediately after subsection (4) as follows—

(5) Any tenant in common may apply for partition in the prescribed form and in accordance with the order made under subsection (4).

39. 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 102 of No.3 of 2012.

40. Section 103 of the Land Registration Act is amended—

Amendment of section 103 of No. 3 of 2012

- (a) in subsection(1)—
- (i) by deleting the word “ownership” appearing in paragraph (c)(i) immediately after the words “certificate of” and substituting therefor the words “title or certificate of lease”;
 - (ii) by deleting the word “a” appearing in paragraph (c)(ii) immediately after word “of” and substituting therefor the word “an”;
 - (iii) by inserting the following new paragraph immediately after paragraph (c)(iii)—
 - (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) deleting subsection (2).

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

Amendment of
section 105 of No.
3 of 2012.

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

(c) 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.

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

Amendment of section 2 of No. 5 of 2012.

43. Section 5 of the National Land Commission Act is amended in—

Amendment of section 5 of No. 5 of 2012.

(a) subsection (2) by—

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

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

(ii) deleting paragraph (d);

(iii) deleting paragraph (e);

(iv) deleting paragraph (f);

(b) deleting subsection (3).

(c) deleting subsection (4).

44. Section 15 of the National Land Commission Act is amended by deleting section 15 and substituting therefor the following new section—

Amendment of section 15 of No. 5 of 2012.

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) 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 member of the Staff of the Commission to any person, direct such person, in relation to an investigation, to appear before a Member of 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.

(3) Any person directed to produce documents or objects in accordance with subsection (1)(c) shall not be compelled to produce any document or object which could be used in evidence against him or her in a criminal trial.

(4) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall direct an officer of the Commission to take reasonable steps to have this information made available.

(5) 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.

(6) A claim in respect of a matter contemplated in subsection (4) shall not be lodged after the expiry of the period specified in the said notice.

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

Repeal of section 18 of No. 5 of 2012.

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

Amendment of First Schedule to No. 5 of 2012.

- (a) by deleting paragraph (1).
- (b) by deleting paragraph (2).
- (c) in paragraph (3) by deleting the words “The selection panel shall within seven days of convening,” and substituting therefor “The Public Service Commission shall within twenty-one days, whenever a vacancy arises,”;
- (d) in subsection (4) by deleting the words “The selection panel” and substituting therefor with the words “The Public Service Commission”;
- (e) by inserting the words “within seven days” immediately after the word “shall” appearing in paragraph (7).
- (f) inserting the following new paragraph (8A) immediately after paragraph (8)—
 “(8)(A) 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.
- (g) in paragraph (10) by deleting the words “the selection panel” and substituting therefor “the Public Service Commission”;
- (h) in paragraph (12) by deleting the words “the selection panel” and substituting therefor “the Public Service Commission”;
- (i) by deleting paragraph (13);
- (j) by deleting paragraph (14);
- (k) by deleting paragraph (15);

47. Section 2 of the Land Act is amended—

Amendment to section 2 of No.6 of 2012.

- (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—

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

No. 13 of 2013

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

No. 13 of 2013

“lawful improvements” means improvements which increase or improve the value of land which have been carried out bona fide with all the approvals and consents having been obtained 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 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;
- (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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48. Section 5 by inserting the following new subsection immediately after subsection (2)—

Amendment to section 5 of No. 6 of 2012.

(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 or vice versa.

49. Section 6 of the principle Act is amended by—

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

- (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;
- (h) administer and undertake all dealings including registration of private land interests subject to Part VIII of this Act; and
 - (i) coordinate the development and implementation of a National Land Information system in collaboration with the Commission.

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

Amendment of section 8 of No. 6 of 2012.

- (a) re-numbering the 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 alienation;
 - (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.

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

Amendment of section 9 of No. 6 of 2012.

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

52. Section 12 of the Land Act is amended—

Amendment of section 12 of No. 6 of 2012.

- (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 or alienate the whole or part of a specific public land, the Cabinet Secretary or the County Executive Committee member 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” at the end.

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

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

Controlled land.

2A. (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) has an agriculture or agricultural user within the meaning of the Agriculture, Fisheries and Food Authority Act, 2013 including land upon which a land preservation order has been made;
- (d) community land under Article 63 of the Constitution; or
- (e) public land as described in section 12 of the land Act; or
- (f) any other land as may be declared controlled land under any law or statute.

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“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 whose majority shareholders or owners are non-citizens 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) Subject to subsection (3)—

- (a) an ineligible person shall not take or acquire, directly or indirectly, an interest in controlled land except with the prior written approval of the Commission.
- (b) no person shall, whether for a consideration or by way of trusts, gift *inter vivos* or otherwise, transfer controlled land to any ineligible person without the prior approval of the commission;

(3) Nothing in section (2) shall affect—

- (a) the taking or acquisition of an interest in controlled land by any person as the executor or

administrator of the of the estate of a deceased person and the vesting of such interest to a beneficiary provided that where the beneficiary is an ineligible person the interest vested shall be disposed off within three years from the date of vesting unless the registered beneficiary obtains approval from the commission as provided for in this section;

- (b) the taking of an interest in controlled land by way of security by a bank or financial institution provided that on realization the transferee will have to be a citizen of Kenya or a person who has received an approval from the commission under this section
- (c) an order of a court charging interest in controlled land for the benefit of a spouse or child of the owner of that interest in controlled land;
- (d) the taking of a leasehold interest in controlled land by any foreign state for diplomatic or consular purposes;
- (e) the taking or holding of a leasehold interest by a public company whose shares are freely alienable and are listed at the Nairobi Securities Exchange with at least sixty percent of the shares being held by or otherwise being available for Kenyans;
- (f) the taking of a leasehold interest in controlled land by an ineligible in the case of a substantial transaction under section 9 of the Act;

- (g) the grant of a licence in controlled land to an ineligible person by the national government pursuant to the provisions of the Energy Act;
- (h) any rights or interest in land which have lawfully accrued and are registered as at the date of commencement of the Act but nothing in this paragraph shall be construed to limit the legal right to acquire compulsorily any property required for public purpose.

(4) The application for approval under section (2) shall be made to the Commission in the prescribed form within three months of entering into an agreement to acquire an interest in controlled land.

(5) The Commission shall within three months of the application either approve or not approve the application and subject to any right of appeal conferred by this Act, its decision shall be conclusive and may only be challenged in Court.

(6) In deciding whether to approve or not approve an application, the Commission shall be guided *inter alia* by—

- (a) the comments made by the body responsible for internal security of Kenya;
- (b) the comments made by the county government;
- (c) the comments made by the Cabinet Secretary;
- (d) the comments made by the relevant Cabinet Secretary for agriculture having regard to the need to promote food security and sustainable agricultural practices (if applicable);
- (e) the comments made by the relevant Cabinet Secretaries in

charge of Tourism, Forestry or Wildlife as the case may be where the use of the property or proposed transaction is in line with the Ministry;

- (f) the comments or guidance from any other relevant body or Ministry as the Commission may deem necessary having regard to the use and location of the property;
- (g) the principle that the consent ought to be generally to be refused where—
 - (i) the interest being applied for is a freehold;
 - (ii) in the case of the division of the land into two or more parcels, the division would likely reduce the productivity of the land;
 - (iii) the user of the interest being acquired for agricultural or pastoral use is less than fifty acres;

(7) The Cabinet Secretary in consultation with the Commission may make regulations under this part for the purposes of determining—

- (a) what transactions constitute a direct or indirect taking or acquisition of an interest in controlled land; and
- (b) the manner in which the part shall be carried out including the applications for consent.

54. Section 13 of the principle Act is amended by—

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

Amendment of
section 13 of No.
6 of 2012.

(1) Within five years before the expiry of a leasehold tenure, the Commission shall, by registered mail, notify the lessee of the date of expiry of the lease and inform the lessee of the lessee's pre-emptive right to allocation of the land, upon application, in the prescribed form.

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

(1A) If the lessee does not apply for the allocation of land before the expiry of the lease, the lessee shall be deemed to have forfeited the pre-emptive right over the land.

(1B) 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.

- (c) in subsection (2) by deleting the word "Commission" and substituting therefor the words "Cabinet Secretary."

- (d) inserting the following new subsection immediately after subsection (2)—

(3) Unless a lease is extended before it expires, the right of the lessee to possession of the land ends on the date the lease expires and the land shall revert to the national or county government, as the case may be.

(4) If upon the expiry of the lease the national or county government declares that the land or part thereof is required for public purposes, and immediately preceding lessee had applied for a renewal or for a new term before expiry but was not granted, the departing lessee shall be entitled to compensation.

