



REPUBLIC OF KENYA

PARLIAMENT



NATIONAL ASSEMBLY BILLS
(Bill No. 55 of 2015)

THE LAND LAWS (AMENDMENT) BILL, 2015

(A Bill published in the Kenya Gazette Supplement No. 140 of 18th August, 2015
and passed by the National Assembly, with amendments, on 5th May, 2016)

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)(f) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

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

Amendment to section 2 of No.3 of 2012.

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

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

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

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

(c) in the definition of “caution” by deleting paragraph (b);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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“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

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making of an entry, note or record in the land register;

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

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

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

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

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

Amendment of section 6 No. 3 of 2012.

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

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

(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 7 of No. 3 of 2012.

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

(a) in subsection (1) by deleting the word Commission

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wherever it appears and substituting therefor the word “Cabinet Secretary”;

- (b) in subsection (3) by deleting the words “Public Service Commission and”;
- (c) inserting the following new subsections immediately after subsection (3)—
 - (4) The land register shall include the following features—
 - (a) the property section;
 - (b) the proprietorship section;
 - (c) the encumbrance section;
 - (d) the user of the land; and
 - (e) any other feature required under any law or otherwise considered necessary by the Cabinet Secretary.

(5) Registration shall be effected by an entry in the register in such form as may from time to time be prescribed by the Cabinet Secretary, and by cancellation of the entry, if any, which it replaces.

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

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

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Amendment of section 9 of No. 3 of 2012.

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

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

Amendment of section 12 of No. 3 of 2012.

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

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

Appointment of Land Registrars and other officers.

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

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

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

Qualifications for appointment 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, a land surveyor, a land economist or an expert in any other relevant field.

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

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

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

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

Amendment of
section 14 of No.
3 of 2012.

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

- (a) renumbering the existing section 14 as 14 (1);
- (b) inserting the following new subsections immediately after subsection (1)—
 - (2) In addition to the powers conferred by section 14(1) the Chief Land Registrar shall—
 - (a) formulate practice instructions and guidelines for implementation of the land registration policies and strategies;
 - (b) set standards for the registries;
 - (c) supervise the registries;
 - (d) prepare and submit an annual report on the state of land registration to the Commission and the

Cabinet Secretary;

- (e) hear and determine appeals from the registries;
- (f) approve the format of any instrument which is not in accordance with the prescribed form; and
- (g) perform such other functions or duties as may be provided under any written law.

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

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

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

Amendment of
section 16 of No.
3 of 2012.

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

- (a) in subsection (1) by deleting the words “and such correction shall not be effected except on the instruction of the Registrar, in writing,” appearing immediately after the words “subdivision plan” and substituting therefor the words “approved combination plan or any other approved plan necessitating the alteration of the boundary”;
- (b) in subsection (2) by deleting the words “Notwithstanding subsection (1), any alteration and shall be made public and”
- (c) by inserting the following new subsection immediately

after subsection (3)—

(4) Any rectification to the cadastral map in accordance with this section shall be notified to the Registrar by the submission of the rectified cadastral map and all the approvals that necessitated the amendments.

Amendment of
section 17 of No.
3 of 2012.

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

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

Amendment of
section 28 of No.
3 of 2012.

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

(a) deleting paragraph (a);

(b) deleting paragraph (f);

(c) inserting the following new proviso to the section—

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such manner as the Registrar deems necessary.

Amendment to
section 30 of No.
3 of 2012.

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

(a) in subsection (1) by deleting the words “or a lease” and substituting therefor the words “whose name appears in the register or a lease”;

(b) in subsection (2)(b) by deleting the expression “twenty-five” and substituting therefor the expression “twenty-one”.

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Amendment of
section 33 of No.
3 of 2012

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

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

Amendment of
section 36 of No.
3 of 2012.