(5) The compensation referred to in subsection (4) shall, in the case of a citizen of Kenya, be prompt and adequate compensation for full value of any lawful improvements made on the land whose lease is not renewed.

(6) In computing the value of the lawful improvements on the leased land, the state shall

apply the market value of the improvements on the land on the day of the expiry or surrender.

(7) The National or County Government may deduct expenses incurred to rectify damage caused to the land by the lessee or any amount owing under this Act or any other law.

55. Section 15 of the Land Act is amended—

Amendment of
section 15 of No.
6 of 2012.

- (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.

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

Amendment of
section 16 of No.
6 of 2012.

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

57. Section 23 of the Land Act is amended—

Amendment of
section 23 of No.
6 of 2012.

- (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 with the written consent of the national and county government.

58. 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 24 of No. 6 of 2012.

59. Section 25 of the Land Act is amended—

- (a) in subsection (1) by deleting the words “without payment of compensation” and substituting therefor the words “subject however to the provisions of compensation as provided under section 13”;
- (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 25 of No. 6 of 2012.

60. 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.

Amendment of section 34 of No. 6 of 2012.

61. 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 “Unless otherwise 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”.

Amendments to section 38 of No. 6 of 2012.

- (c) in subsection (2) by inserting the words “any agreement or contract made or entered into before the commencement of this Act or” immediately after the words “apply to”

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

Amendment of section 42 of No. 6 of 2012.

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

Amendment of section 63 of No. 6 of 2012.

- (a) deleting the word “longer” appearing in the marginal note and substituting therefor the word “shorter”

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

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

64. Section 65 of the Land Act is amended—

Amendment of section 65 of No. 6 of 2012.

- (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 reasonable notice to the lessee” immediately after the words “reasonable time” appearing in paragraph (a).

65. The Land Act is amended by repealing section 72.

Repeal of section 72 of No. 6 of 2012.

66. Section 78 of the Land Act is amended—

Amendment of section 78 of no. 6 of 2012.

- (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 notwithstanding 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.

67. Section 79 of the Land Act is amended—

Amendment of section 79 of No.6 of 2012.

- (a) in subsection (5) by deleting the words “prescribed in the register” in subsection (5) and substituting therefor the words “land register”;
- (b) in subsection (6) by inserting the words ““plus interest as agreed by the chargor and the chargee””;
- (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;

- (d) by inserting the following this 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.

68. Section 81 of the Land Act is amended—

Amendment of section 81 of No.6 of 2012.

- (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 a chargor, subsequent in time to a

prior chargor under a charge, lends money or money's worth on the security of a charge to a chargee as a consequence, through the fraud, dishonesty or misrepresentation of the chargee, either in conjunction with or separately from the fraud, dishonesty or misrepresentation of the prior chargor, that prior chargor's right to repayment under the charge shall be postponed to the rights of the subsequent chargee.

69. 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”.

Amendment of section 82 of No. 6 of 2012.

70. 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).

Amendments of section 84 of No. 6 of 2012.

71. 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 87 of No. 6 of 2012.

72. Section 88(1) of the Land Act is amended by deleting the word “at” appearing immediately after the word “improvements”.

Amendment of section 88 of No. 6 of 2012.

73. Section 90 of the Land Act is amended—

Amendment of section 90 of No. 6 of 2012.

- (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 “three months”.

74. Section 91 of the Land Act is amended by inserting the expression “paragraph (c)” immediately after the word “under” appearing in subsection (2).

Amendment of section 91 of No. 6 of 2012.

75. 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 92 of No. 6 of 2012.

76. Section 93 of the Land Act is amended—

Amendment of section 93 of No. 6 of 2012.

- (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.

77. Section 94 of the Land Act is amended—

Amendment of section 94 of No. 6 of 2012.

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

78. Section 95 of the Land Act is amended—

Amendment of section 95 of No. 6 of 2012.

- (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”;

79. Section 96 of the Land Act is amended in subsection (3) by inserting the word “of” immediately after the word “out” appearing in paragraph (b).

Amendment of section 96 of No. 6 of 2012.

80. Section 98 of the Land Act is amended—

Amendment of section 98 of No. 6 of 2012.

- (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 three months old.

(6) A transfer by charge shall have priority over all entries made after the charge 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.

(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 of the deposit. If the amount is not demanded within the stated period, it shall be paid into the consolidated fund.

81. Section 103 of the Land Act is amended—

Amendment of
section 103 of No.
6 of 2012.

(a) in subsection by (1)—

- (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 (a);
- (iii) deleting paragraph (d);

82. Section 104 of the Land Act is amended—

Amendment of
section 104 of No.
6 of 2012.

- (a) in subsection (1) deleting paragraph (b) and substituting therefor the following paragraph—
- (b) shall have regard to the freedom of parties to contract and that courts should generally uphold the contract made between the parties;

- (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”.

83. Section 107 of the Land Act is amended—

Amendment of section 107 of No. 6 of 2012.

- (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 three months, the acquiring authority may proceed and acquire the land.
- (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”.

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

Amendment of section 111 of No. 6 of 2012.

(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.

85. Section 117 of the Land Act is amended—

Amendment of sections 117 of No. 6 of 2012.

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

Payment of interest

- (b) in subsection (2) by deleting the expression “section 120” and substituting therefor the expression “section 119”.

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

Amendment of sections 118 of No. 6 of 2012.

Final survey

87. Section 119 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

Amendment of sections 119 of No. 6 of 2012.

Additional compensation where area is found to be greater

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

Amendment of sections 120 of No. 6 of 2012.

Formal taking of possession

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

Amendment of sections 121 of No. 6 of 2012.

Surrender of documents of title

90. Section 122 of the Land Act is amended—

Amendment of sections 122 of No. 6 of 2012.

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

Acquisition of other land on account of severance.

(b) in subsection (3) by deleting the word “authority” appearing immediately after the word “acquiring” and substituting therefor the word “body”.

91. Section 123 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

Amendment of sections 123 of No. 6 of 2012.

Withdrawal of acquisition.

92. Section 124 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

Amendment of sections 124 of No. 6 of 2012.

Power to obtain temporary occupation of land

93. Section 125 of the Land Act is amended by deleting the marginal note and substituting therefor the following marginal note—

Amendment of sections 125 of No. 6 of 2012.

Payment of compensation

94. Section 126 of the Land Act is amended by—

Amendment of sections 126 of No. 6 of 2012.

(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)”.

95. Section 134 of the Land Act is amended by—

Amendment of
section 134 of No.
6 of 2012.

- (a) 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

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”

- (b) in subsection (4) by—

(i) by inserting the words appointed by the Cabinet Secretary” immediately after the word “committee”;

(ii) by deleting the word “administrator” and substituting the word “Sub-county Commissioner” to replace the word “administrator”;

- (c) 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”

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

- (e) 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 not be subdivided and a transfer shall only be allowed through a process of succession”.

- (f) in subsection (8) by deleting to read “Beneficiaries of land in settlement schemes

shall pay a sum of money as may be determined from time to time by the board of settlement trust fund”.

96. Section 135 of the Land Act is amended—

Amendment of
section 135 of No.
6 of 2012

- (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 the Order 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; and

(e) a representative of the Commission.

(1C) The Board of Trustees shall—

(c) in subsection (2)—

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

(ii) by deleting paragraph (c);

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

(e) in subsection (5) by deleting the word “Commission” and substituting therefor the words “Board of Trustees”.

97. Section 139 of the Land Act is amended—

Amendment of section 139 of No. 6 of 2012.

(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.

98. Section 140 of the Land Act is amended—

Amendment of section 140 of No. 6 of 2012.

(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).

99. 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”.

Amendment of section 141 of No. 6 of 2012

100. The Land Act is amended by repealing section 142.

Repeal of section 142 of No. 6 of 2012.

101. 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 146 of No. 6 of 2012.

102. Section 147 of the Land Act is amended by deleting the words "certificate of occupancy" and substituting therefor the words "certificate of title or certificate of lease" wherever they occur.

Amendment of section 147 of No. 6 of 2012.

103. Section 148 of the Land Act is amended by deleting subsection (6) and substituting therefor the following new subsection—

Amendment of section 148 of No. 6 of 2012.

(6) The Cabinet Secretary shall make Regulations prescribing the criteria to be applied in the payment of compensation under this section and to give effect to this section.

104. The Land Act is amended in section 151 by deleting the words "effected and" appearing immediately after the word "notice".

Amendment of section 151 of No. 6 of 2012.

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

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

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. (1) 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. The County Executive Committee Member responsible for land matters shall cause a decision relating to an eviction from 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.

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 language that is generally understood by that person;
- (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; and
- (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.

(3) Any person or persons served with a notice in terms of subsection (2) may apply to the Court for relief against the notice.

(4) The Court, may after considering the matters set out in subsection (5) —

- (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.

152F. (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 any national or local code of conduct consistent with international law enforcement and human rights standards;
- (i) give the affected persons the first priority to demolish and salvage their property; and

- (j) fairness, freedom of expression, openness and accountability.

Disposal of property left after eviction.

152G. The competent officer of the n Commission or County Government or owner of private premises of land shall at least seven days form 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.

152H. 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,

106. The Land Act is amended by repealing section 153.

Repeal of sections 153 of No. 6 of 2012.

107. Section 155 of the Land Act is amended—

Amendment of section 155 of No. 6 of 2012.

- (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”.

108. The Land Act is amended by deleting section 159 and substituting therefore the following new section—

Amendment of section 159 of No. 6 of 2012.

Minimum and maximum land holding acreages.

159. (1) The Minimum and maximum land holding acreages shall be as prescribed by the Cabinet Secretary.

(2) The Cabinet Secretary shall issue guidelines, not inconsistent with this Act, on—

- (a) determination of land holding among married couples and family members;
- (b) determination of land holding by non-citizens;
- (c) regulation of land holding across different zones by one person; or
- (d) any other matter relating to land holding.

109. The Land Act is amended by inserting the following new sections immediately after section 159—

Insertions of new sections in section 159 of No. 6 of 2012.

Regular revision of the minimum and maximum land holding acreages.

159A. The Cabinet Secretary shall cause to be undertaken, through a participatory process, a review of the minimum and maximum land holding acreages at intervals of not less than eight years and not more than twelve years.

Procedures for determining minimum and maximum acreages

159B.(1) Before undertaking the review contemplated under section 159A, the Cabinet Secretary shall commission a scientific study to determine the economic viability of minimum and maximum acreages in respect of private land for various land zones in the country.

(2) The minimum and maximum land holding acreages shall be determined after taking into account—

- (a) ecological zones;
- (b) demographic factors;
- (c) land use;
- (d) land tenure system;
- (e) cultural and customary practices;
- (f) infrastructure; and
- (g) any other relevant factor.

(3) The findings of the study shall be available for the public to make observations and shall be modified based on

valid representations in accordance with principles of participation of the people, good governance, transparency and accountability.

(4) Within three months after the publication of the final report of the scientific study commissioned under subsection (1) the Cabinet Secretary shall table the report before Parliament for debate and approval.

(5) Upon approval of the report by Parliament, the Cabinet Secretary shall—

- (a) by notice in the gazette, amend the Second Schedule; and
- (b) make regulations to give effect to the minimum and maximum acreages based on the recommendations in the report.

Ecological zoning.

159C. For the purposes of this Act, all private land shall be zoned as follows—

- (a) agricultural land which shall be categorized into—
 - (i) cash crop farming;
 - (ii) food farming;
 - (iii) subsistence and commercial farming; and
 - (iv) such other category;
- (b) livestock and pastoral land which shall be categorized into—
 - (i) pastoral farming;
 - (ii) beef farming;
 - (iii) zero-grazing dairy farming;
 - (iv) sheep and goat farming;
 - (v) poultry farming;
 - (vi) fisheries;

- (vii) such other relevant category;
- (c) urban and peri-urban land in cities, municipalities, towns and urban areas which shall be categorized into—
 - (i) low, medium, mixed user and high density residential areas;
 - (ii) light, medium and heavy industrial areas;
 - (iii) commercial areas;
 - (iv) educational, health and religious facilities; and
 - (v) such other relevant category.

Exemptions

159D. (1) The Cabinet Secretary may, on application by an interested private land holder, approve a land holding larger than the maximum land holding for any of the following purposes—

- (a) large scale farming;
- (b) wildlife and nature conservancies;
- (c) cattle ranges in arid areas;
- (d) forestry;
- (e) educational, religious or charitable trusts;
- (f) major investment concerns; or
- (g) other land use with significant economic or social value.

(2) The Cabinet Secretary shall make regulations prescribing the conditions to be met before exempting a land holder from the provisions of this Act.

Registrar to ensure compliance.

159E.(1) The Registrar shall not accept for registration any instrument of disposition that confers interest in land that has the effect of breaching the prescribed guidelines on minimum and maximum land holding acreages in respect of private land.

MEMORANDUM OF OBJECTS AND REASONS

The Bill proposes to amend the Land Registration Act, the National Land Commission Act and the Land Act, which were enacted as required for the implementation of the Constitution, in order to clarify the roles and mandates of the Ministry of Land, Housing and Urban Development by rectifying inconsistencies and overlap of mandates in the land laws that have resulted in difficulties in the implementation of the Land Registration Act, the National Land Commission Act and the Land Act.

The Bill proposes to amend the Land Registration Act to clarify the mandate of the National Land Commission and the Ministry of Land, Housing and Urban Development to eliminate the overlap of mandates that caused a conflict between the Ministry and the Commission in matters relating to the registration of land.

The Bill provides key definitions, provides for the Offices of the Deputy Chief Land Registrar, County Registrars and other Registrars and prescribes their qualifications and powers and the procedure for the constitution of land registration units.

The National Land Commission Act

The Bill proposes to amend the National Land Commission Act in order to eliminate the duplication of institutions at the county level, provides the manner in which the National Land Commission shall undertake the investigate historical land injustice complaints pursuant to Article 67(2)(e) and to harmonize the mandate of the Commission with that of the Ministry of Land, Housing and Urban Development.

The Land Act

The Bill proposes to amend the Land Act in order to harmonize the Act with the Constitution and eliminate overlap and clarify the mandates of the Ministry of Land, Housing and Urban Development and National Land Commission which resulted into difficulties in the implementation of the Act.

The Bill proposes to limit that mandate of the National Land Commission to the management of public land on behalf of the National and County Governments, limit the policy making powers of the National Land Commission, limit the powers of the Commission regarding the allocation of public land, proposes to established a Board of Trustees to manage the Settlement Scheme Fund, proposes the mode of prescribing minimum and maximum private land holding acreages pursuant to 68(c)(i) and to provide for the manner of undertaking evictions from private, community and public land.

This Bill is a Bill concerning counties within the meaning of Article 110 of the Constitution, and is an ordinary Bill.

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

Dated the 11th August, 2015.

ADEN DUALE,
Leader of Majority Party.

Section 2 of No. 3 of 2012, which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

“assignee” means a person to whom an assignment has been made;

“borrower” means a person who obtains an advance of money or money’s worth or agrees to fulfill a condition on the security of a charge of that person’s land or lease;

“caution” means—

(a) a notice in the form of a register to the effect that no action of a specified nature in relation to the land in respect of which the notice has been entered may be taken without first informing the person who gave the notice; or

(b) a caveat.

“charge” means—

(a) an interest in land or a lease securing the payment of money or money’s worth or the fulfillment of a condition;

(b) a sub-charge; and

(c) the instrument creating other charge;

“register” means land register and community land register;

“disposition” means—

(a) a sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the creation of an easement, usufructuary right, or other servitude or any other interest in land or a lease and any other act by an owner of land or under a lease whereby the person’s rights over that land or lease are affected; or

(b) an agreement to undertake any such disposition;

“Registrar” means the Chief Land Registrar, County Land Registrars and Land Registrars appointed under section 12 and 13;

Section 6 of No. 3 of 2012, which it is proposed to amend—

(1) For the purposes of this Act, the Commission in consultation with national and county governments 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.

(5) Any order by the Commission under this section shall be published in the Gazette and in at least two daily newspapers of nationwide circulation. (6) The land registration units shall be established

at county level and at such other levels to ensure reasonable access to land administration and registration services.

Section 7 of No. 3 of 2012, which it is proposed to amend—

7. (1) There shall be maintained, in each registration unit, a land registry in which there shall be kept—

- (a) a land register, in the form to be determined by the Commission;
- (b) the cadastral map;
- (c) parcel files containing the instruments and documents that support subsisting entries in the land register;
- (d) any plans which shall, after a date appointed by the Commission, be geo-referenced;
- (e) the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
- (f) an index, in alphabetical order, of the names of the proprietors; and
- (g) a register and a file of powers of attorney.

(3) In establishing the land registry, the Public Service Commission and Cabinet Secretary, shall be guided by the principles of devolution set out in Articles 174 and 175 of the Constitution.