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

- (a) by deleting subsection (4) and substituting therefor the following subsection—
 - (4) Where an instrument presented for registration later than three months from the date of the instrument, then, as well as registration fee, and additional fee equal to the registration fee shall be payable for each of the three months which have elapsed since that date:

Provided that in no such case shall the sum of the additional fees, exceed two times the original registration fees payable;
- (b) by inserting the following new subsections immediately after subsection (4)—
 - (5) Interests appearing in the register shall have priority according to the order in which the instruments

which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:

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

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

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

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

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

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

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

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

15. 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

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“instrument” and substituting therefor with the words
“transferring or vesting”;

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

Amendment of
section 43 of No.
3 of 2012.

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

Amendment of
Section 44 of No.
3 of 2012.

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

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

(3) The execution of any instrument referred to in section (1) by a corporate body, association, cooperative society or other organisation shall be effected in accordance with the provisions of the relevant applicable law and in the absence of provisions on execution of instruments, the execution shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

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

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

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

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

Amendment of section 54 of No. 3 of 2012.

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

- (a) in subsection (1) by deleting the word “leased” appearing immediately after the word “leased land”;
- (b) in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) on any of the grounds set out under section 39(4).
- (c) inserting the following new subsection immediately after subsection (5)—
 - (6) The Cabinet Secretary may prescribe regulations for the registration of long term-leases.

Amendment of Section 55 of no. 3 of 2012.

19. 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 56 of No. 3 of 2012.

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

- (a) by deleting subsection (4) and substituting therefor the following new subsection—
 - (4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.

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

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

- (a) a unit in a condominium;
 - (b) an office in a building; or
 - (c) a sub-lease where the lease is by virtue of any law subject to the full payment of the rent by the head-lessor.
- (c) in subsection (6) by deleting the words “chargee of his or her” appearing in subsection (6) immediately after the word “exercise of the” and substituting therefor the word “chargee’s”.

Amendment of section 57 of No. 3 of 2012.

21. 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 58 of No. 3 of 2012.

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

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

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

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Amendment of
Section 77 of No.
3 of 2012.

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

Amendment of
Section 78 of No.
3 of 2012.

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

Amendment of
Section 79 of No.
3 of 2012.

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

(a) in subsection (1)—

(i) by inserting the word “mistakes” immediately after the word “errors” appearing in paragraph (a);

(ii) inserting the following new paragraphs immediately after paragraph (c)—

(d) for purposes of updating the register;

(e) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

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

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

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

(b) it would for any other reason be unjust for the

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alteration not to be made.

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

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

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

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

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

Amendment of
section 80 of No.
3 of 2012.

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

Amendment of
section 83 of No.
3 of 2012.

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

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Amendment of
section 91 of No.
3 of 2012.

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

- (a) in subsection (1) by deleting the words “in undivided shares” appearing immediately after the word “persons”;
- (b) deleting subsection (2) and substituting therefor the following subsection—
 - (2) Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.
- (c) in subsection (4) by deleting the word “or” appearing at the end of paragraph (b) and substituting therefor the word “and”;
- (d) deleting subsection (8) and substituting therefor the following new subsection—
 - (8) The Registrar may upon receipt of adequate proof dispense with the consent under subsection (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably and the Registrar shall note on the register and on the instrument the reasons for dispensing with the consent.
- (e) inserting the following new subsection immediately after subsection (8)—
 - (9) A person who is aggrieved by the decision of the Registrar may apply to the Court for the

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necessary orders.

Amendment of
section 92 of No.
3 of 2012.

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

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

Amendment of
section 93 of No.
3 of 2012.

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

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

Amendment of
section 94 of No.
3 of 2012.

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

(a) in subsection (1), by deleting the words “certificate of land” and substituting therefor the words “certificate of title or certificate of lease”;

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

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

Amendment of
section 102 of
No. 3 of 2012.

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

installments” appearing at the end of the subsection.