Section 8 of No. 3 of 2012, which it is proposed to amend—

Community Land Register

Section 12 of No. 3 of 2012, which it is proposed to amend—

Appointment of officers

12. (1) There shall be appointed by the Public Service Commission, a Chief Land Registrar, and such other officers who shall be public officers as may be considered necessary for the effective discharge of functions under this Act.

Section 16 of No. 3 of 2012, which it is proposed to amend—

16. (1) The office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, and such correction shall not be effected except on the instructions of the Registrar, in writing, in the prescribed form, and in accordance with any law relating to subdivision of land that is for the time being in force.

(2) Notwithstanding subsection (1), any alteration made shall be made public and whenever the boundary of a parcel is altered on the cadastral map, the parcel number shall be cancelled and the parcel shall be given a new number.

Section 19 of No. 3 of 2012, which it is proposed to amend—

19. (1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.

Section 28 of No. 3 of 2012, which it is proposed to amend—

28. Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

- (a) spousal rights over matrimonial property;
- (b) trusts including customary trusts;
- (c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;
- (d) natural rights of light, air, water and support;
- (e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;
- (f) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies;
- (g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;
- (h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

- (i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law; and
- (j) any other rights provided under any written law.

Section 30 of No. 3 of 2012, which it is proposed to amend—

30. (1) The Registrar may, if requested by a proprietor of land or a lease where no certificate of title or certificate of lease has been issued, issue to him or her a certificate of title or a certificate of lease, as the case may be, in the prescribed form showing, if so required by the proprietor, all subsisting entries in the register affecting that land or lease.

(2) Notwithstanding subsection (1)—

- (a) only one certificate of title or certificate of lease shall be issued in respect of each parcel or lease; and
- (b) no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.

Section 33 of No. 3 of 2012, which it is proposed to amend—

33. (1) Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a duplicate certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.

(3) If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a duplicate certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers; whichever is first.

(4) If a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.

Section 35 of No. 3 of 2012, which it is proposed to amend—

35. (1) Every document purporting to be signed by a Registrar shall, in all proceedings, be presumed to have been so signed unless the contrary is proved.

(4) No process for compelling the production of the register, or of the cadastral map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted

if a certified copy or extract will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

Section 38 of No. 3 of 2012, which it is proposed to amend—

38. (1) The Registrar shall not register any instrument purporting to transfer or to vest any land, a lease of land, situated within the area of a rating authority unless, a written statement, by the relevant government agency, certifying that all outstanding rates and other charges payable to the agency in respect of the land including rates and charges for the last twelve months and up to the date of request for transfer have been paid there is produced to the Registrar.

(2) No statement shall be required under subsection (1) if the instrument relates to—

- (a) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or
- (b) a lease, and the land or another leasehold interest is, by virtue of any written law, the rateable property.

Section 43(2) of No. 3 of 2012, which it is proposed to amend—

(2) No instrument effecting any disposition of private land under this Act shall operate to sell or assign land or create, transfer or otherwise affect any land, lease or charge until it has been registered in accordance with the laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.

Section 54 of No. 3 of 2012, which it is proposed to amend—

54. (1) Upon the registration of a lease containing an agreement, express or implied, by the lessee that the lessee shall not transfer, sub-let, charge or part with possession of any of the leased land leased without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with this Act has been produced to the Registrar.

Section 56 of No. 3 of 2012, which it is proposed to amend—

55. If a lease contains a condition, express or implied, by the lessee that the lessee shall not transfer, sub-let, charge or charge or part with the possession of the land leased or any part of it without the written consent of the lessor, and the dealings with the lease shall not be registered unless—

Section 56 of No. 3 of 2012, which it is proposed to amend—

56. (4) The Registrar shall not register a charge, unless a land rent clearance certificate and the consent to charge, certifying that no rent is owing to the Commission in respect of the land, or that the land is freehold, is produced to him or her.

(6) There shall be included, in an instrument of charge, securing the fulfillment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to application of purchase money by the chargee, of the money which may arise on the exercise by the chargee of his or her power of sale, either by setting aside the proceeds of sale or part thereof and investing it to make the future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

Section 57(2) of No. 3 of 2012, which it is proposed to amend—

57. (2) Where a second or subsequent charge is to be created, the consent of the first charge shall be obtained before the second or subsequent charge is created.

Section 76 of No. 3 of 2012, which it is proposed to amend—

76. (2) A restriction may be expressed to endure—

- (a) for a particular period;
- (b) until the occurrence of a particular event; or
- (c) until the making a further order is made,

and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

Section 77(2) of No. 3 of 2012, which it is proposed to amend—

77. (2) An instrument that is inconsistent with it shall not be registered while the restriction is still registered except by order of the court or of the Registrar.

Section 78(1) of No. 3 of 2012, which it is proposed to amend—

78. (1) The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order that the removal or variation of a restriction.

Section 79 of No. 3 of 2012, which it is proposed to amend—

79. (1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

- (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
- (b) in any case and at any time with the consent of all affected parties; or
- (c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.

(4) The Commission may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under subsection (2) and without prejudice to the generality of the foregoing, the regulations may provide for—

- (a) the process of investigation including notification of affected parties;
- (b) hearing of the matters raised; and
- (c) the criteria to be followed in coming up with the decision.

Section 80 of No. 3 of 2012, which it is proposed to amend—

80. (2) The register shall not be rectified to affect the title, of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

Section 83 of No. 3 of 2012, which it is proposed to amend—

83. The Court may, on the application of any interested party, may determine whether a right of indemnity has arisen under this Part and, award indemnity, and may add any costs and expenses properly incurred in relation to the matter.

Section 91 of No. 3 of 2012, which it is proposed to amend—

91. (1) In this Act, co-tenancy means the ownership of land by two or more persons in undivided shares and includes joint tenancy or tenancy in common.

(4) If land is occupied jointly, no tenant is entitled to any separate share in the land and, consequently—

- (a) dispositions may be made only by all the joint tenants;
- (b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; or
- (c) each joint tenant may transfer their interest *inter vivos* to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void.

Section 92 of No. 3 of 2012, which it is proposed to amend—

92. (1) Each co-tenant of land shall be entitled to receive a copy of the certificate of title of that land.

Section 92 of No. 3 of 2012, which it is proposed to amend—

92. (1) Each co-tenant of land shall be entitled to receive a copy of the certificate of title of that land.

Section 93 of No. 3 of 2012, which it is proposed to amend—

93. (1) Subject to the law on matrimonial property, if a spouse obtains land for the co-ownership and use of both spouses or, all the spouses—

- (a) there shall be a presumption that the spouses shall hold the land as joint tenants unless—
 - (i) a provision in the certificate of ownership or the certificate of customary ownership clearly states that one spouse is taking the land in, his or her own name only, or that the spouses are taking the land as joint tenants; or
 - (ii) the presumption is rebutted in the manner stated in this subsection; and

(b) the Registrar shall register the spouses as joint tenants.

(3) Where a spouse who holds land or a dwelling house in his or her name individually undertakes a disposition of that land or dwelling house—

- (a) the lender shall, if that disposition is a charge, be under a duty to inquire of the borrower on whether the spouse has or spouses have, as the case may be, have consented to that charge; or
- (b) the assignee or transferee shall, if that disposition is an assignment or a transfer of land, be under a duty to inquire of the assignor or transferor on whether the spouse or spouses have consented to that assignment.

(4) If the spouse undertaking the disposition deliberately misleads the lender or, the assignee or transferee by the answers to the inquiries made

in accordance with subsection (3)(a) or (3)(b), the disposition shall be void at the option of the spouse or spouses who have not consented to the disposition.

Section 94 of No. 3 of 2012, which it is proposed to amend—

94. (2) An application, may be made to the Registrar, in the prescribed form, for an order for the partition of land owned in common by—

- (a) any one or more of the tenants in common without the consent of all the tenants in common; or
- (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree.