Amendment of
section 103 of
No. 3 of 2012

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

(a) in subsection(1)—

(i) by deleting the word “ownership” appearing immediately after the words “certificate of” in paragraph (c) subparagraph (i) and substituting therefor the words “title or certificate of lease”;

(ii) by deleting the word “a” appearing immediately after word “of” in paragraph (c) subparagraph (i) and substituting therefor the word “an”;

(iii) by inserting the following new subparagraph immediately after subparagraph (iii) of paragraph (c)—

(iv) a dealing or a transaction using any of the replaced register, certificate of title or certificate of lease;

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

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

Amendment of
section 105 of
No. 3 of 2012.

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

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

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

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

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

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

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

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

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

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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.

Amendment of section 2 of No. 5 of 2012.

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

Amendment of section 5 of No. 5 of 2012.

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

(a) in subsection (2) by—

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

(c) ensure that 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).

Amendment of section 15 of No. 5 of 2012.

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

Historical
injustices.

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

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

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

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

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
 - (i) the claim contradicts a law that was in force at the time when the injustice began; or

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- (ii) the claim is debarred under section 7 of the Limitation of Actions Act or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
- (d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and
- (e) it is brought within five years from the date of commencement of this Act.

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

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

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

- (a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or
- (b) by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.

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

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

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

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

- (a) restitution;
- (b) compensation, if it is impossible to restore the land;
- (c) resettlement on an alternative land;
- (d) rehabilitation through provision of social infrastructure;
- (e) affirmative action programmes for marginalized groups and communities;
- (f) creation of wayleaves and easements;
- (g) order for revocation and reallocation of the land;
- (h) order for revocation of an official declaration in respect of any public land and reallocation;
- (i) sale and sharing of the proceeds;
- (j) refund to *bona fide* third party purchasers after valuation; or
- (k) declaratory and preservation orders including injunctions.

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

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

Repeal of section
18 of No. 5 of
2012. **38.** The National Land Commission Act is amended by repealing
section 18.

Amendment of
First Schedule to
No. 5 of 2012. **39.** The First Schedule of the National Land Commission Act is
amended—

- (a) in paragraph (1)—
- (i) by deleting the words “in consultation with the Prime Minister” appearing in the opening sentence;
 - (ii) by deleting sub-paragraph (b); and
 - (iii) by deleting the proviso;
- (b) by inserting the words “within seven days” immediately after the word “shall” appearing in paragraph (7).
- (c) inserting the following new paragraph (8A) immediately after paragraph (8)—

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

- (d) by deleting paragraph (14);

Amendment to
section 2 of No.6
of 2012.

40. Section 2 of the Land Act is amended—

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

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

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

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

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

No. 13 of 2013

2013;

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

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

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

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

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

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

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- (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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Amendment to section 5 of No. 6 of 2012.

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

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

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

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

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

Powers and functions of the Cabinet Secretary in land management.

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

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

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

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

Amendment of section 8 of No. 6 of 2012.

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

(a) re-numbering the existing provision as subsection (1);

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

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

(a) the particulars of all public land converted to private land by allocation;

(b) the names and addresses of all persons whose land has converted to public through compulsory acquisition or reversion of leasehold;

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- (c) particulars of community land converted into public; and
- (d) such other details as the Commission may consider necessary.

Amendment of section 9 of No. 6 of 2012.

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

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

Amendment of section 12 of No. 6 of 2012.

45. Section 12 of the Land Act is amended—

- (a) in subsection (1) by deleting the introductory part and substituting therefor the following—
 - (1) Whenever the national or county government is satisfied that it may be necessary to allocate the whole or part of a specific public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission for the necessary action by way of—
- (b) in subsection (3) by inserting the words “upon the request of the national or a county government” immediately after the word “shall”;
- (c) in subsection (7) by deleting the expression “(16)” and substituting therefor the expression “(17)”;
- (d) in subsection (9) by inserting the words “and the Commission shall include in its annual report the status of implementation of this subsection” immediately after the words “as the case

may be”.

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

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

Controlled land. **12A.(1)** In this part

“controlled land” means land in Kenya which is—

- (a) within a zone of twenty-five kilometres from the inland national boundary of Kenya;
- (b) within the first and second row from high water mark of the Indian Ocean;
- (c) any other land as may be declared controlled land under any law or statute.

“ineligible person” means—

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

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

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

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

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

Amendment of
section 13 of No.
6 of 2012.

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

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

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

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

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

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

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

(c) 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) Subject to the provisions of subsection (1), a lessee shall be entitled to apply for a renewal of the lease at any time before the expiry of the lease.

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

(6) An application under this section shall be in the prescribed form.

Amendment of

section 15 of No.
6 of 2012.

48. Section 15 of the Land Act is amended—

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

Reservation and development of public land.

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

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

Amendment of
section 16 of No.
6 of 2012.

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

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

Amendment of
section 23 of No.
6 of 2012.

50. Section 23 of the Land Act is amended—

(a) in subsection (1)—

- (i) deleting the word “grant” wherever it occurs;
 - (ii) deleting the word “grantor” wherever it occurs;
 - (iii) deleting the word “grantee” appearing in paragraph (b);
- (b) deleting subsection (2) and substituting therefor the following new subsection—

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

Amendment of
section 24 of No.
6 of 2012.

51. 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.

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Amendment of section 25 of No. 6 of 2012.

52. Section 25 of the Land Act is amended—

- (a) in subsection (1) by deleting the word “determination” appearing in paragraph (a) and substituting therefor the word “termination”;
- (b) in subsection (2) by deleting the word “arbitration” and substituting therefor the phrase “reference to an independent professional valuer who shall be appointed by the Commission through an open, transparent and competitive process as per the public procurement law”.

Amendment of section 34 of No. 6 of 2012.

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

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

Amendments to section 38 of No. 6 of 2012.

54. Section 38 of the Land Act is amended—

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

Validity of contracts in sale of land.
- (b) in subsection (1)—
 - (i) by inserting the words “Other than as provided by this Act or by any other written law” at the beginning of the provision.

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(ii) by deleting the word “unless” appearing immediately after the word “land”.

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

(2) Subsection (1) shall not apply to—

- (a) a contract made in the course of a public action;
- (b) the creation or operation of a resulting, implied or a constructive trust; or
- (c) any agreement or contract made or entered into before the commencement of this Act, provided that—

(i) the verbal contracts shall be reduced to writing within two years from the date of enactment of this Act; and

(ii) the Cabinet Secretary shall put a notice of the requirement to reduce the contracts in writing, in a newspaper of nationwide circulation.”

Amendment of section 42 of No. 6 of 2012.

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

Amendment of section 63 of No. 6 of 2012.

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

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

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

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

Amendment of section 65 of No. 6 of 2012.

57. Section 65 of the Land Act is amended—

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

Amendment of section 72 of No. 6 of 2012.

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

Amendment of section 78 of no. 6 of 2012.

59. Section 78 of the Land Act is amended—

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

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

Provided that—

- (a) the provisions of this Part shall not be construed so as to affect the validity of any entry in the register or any charge, mortgage other security instrument which was valid immediately before the commencement of this Act and the entries in the register and the charges, mortgages or other instruments shall continue to be valid in accordance with their terms not withstanding their inconsistency with the provisions of this Part;

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

Amendment of
section 79 of
No.6 of 2012.

60. Section 79 of the Land Act is amended—

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

Amendment of
section 81 of No.
6 of 2012.

61. Section 81 of the Land Act is amended—

- (a) in subsection (1) by inserting the words “Unless otherwise provided in the charge instrument,” at the beginning of subsection (1);
- (b) deleting subsection (4) and substituting therefor the following—
 - (4) Unless otherwise provided in the charge instrument, if

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

Amendment of section 82 of No. 6 of 2012.