(3) The Registrar may, after hearing the applicant and any of the other tenants in common who wish to appear and be heard, make an order for the partition of land having regard to—

- (a) whether the provisions of this Act, any other written law regulating the subdivision of land and any covenants and conditions in a land have been or will be complied with if the partition is effected;
- (b) the nature and location of the land;
- (c) the number of tenants in common and the extent of their respective shares particularly, the extent of the share of any tenant in common by whom or on whose behalf the application has been made;
- (d) the value of any contribution made by any tenant in common to the cost of improvements to or the maintenance of the land or buildings occupied in common;
- (e) where the tenants in common are spouses or the tenants in common who do not agree on the partition are dependants of or related to the tenants in common, whether the interests of those tenants in common who have not agreed to the partition have been or will be adequately provided for as a consequence of or after the partition is effected, and particularly, a spouse or dependants of the tenant in common who is applying for the partition will not be rendered homeless by the partition;
- (f) in respect of an application made by a person referred to in subsection (2)(b), whether the interests of the spouse or any dependants of the tenant in common whose share is to be sold in execution of a judgment or decree, will be adequately catered

for and particularly, any spouse or dependants will not be rendered homeless by the sale;

- (g) if the tenants in common are pastoralists, whether the tenants in common who have not agreed to the partition will, after the partition, still retain grazing rights, including grazing rights created by an easement in the partitioned land, to sufficient land of the quality and nature and in the location customarily used by those pastoralists;
- (h) the proper development and use of the land and whether it may be adversely affected by the partition applied for;
- (i) the hardship that would be caused to the applicant or applicants by the refusal to an order in comparison with the hardship that would be caused to any other person by making the order; and
- (j) any other matters that the Registrar considers relevant.

(4) The Registrar may make the order for partition subject to such limitations and conditions, including conditions relating to the payment of compensation to those tenants in common who have not agreed to the partition, by the tenants in common who have applied for the partition and how the expenses and costs of the partition are to be borne, as the Registrar may consider just and reasonable.

Section 102 of No. 3 of 2012, which it is proposed to amend—

102. (3) The Registrar shall refuse to make an entry on the register or register a document in respect of any grant of land or disposition arising in connection with land in respect of which a fee has not been paid in whole or in part, unless the Registrar is satisfied on the basis of written evidence that the fee has been waived in whole or in part or that it has been agreed between the payer and payee that fee may be paid in installments.

Section 103 of No. 3 of 2012, which it is proposed to amend—

103. (1) A person who—

- (a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act; or
- (b) knowingly gives a false information or makes a false statement, either orally or in writing, in connection with a call for information made under this Act or in connection with a investigation into the commission of any offence under this Act;
- (c) fraudulently procures—

- (i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land;
 - (ii) the making of a entry or the endorsement of a matter on a document or instrument referred to in subparagraph (i); or
 - (iii) the cancellation or amendment of the documents, instruments, entries or endorsements referred to in this paragraph;
- (d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Registrar, or any authorized officer exercising powers under this Act, or assist or joins in so doing, any material document, factor matter, commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Section 105 of No. 3 of 2012, which it is proposed to amend—

105. (1) On the effective date, the following provisions shall apply in respect of every parcel of land, the title to land which is already registered under the repealed Acts —

- (a) if the title to a parcel of land is comprised in a grant or certificate of title registered under the repealed Registered Land Act—
 - (i) the grant or certificate of title shall be deemed to be a certificate of title or certificate of lease, as the case may be, issued under this Act; and
 - (ii) the folio of the register of titles kept under the repealed Acts shall be deemed to be the register under this Act:

Provided that the Registrar may at any time prepare a register, in the prescribed form, showing all subsisting particulars contained in or endorsed on the folio of the register of titles and substitute such register for such folio and issue to the proprietor a certificate of title or certificate of lease, as the case may be, in the prescribed form.

- (b) if the title to the parcel is comprised in a grant or certificate of title registered under the repealed Registration of Titles Act—
- (c) the grant or certificate of title shall be deemed to be a certificate of title or certificate of lease, as the case may be, issued under this Act; and

- (ii) the folio of the register of titles kept under section 7 of the repealed Registration of Titles Act shall be deemed to be the register under this Act:

Provided that the Registrar may at any time prepare a register, in the prescribed form, showing all subsisting particulars contained in or endorsed on the folio of the register of titles kept as aforesaid and substitute such register for such folio and issue to the proprietor a certificate of title or certificate of lease, as the case may be, in the prescribed form.

- (d) if the title to the parcel is comprised in a register kept under the repealed Government Lands Act or the repealed Land Titles Act, the Registrar shall—
 - (i) as soon as conveniently possible, cause the title to be examined;
 - (ii) prepare a register, in the prescribed form, showing all subsisting particulars affecting the parcel which are capable of registration under this Act;
- (e) serve on the proprietor and on the proprietor of any lease or charge, a notice of intention to register; and
 - (iv) issue to the proprietor, upon request, a certificate of title or certificate of lease in the prescribed form.

Section 5 of No. 5 of 2012, which it is proposed to amend—

5. (1) Pursuant to Article 67(2) of the Constitution, the functions of the Commission shall be —

- (a) to manage public land on behalf of the National and County Governments;
- (b) to recommend a National Land Policy to the National Government;
- (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

- (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;
- (g) to assess tax on land and premiums on immovable property in any area designated by law; and
- (h) to monitor and have oversight responsibilities over land use planning throughout the country.

(2) In addition to the functions set out in subsection (1), the Commission shall, in accordance with Article 67(3) of the Constitution—

- (a) on behalf of, and with the consent of the National and County Governments, alienate public land;
- (b) monitor the registration of all rights and interests in land;
- (c) ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- (d) develop and maintain an effective land information management system at national and county levels;
- (e) manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- (f) develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.

(3) Despite the provisions of this section, the Commission shall ensure that all unregistered land is registered within ten years from the commencement of this Act.

(4) Parliament may, after taking into consideration the progress of registration, extend the period set by the Commission under subsection (3).

Section 15 of No. 5 of 2012, which it is proposed to amend—

15. The Commission shall, within two years of its appointment recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67(2)(e) of the Constitution.

Paragraph (3) of the First Schedule to No. 5 of 2012, which it is proposed to amend—

(3) The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of nationwide circulation, invite applications from persons who qualify for nomination and

appointment for the position of the chairperson and members referred to under section 8.

Paragraph (4) of the First Schedule to No. 5 of 2012, which it is proposed to amend—

(4) The selection panel shall within twenty-one days after the expiry of the deadline for receipt of applications under paragraph (3)—

- (a) consider the applications received under paragraph (3) to determine their compliance with the provisions of the Constitution and this Act;
- (b) short list the applicants;
- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of nationwide circulation;
- (d) conduct interviews of the shortlisted persons in public;
- (e) shortlist two qualified applicants for the position of chairperson;
- (f) shortlist sixteen qualified applicants for the position of the members; and
- (g) forward the names of the qualified persons to the President.

Paragraph (7) of the First Schedule to No. 5 of 2012, which it is proposed to amend—

(7) Where the National Assembly approves of the nominees, the Speaker of the National Assembly shall forward the names of the approved nominees to the President for appointment.

Paragraph (10) of the First Schedule to No. 5 of 2012, which it is proposed to amend—

(10) Where a nominee is rejected by the National Assembly under paragraph (9), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under paragraph (4).

Paragraph (12) of the First Schedule to No. 5 of 2012, which it is proposed to amend—

(12) In short listing, nominating or appointing persons as Chairperson and Members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

Section 2 No. 6 of 2012, which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

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

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating land;

Section 9 of No. 6 of 2012, which it is proposed to amend—

9. (2) Without prejudice to the generality of subsection (1)—

- (a) public land may be converted to private land by alienation;
- (b) subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;
- (c) private land may be converted to public land by—
 - (i) compulsory acquisition;
 - (ii) reversion of leasehold interest to Government after the expiry of a lease; and
 - (iii) transfers; or
 - (iv) surrender.
- (d) Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.

Section 12 of No. 6 of 2012, which it is proposed to amend—

12. (1) The Commission may, on behalf of the National or county governments, allocate public land by way of—

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

(3) Subject to Article 65 of the Constitution, the Commission shall set aside land for investment purposes.

(7) Public land shall not be allocated unless it has been planned, surveyed and serviced and guidelines for its development prepared in accordance with section 16 of this Act.

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

Section 13 of No. 6 of 2012, which it is proposed to amend—

13. (1) Where any land reverts back to the national or county government after expiry of the leasehold tenure the Commission shall offer to the immediate past holder of the leasehold interest pre-emptive rights to allocation of the land provided that such lessee is a Kenya citizen and that the land is not required by the national or the county government for public purposes.

(2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following.

- (a) prescribing the procedures for applying for extension of leases before their expiry.
- (b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee.
- (c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or reallocation of the land.
- (d) other covenants and conditions to be observed by the lessee.

Section 15 of No. 6 of 2012, which it is proposed to amend—

Commission may reserve public land.

15. (1) Subject to Article 66 (1) of the Constitution, the Commission may, in consultation with the national government and the county governments, by order in the Gazette, reserve public land located within—

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

- (e) the air space above the surface. for one or more purposes in the public interest.

(2) Land that has been reserved by the Commission shall only be used for the purpose set out by the Commission in the order designating the reservation and shall not be subject to allocation or development.

Section 16 of No. 6 of 2012, which it is proposed to amend—

16. (1) The Commission may, by order in the Gazette—

- (a) vest the care, control and management of any reserved land with a statutory body, public corporation or a public agency for the same purpose as that for which the relevant public land is reserved under section 15 and for purposes ancillary or beneficial to that purpose; and
- (b) subject that care, control and management to such conditions as the Commission specifies.

Section 23 of No. 6 of 2012, which it is proposed to amend—

23. Implied covenants and conditions by grantor or lessor (1) In every grant or lease relating to public land, unless the grant or lease expressly provides otherwise, there is an implied covenant by the grantor or lessor—

- (a) that the grantor or lessor has full power to grant the land or lease; and
- (b) that the grantee or lessee, paying the rent and fulfilling the conditions of the grant or lease, shall enjoy quiet possession of the premises without interruption by the grantor or lessor or any person claiming under the grantor or lessor, except so far as the laws for the time being in force may permit.

Section 24 of No. 6 of 2012, which it is proposed to amend—

24. Implied covenant and conditions by lessee or licensee in every grant, lease or licence for public land under this Act, there shall be implied covenants and conditions by the grantee, lessee or licensee that the grantee, lessee or licensee shall—

- (a) pay rent and royalties thereby reserved at the time and in the manner therein provided; and
- (b) pay all taxes, rates, charges, duties, assessments or outgoings of whatever description that may be imposed, charged or assessed upon the land or the buildings thereon, or upon the lessor or grantor or lessee or licensee in respect thereof.

Section 25 of No. 6 of 2012, which it is proposed to amend—

25. (1) Unless expressly stated to the contrary in a lease or license for public land under this Act, all buildings on public land leased or occupied under a license, whether erected by the lessee or licensee or not—

- (a) in the case of a lease for a term exceeding thirty years, shall pass to the national or county governments without payment of compensation, on the determination of the lease or license; or
- (b) in the case of a lease for a term not exceeding thirty years, may be removed by the lessee within three months of the termination, otherwise than by forfeiture, of the lease unless the Commission elects to purchase those buildings.

(2) If the Commission elects to purchase any buildings, as contemplated in subsection (1)(b), any disagreement as to the purchase price of the buildings, shall be resolved by arbitration.

Section 38 of No. 6 of 2012, which it is proposed to amend—

38. (1) No suit shall be brought upon a contract for the disposition of an interest in land unless—

- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.

(2) Subsection (1) shall not apply to a contract made in the course of a public auction nor shall anything in that subsection affect the creation or operation of a resulting, implied or a constructive trust.

Section 42(1) of No. 6 of 2012, which it is proposed to amend—

42. (1) If the vendor, after serving on the purchaser a notice under section 41, applies to the court for an order for possession of the land or if the vendor has peaceably entered on to the land in order to regain possession under section 39, the purchaser may apply to the court for relief against the rescission of the contract either—

- (a) in the proceedings for an order for possession; or
- (b) in a proceedings brought by the purchaser.

Section 63 of No. 6 of 2012, which it is proposed to amend—

Sublease for a term that is the same as or longer than the term of the head lease.

Section 65 of No. 6 of 2012, which it is proposed to amend—

65. (1) In every lease, there shall be implied covenants by the lessor with the lessee, binding the lessor—

- (a) that so long as the lessee pays the rent and observes and performs the covenants and conditions contained or implied in the lease to be observed and performed on the lessee's part, the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any interruption from or by the lessor or any person rightfully claiming through the lessor;
- (b) not to use or permit any adjoining or neighbouring land that the lessor owns or leases that would in any way render the leased land or any buildings on the leased land unfit or materially less fit for any purpose for which they may be used, consistent with the terms and conditions of the lease,
- (c) if only part of a building is leased, to keep the roof, all external and main walls and main drains, and the common parts and common installations and facilities, including common passages and walkways in a proper state of repair;
- (d) if any dwelling house, flat, or room is leased, that the house, flat or room is fit for human habitation at the commencement of the lease and shall be kept fit for human habitation during the lease;
- (e) that if, the leased premises or any part of them are destroyed or damaged at any time—
 - (i) by fire, flood or explosion or other accident not attributable to the negligence of the lessee, or lessee's invitees or employees;
 - (ii) by civil commotion; or
 - (iii) by lightning, storm, earthquake, volcanic activity or other natural disaster,

so as to make the leased premises or any part of it wholly or partially unfit for occupation or use, the rent and any contribution payable by the lessee to the outgoings on the premises or a just proportion of that rent of contribution according to the nature and extend of the damage sustained shall be suspended and cease to be payable until the leased premises have

been, once more, rendered fit for occupation and use; and if the leased premises have not been rendered fit for occupation and use within six months after their destruction or damage, the lessee shall have the option to terminate the lease after giving one month's notice;

- (f) if it is an express or implied term of the lease that the leased land or a building on it may be used for any one specific purpose or purposes, the lessee may terminate the lease, on giving one month's notice to the lessor, if the land or building cannot be, or can no longer lawfully be, used for any of those purposes; and
- (g) to pay all rates, taxes, dues and other outgoings that are payable in respect of the leased land except to the extent otherwise specified in the lease.

(2) There shall be implied in every lease covenants by the lessee empowering the lessor to—

- (a) either personally or by agents, enter, the leased land or buildings at any reasonable time for the purpose of inspecting the condition and repair of the premises, or for carrying out repairs and making good any defects that it is the lessor's obligation so to do; but in the exercise of that power, the lessor shall not unreasonably interfere with the occupation and use of the land and buildings by the lessee ;
- (b) terminate the lease by serving a notice of intention to terminate the lease on the lessee where—
 - (i) any rent is unpaid for one month after the due date for payment, whether or not a demand, in writing, for payment has been made by the lessor or an agent of the lessor;
 - (ii) the lessee has failed for a period of one month, to observe or perform any condition, covenant or other term, the observation or performance of which has been assumed by the lessee expressly or impliedly in the lease.

Section 78 of No. 6 of 2012, which it is proposed to amend—

78. (1) This Part applies to all charges on land 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 any section in this Part.

Section 79 of No. 6 of 2012, which it is proposed to amend—

79. (5) A formal charge shall take effect only when it is registered in a prescribed register and a chargee shall not be entitled to exercise any of the remedies under that charge unless it is so registered.

- (6) An informal charge may be created where—
- (a) a chargee accepts a written and witnessed undertaking from a chargor, the clear intention of which is to charge the chargor's land or interest in land, with the repayment of money or money's worth, obtained from the chargee;
 - (b) the chargor deposits any of the following—
 - (i) a certificate of title to the land;
 - (ii) a document of lease of land;
 - (iii) any other document which it is agreed evidences ownership of land or a right to interest in land.

Section 81 of No. 6 of 2012, which it is proposed to amend—

81. (1) Charges shall rank according to the order in which they are registered.

(4) If a chargor, subsequent in time to a prior chargor under a charge, lends money or money's worth on the security of a charge to a chargee as a consequence of or through the fraud, dishonesty or misrepresentation of the prior chargee, either in conjunction with or separately from the fraud, dishonesty or misrepresentation of the chargor, that prior chargee's right to repayment under the charge shall be postponed to the rights of the subsequent chargor.

Section 82 of No. 6 of 2012, which it is proposed to amend—

82. (1) Subject to the provisions of this Act, a chargor may make provision in the charge instrument to give further advances or credit to the chargor on a current or continuing account.

(2) A further advance referred to in subsection (1) shall not rank in priority to any subsequent charge unless—

- (a) the provision for further advances is noted in the register in which the charge is registered; or
- (b) the subsequent chargor has consented in writing to the priority of the further advance.