62. Section 82 of the Land Act is amended—

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

(b) in subsection (2) by deleting the word “chargor” appearing in paragraph (b) and substituting therefor the word “chargee”.

Amendments of section 84 of No. 6 of 2012.

63. Section 84 of the Land Act is amended—

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

Variation of charge.

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

Amendment of section 87 of No. 6 of 2012.

64. 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

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chargee has been produced to the Registrar.

Amendment of
section 88 of No.
6 of 2012.

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

Amendment of
section 90 of No.
6 of 2012.

66. Section 90 of the Land Act is amended—

(a) in subsection (1) by inserting the word “in” immediately after the words “continues to be”;

(b) in subsection (3) by deleting the words “two months” appearing immediately after the word “within” and substituting therefor the words “ninety days”.

Amendment of
section 91
of No. 6 of 2012.

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

Amendment of
section 92
of No. 6 of 2012.

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

Amendment of
section 93 of No.
6 of 2012.

69. Section 93 of the Land Act is amended—

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

(b) in subsection (3) by deleting the words “in possession” appearing in paragraph (a);

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

(5) The provisions of this section shall only apply to a

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receiver of income appointed under this section and not to receivers appointed under any other instrument to which the chargor may be subject.

Amendment of section 94 of No. 6 of 2012.

70. Section 94 of the Land Act is amended—

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

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

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

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

Amendment of section 95 of No. 6 of 2012.

71. Section 95 of the Land Act is amended—

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

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

Amendment of section 96 of No. 6 of 2012.

72. 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 98 of No.
6 of 2012.

73. Section 98 of the Land Act is amended—

- (a) in subsection (1) by inserting the word “or” immediately after the word “whole” appearing in paragraph (a);
- (b) in subsection (3) by deleting the words “A sale of” appearing at the beginning of the provision and substituting therefor the words “A transfer of”;
- (c) by inserting the following new subsections immediately after subsection (4)—
 - (5) In a sale by a private contract, the chargee shall be entitled to rely on a valuation carried out by a valuer who is registered with the institute of Surveyors of Kenya and the report shall in the absence of a manifest error, be conclusive in relation to the market price:

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

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

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

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

been accepted at the auction sale.

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

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

Amendment of
section 103 of
No. 6 of 2012.

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

(i) deleting the expression “85(3)(a) and (b)” appearing immediately after the words “in section” and substituting therefor the expression “90(3)”;

(ii) inserting the words “to the extent that the spouse was required to give consent to the creation of the charge but did not give consent” immediately after the word “chargor” appearing in paragraph (c); and

(iii) deleting paragraph (d);

Amendment of
section 104 of
No. 6 of 2012.

75. Section 104 of the Land Act is amended—

(a) in subsection (1) by deleting the word “available” appearing

immediately after the words “available remedies” in sub-paragraph (i) of paragraph (b);

(b) in subsection (2) by deleting the words “authorize an order” appearing immediately after the words “refuse to” and substituting therefor the words “grant an order under subsection (1)”;

(c) in subsection (4) by deleting word “must” and substituting therefor the words “may at any time before the charged property is sold”.

Amendment of
section 107 of
No. 6 of 2012.

76. Section 107 of the Land Act is amended—

(a) in subsection (1) by deleting the word “public” appearing immediately after the words “acquisition of”;

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

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

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

Amendment of
section 111 of
No. 6 of 2012.

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

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

Amendment of sections 117 of No. 6 of 2012.

78. Section 117 of the Land Act is amended—

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

“Payment of interest.”

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

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

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

Amendment of sections 118 of No. 6 of 2012.

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

“Final survey.”

Amendment of sections 119 of No. 6 of 2012.

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

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

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“Condition for payment of compensation.”

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

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

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

Amendment of sections 120 of No. 6 of 2012.

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

“Formal taking of possession.”

Amendment of sections 121 of No. 6 of 2012.