Section 88(1) of No. 6 of 2012, which it is proposed to amend—

88. (1) There shall be implied in every charge covenants by the chargor with the chargee binding the chargor—

- (a) to pay the principal money on the day appointed in the charge agreement, and, so long as any of the principal money or any part thereof remains unpaid, to pay interest on the money thereon or on so much of the money that for the time being

remains unpaid at the rate and on the days and in the manner specified in charge agreement;

- (b) to pay all rates, charges, rent, taxes and other outgoings that are at all times payable in respect of the charged land;
- (c) to repair and keep in repair all buildings and other improvements upon the charged land or to permit the chargee or chargee's agent to enter the land and examine the state and condition of such buildings and improvements at after a seven days' notice to the chargor until the charge is discharged;
- (d) to ensure by insurance or any other means that may be prescribed or which are appropriate, that resources will be available to make good any loss or damage caused by fire to any building on the land, and where insurance is taken out, it is done so in the joint names of the chargor and chargee with insurers approved by the chargee and to the full value of all the buildings;
- (e) in the case of a charge of land used for agricultural purposes, to use the land in a sustainable manner in accordance with the principles and any conditions subject to which the land or lease under which the land is held, and in compliance with all written laws and lawful orders applicable to that use of the land;
- (f) not to lease or sublease the charged land or any part of it for any period longer than a year without the previous consent in writing of the chargee, which consent shall not be unreasonably withheld;
- (g) not to transfer or assign the land or lease or part of it without the previous consent in writing of the chargee which consent shall not be unreasonably withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge, to pay, perform and observe the rent, covenants and conditions contained in or implied by and in the lease contained and implied and on the part of the lessee to be paid, performed and observed and to keep the charge indemnified against all proceedings, expenses and claims on account of non-payment any part of the rent or part of it or the breach or non-observance of any covenants and conditions referred to above, and, if the lessee has an enforceable right to renew the lease, to renew it;
- (i) if the charge is a second or subsequent charge, that he chargor will pay the interest from time to time accruing on each prior charge when it becomes due and will at the proper time repay

the principal money or part of it due on each prior charge at the proper time;

- (j) if the chargor fails to comply with any of the covenants implied by paragraphs (b), (c), (d), (e) and (h) of this subsection, that the chargee may spend any money which is reasonably necessary to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the charge.

Section 90 of No. 6 of 2012, which it is proposed to amend—

90. (1) If a chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied, in any charge, and continues to be default for one month, the chargee may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.

(3) If the chargor does not comply within two months after the date of service of the notice under, subsection (1), the chargee may—

- (a) sue the chargor for any money due and owing under the charge;
- (b) appoint a receiver of the income of the charged land;
- (c) lease the charged land, or if the charge is of a lease, sublease the land;
- (d) enter into possession of the charged land; or
- (e) sell the charged land;

Section 91 of No. 6 of 2012, which it is proposed to amend—

91. (2) The court may order the postponement of any proceedings brought under this section until the chargee has exhausted all other remedies relating to the charged land, unless the chargee agrees to discharge the charge.

Section 92(7) of No. 6 of 2012, which it is proposed to amend—

92.(7) The receiver shall be entitled to retain, out of any money received, all costs, charges and expenses incurred by receiver and, for a commission at the rate specified in the appointment, but not exceeding five per centum of the gross amount of all money, received, or, if no rate is so specified at the rate of five per centum or any other rate as the chargor and chargee may agree or if the appointment of a receiver comes before the court, which the court considers fit.

Section 93 of No. 6 of 2012, which it is proposed to amend—

93. (1) Unless the charge instrument expressly provides to the contrary, a chargee who has appointed a receiver under section 92, shall, unless the charge instrument expressly provides to the contrary, have power, subject to the provisions of this Act and any other laws applicable to the leases of land—

- (a) to grant leases in respect of the charged land or any part thereof; and
 - (b) to accept a surrender of any lease so granted and of any lease granted by the chargor, and, for that purpose may, execute, in place of the chargor any instrument required to execute that lease or surrender in place of the chargor.
- (3) Every lease granted by the chargee shall—
- (a) be made to take effect in possession not later than six months after its date;
 - (b) reserve the best rent that can reasonably be obtained in the circumstances;
 - (c) be for a term not exceeding fifteen years or the length of the term of the charge whichever is the shorter subject to the provisions of subsection (5) (a);
 - (d) contain any reasonable terms and conditions, having regard to the interests of the chargor and of any other persons having an interest in the charged land; and
 - (e) contain a declaration that the chargee has appointed a receiver, with the date of the appointment.

Section 94 of No. 6 of 2012, which it is proposed to amend—

Power of the chargee to take possession of the charged land

94.(2) A chargee may exercise the power of entry peaceably and any forcible entry-

- (a) entering into and taking physical possession of the land or a part of it peaceably and without committing any forcible entry; or
- (b) asserting management or control over the land by serving a notice in the prescribed form requiring any lessee of the chargor or any other owner of the land to pay to the charge any rent or profits that would otherwise be payable to the chargor.

(7) A chargee in possession shall apply all money to the same payments and in the same order as apply to a receiver as set out in section

92 (8), except that a chargee in possession shall not be entitled to receive any payments under paragraph (c) of that subsection.

Section 95 of No. 6 of 2012, which it is proposed to amend—

95.(3) A chargee in possession shall be taken to have withdrawn from possession of all or a part of the charged land in any case provided for—

- (a) by subsection (2)(a), when the order of the court is made;
- (b) by subsection (2)(b), when the receiver has been appointed in accordance with section 104;
- (c) by (2) (c), when the chargee—
 - (i) has ceased to occupy the charged land; or
 - (ii) is not in occupation, and has served a notice of withdraw on all persons served with a notice under section 96 (1) and (2) or section 97;
- (d) by subsection (2) (d), when the purchaser of the charged land enters into occupation of that land; or
- (e) by subsection (2) (e), when the chargor serves notice of cancellation of possession in the prescribed form.

(4) A chargee who has withdrawn from possession of charged land may not again enter into possession of that land, otherwise than by complying with the provisions of sections 102 and 104 if the charger is in a fresh default under the charge.

Section 96(3) of No. 6 of 2012, which it is proposed to amend—

96. (3) A chargee in possession shall be taken to have withdrawn from possession of all or a part of the charged land in any case provided for—

- (a) by subsection (2) (a), when the order of the court is made;
- (b) by subsection (2)(b), when the receiver has been appointed in accordance with section 104;
- (c) by (2) (c), when the chargee —
 - (i) has ceased to occupy the charged land; or
 - (ii) is not in occupation, and has served a notice of withdraw on all persons served with a notice under section 96 (1) and (2) or section 97;
- (d) by subsection (2) (d), when the purchaser of the charged land enters into occupation of that land; or

- (e) by subsection (2) (e), when the chargor serves notice of cancellation of possession in the prescribed form.

Section 98 of No. 6 of 2012, which it is proposed to amend—

98. (1) If a chargee or a receiver becomes entitled to exercise the power of sale, that sale may be—

- (a) of the whole part of the charged land;
- (b) subject to or free of any charge or other encumbrance or charge having priority to the chargee's charge;
- (c) by way of subdivision or otherwise;
- (d) by private contract at market value;
- (e) public auction with reserve price;
- (f) for a purchase price payable in one sum or by instalments; or
- (g) subject to any other conditions that the chargee shall think fit, having due regard to the duty imposed by section 97(1).

(3) A sale of the charged land by a chargee in exercise of the power of sale shall be made in the prescribed form and the Registrar shall accept it as sufficient evidence that the power has been duly exercised.

Section 103 of No. 6 of 2012, which it is proposed to amend—

103. (1) An application for relief against the exercise by the chargee of any of the remedies referred to in section 85 (3) (a) and (b) may be made by—

- (a) the chargor;
- (b) if two or more persons are joint chargors, by one or more of them on their own behalf;
- (c) a spouse of the chargor;
- (d) a lessee of the chargor; or
- (e) the trustee in bankruptcy of the chargor.

Section 104 of No. 6 of 2012, which it is proposed to amend—

104. (1) In considering whether to grant relief as applied for, a court—

- (a) shall, have regard to whether the remedy which the chargee proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred if the charged land consists of agricultural land or commercial

premises, and the remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof;

(b) shall, where the charged land consists of or includes, a dwelling-house, and the remedy proposed is to appoint a receiver, or take possession or lease the dwelling house or a part of it, have regard to the effect that the appointment of a receiver or the taking of possession or leasing the whole or a part of the dwelling house would have on the occupation of the dwelling house by the chargor and dependants and if the effect would be to impose undue disturbance on those owners, whether it is satisfied that—

(i) the chargee has made all reasonable efforts, including the use of other available remedies available, to induce the chargor to comply with the obligations under the charge; and

(ii) the chargor has persistently been in default of the obligations under the charge; and

(iii) if the sale is of land held for a customary land, the chargee has had regard to the age, means, and circumstance including the health and number of dependants of the chargor, and in particular whether—

(aa) the chargor will be rendered landless or homeless;

(bb) the chargor will have any alternative means of providing for the chargor and dependants;

(iv) it is necessary to sell the charged land in order to enable the chargee to recover the money owing under the charge;

(v) in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the charged land.