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

“Surrender of documents of title.”

Amendment of sections 122 of No. 6 of 2012.

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

“Acquisition of other land on account of severance.”

Amendment of sections 123 of No. 6 of 2012.

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

“Withdrawal of acquisition.”

Amendment of sections 124 of

85. Section 124 of the Land Act is amended—

No. 6 of 2012.

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

“Power to obtain temporary occupation of land.”

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

Amendment of sections 125 of No. 6 of 2012.

86. Section 125 of the Land Act is amended by

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

“Payment of compensation.”

(b) by deleting subsection (2).

Amendment of sections 126 of No. 6 of 2012.

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

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

“Compensation for damages.”

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

Amendment of section 134 of No. 6 of 2012.

88. Section 134 of the Land Act is amended —

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

“(1) The National Government shall implement settlement programmes to provide access to land for

shelter and livelihood.”

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

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

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

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

Provided that—

- (i) the persons appointed under paragraphs (e), (f), (g) and (h) shall be nominated by the area member of the National Assembly; and
- (ii) a chairperson shall be appointed at the first sitting of the committee from the persons appointed under paragraphs (e), (f), (g) and

(h).

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

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

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

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

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

89. 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 this Act and which may lawfully be done or performed by a body corporate.

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

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

(1C) The Board of Trustees shall—

- (a) be responsible for the provision of access to

land—

- (i) to squatters;
 - (ii) to displaced persons;
 - (iii) for development projects;
 - (iv) for conservation; or
 - (v) such other causes that may lead to movement and displacement of persons;
- (b) purchase private land for settlement programmes;
- (c) coordinate the provision of shelter and a livelihood to persons in need of settlement programmes; and
- (d) perform any other function that may enhance the development and promotion of settlement programmes.
- (c) in subsection (2) by deleting the word “Commission” wherever it occurs and substituting therefor the words “Board of the Land Settlement Fund Trustees”;
- (d) in subsection (3) by deleting paragraph (c);
- (e) by deleting subsection (5) and substituting therefor the following new subsection—

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

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Amendment of section 139 of No. 6 of 2012.

90. Section 139 of the Land Act is amended—

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

Amendment of section 140 of No. 6 of 2012.

91. Section 140 of the Land Act is amended—

- (a) in subsection (2) by deleting the words “local authority having jurisdiction in the area were” appearing in paragraph (b) and substituting therefor the words “county government having jurisdiction in the area where”;
- (b) by inserting the word “an” immediately after the words “may make” appearing in subsection (3).

Amendment of section 141 of No. 6 of 2012

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

Repeal of section 142 of No. 6 of 2012.

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

Amendment of section 146 of No. 6 of 2012.

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

Amendment of section 147 of No. 6 of 2012.

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

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Amendment of section 151 of No. 6 of 2012.

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

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

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

Prohibition of unlawful occupation of land.

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

Evictions to be undertaken in accordance with the Act.

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

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

Eviction Notice
to unlawful
occupiers of
private land

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

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

(a) be in writing and in a national and official language;

(b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land; 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.

(d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area

Application to
Court for relief.

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

(2) The Court, after considering the matters

set out in sections 152C, 152D and 152E, may—

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

Mandatory
procedures
during eviction.

152G. 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

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vulnerable such as women, children, the elderly, and persons with disabilities;

- (f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
- (g) include mechanisms to protect property and possessions left behind involuntarily from destruction;
- (h) respect the principles of necessity and proportionality during the use of force; and
- (i) give the affected persons the first priority to demolish and salvage their property.

Disposal of property left after eviction.

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

Demolition of unauthorized structures.

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

Repeal of sections 153 of No. 6 of 2012.

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

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Amendment of section 155 of No. 6 of 2012.

99. Section 155 of the Land Act is amended—

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

Amendment of section 159 of No. 6 of 2012.

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

Minimum and maximum land holding acreages.

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

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

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