(2) A court may refuse to authorise an order or may grant any relief against the operation of a remedy that the circumstances of the case require and without limiting the generality of those powers, may—

(a) cancel, vary, suspend or postpone the order for any period which the court thinks reasonable;

(b) extend the period of time for compliance by the charger with a notice served under section 90;

(c) substitute a different remedy or the one applied for or proposed by the chargee or a different time for taking or desisting from taking any action specified by the lessor in a notice served under section 90;

- (d) authorise or approve the remedy applied for or proposed by the chargee, notwithstanding that some procedural errors took place during the making of any notices served in connection with that remedy if the court is satisfied that—
 - (i) the chargor or other person applying for relief was made fully aware of the action required to be taken under or in connection with the remedy; and
 - (ii) no injustice will be done by authorising or approving the remedy, and may authorise or approve that remedy on any conditions as to expenses, damages, compensation or any other relevant matter as the court thinks fit.

(4) A court must refuse to authorise or approve a remedy if it appears to the court that—

- (a) the default in issue has been remedied;
- (b) the threat to the security has been removed;
- (c) the chargor has taken the steps that the charger was required to take by the notice served under section 90; and
- (d) the chargee has taken or attempted to take some action against the chargor in contravention of section 90 (4).

Section 107 of No. 6 of 2012, which it is proposed to amend—

107. (1) Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.

(4) In the event that the Commission has not undertaken the acquisition in accordance with subsection (1) the acquiring authority may proceed and acquire the land.

(7) For the purposes of sections 110 to 143, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

Section 117 of No. 6 of 2012, which it is proposed to amend—

117. (2) If additional compensation is payable under section 120 there shall be added to the amount of the additional compensation interest thereon at the prevailing bank rates from the time when possession was taken or compensation was paid, whichever is the earlier.

Section 122 of No. 6 of 2012, which it is proposed to amend—

122.(3) If the Commission is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land.

Section 126 of No. 6 of 2012, which it is proposed to amend—

126. If the Commission is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to other land, then—

- (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- (b) the compensation to be paid under section 120 shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

Section 134 of No. 6 of 2012, which it is proposed to amend—

134. (4) Identification of beneficiaries shall be carried out and verified by a sub-county selection committee comprising of the following—

- (a) sub-county administrator who shall be the chairperson;
- (b) a representative of the county government, approved by the county assembly;
- (c) a representative of the Commission;
- (d) a national government representative; (e) a representative of persons with special needs;
- (e) a women's representative nominated by a local women's organization prescribed by the county government; and
- (f) a youth representative prescribed by the county government.

(5) The Commission shall reserve public land for the establishment of approved settlement programmes, and where public land is not available purchase private land subject to the Public Procurement and Disposal Act, 2005, No. 3 of 2005 or any other law.

(6) Upon planning and survey, land in settlement schemes shall be allocated to households in accordance with national values and principles of governance provided in Article 10 and the principles of land policy provided in Article 60(1) of the Constitution and any other requirements of natural justice.

(7) Any land acquired in a settlement scheme established under this Act, or any other law, shall not be transferable except through a process of succession.

(8) Beneficiaries of land in settlement schemes shall pay a sum of money as may be determined from time to time by the Commission and the body of trustees responsible for settlement matters.

Section 135 of No. 6 of 2012, which it is proposed to amend—

135. (1) There is established a Fund to be known as the Land Settlement Fund which shall be administered by the National Land Commission.

(3) The Fund shall be applied to the following purposes—

(a) 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 of private land for settlement programmes;

(c) establishment and management of refugee camps;

(d) provision of shelter and a livelihood to persons in need of settlement programmes;

(e) research, documentation and dissemination of information on settlement programmes; and

(f) any other purpose that would enhance the development and promotion of settlement programmes that may be approved by the Commission.

(5) In carrying out its functions under Part IX of this Act, the Commission shall consult and co-operate with the departments responsible for land, finance, agriculture, environment and natural resources, and

special programmes and with the relevant county government where applicable.

Section 139 of No. 6 of 2012, which it is proposed to amend—

139. (2) The applicant shall give not less than fourteen days notice in writing to—

- (a) the owner of the servient land; and
- (b) the local authority having jurisdiction in the area where the dominant and servient land are located, of the intention to apply for an entry order under this section.

Section 98 of No. 6 of 2012, which it is proposed to amend—

140. (2) A copy of the application shall be served on—

- (a) the owners of each piece of land adjoining the landlocked land;
- (b) any person claiming an interest in any such piece of land of whom the applicant has actual notice;
- (c) the local authority having jurisdiction in the area where the landlocked land is located;
- (d) any other person occupying or having an interest in land which in the opinion of the court may be affected by the granting of the application.

(3) The court, after hearing the applicant and any person served with an application under subsection (2) may make access order in respect of any other piece of land, the owner of which was served with a copy of the application under subsection (2), for the benefit of the landlocked land.

Section 141(1) of No. 6 of 2012, which it is proposed to amend—

141. (1) The benefit of an easement, and an analogous right granted under this part shall, during the term of its existence, be enjoyed by the owner of the dominant land and that owner's successors in title and by—

- (a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right permit, and part of it, and
- (b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right permit, any part of it.

Section 146 of No. 6 of 2012, which it is proposed to amend—

146. (3) The Cabinet Secretary shall determine whether or not to create to create a public right of way, after taking account, as the case may be, of—

- (a) the recommendations of the Commission; or

- (b) the advice of the county government;
- (c) the outcome of any negotiations initiated under subsection (1)(b)(iii),

Section 147 of No. 6 of 2012, which it is proposed to amend—

147. (1) If the Cabinet Secretary has made an order to create a public right of way the Commission shall cause all the necessary documents, plans, demarcations and surveys Compensation in respect of public right of way Subject to the provisions of this section, of the route of that public right of way to be delivered to the Registrar to enable the registrar to exercise the powers under this section.

(2) On receipt of the information referred to in subsection (1), the Registrar after the expiry of the time allowed in section 146 (6) (e) to appeal against the order of the Cabinet Secretary shall, take any necessary, desirable or prescribed action which the Registrar may consider necessary and desirable or which may be prescribed—

- (a) to cause to be recorded, in such forms as may be prescribed, the route of the public right of way on any certificate of occupancy or other document of title held in any office of the land registry having reference to land over which the public right of way has been created; and
- (b) to cause to be delivered to the Registrar all certificates of occupancy having reference to land over which the public right of way has been created held by—
 - (i) persons occupying such land under such right of occupancy; or
 - (ii) by any lender of money secured by a charge or lien who is holding that certificate of occupancy as part of the security for that loan, so as to amend that certificate of occupancy by recording the route of the public right of way on that certificate of occupancy.

Section 151 of No. 6 of 2012, which it is proposed to amend—

151. If the Commission is satisfied that a notice effected and cannot be served personally or by post, either because the person to be served is evading service or for some other reason the Commission may order service to be effected by—

- (a) affixing a copy of the notice in a conspicuous place—
 - (i) on or as near as may be to the land where possible; and

- (ii) if the land is community land, at the offices of the Community Land Committee or other public place within the village, or
 - (iii) if the land is public land, at the offices of the county government having jurisdiction in the area where the land is located or other public place in the area where the land is located; and
- (b) publishing a copy in the Gazette and if it thinks fit, one or more newspapers circulating in Kenya.

Section 155 of No. 6 of 2012, which it is proposed to amend—

Unlawful occupation of land

155. (3) Any notice referred to in subsection (2) shall inform the person to whom it is addressed that if has a right to be heard in connection with showing cause as to why the person should not vacate the land to which the notice relates.

(4) In determining whether to serve a notice or oral communication and the period of time to be specified in the notice by the end of which the person is required to vacate the land, the Commission shall take account of—

- (a) whether the person has reasonable belief that the person is in lawful occupation of land;
- (b) the use which the person is making of the land, including any crops being grown by that person and when they may reasonably be expected to be ready to be harvested;
- (c) the length of time that person has been on that land and the person's age and general circumstances;
- (d) whether that person is living with any dependants;
- (e) whether that person or any dependants of that person are in employment near to that land;
- (f) whether the occupation of the land took place peaceably or by force and whether the occupation is, as a consequence, depriving and person of the lawful occupation and use of that land which that person could take up immediately the land was vacated;
- (g) whether the occupation of the land is preventing some necessary or desirable development or public works;
- (h) the nature and environment if the land and where the land is land reserved for the primary use of wildlife, whether the occupation

of the land is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use;

- (i) whether in all the circumstance, it would be reasonable to pay any sum of money to the person on account of being required to vacate the land;
- (j) any other factors, which seem relevant include any matters that the person occupying the land brings to the attention of the Commission.

(7) Where If after considering any representations made by the person attempting to show cause the Commission determines that the person has failed to show cause, , the Commission shall inform that person by notice or oral communication to vacate the land within the time specified in the notice served under subsection (2).

