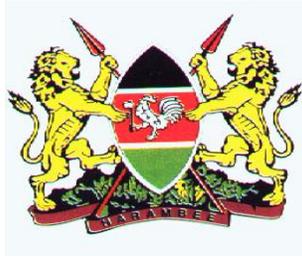


REPUBLIC OF KENYA



MINISTRY OF LANDS AND PHYSICAL PLANNING

DEPARTMENT OF PHYSICAL PLANNING

CONCEPT PAPER

FOR

**FORMULATION OF THE PHYSICAL AND LAND USE PLANNING
HANDBOOK**

JULY, 2020

Table of Contents

1	INTRODUCTION	3
1.1	Background	3
1.2	The Physical and Land Use Planning Handbook	5
1.3	Problem Statement	5
1.4	Rationale and Justification	7
1.5	Significance of the Handbook	8
1.6	Scope of the handbook.....	9
1.7	Guiding Principles.....	10
1.8	Activities	10
1.9	Methodology.....	11
1.10	Expected Outputs.....	11
1.11	Target Users.....	11
2	FORMULATION PROCESS	13
2.1	Work plan.....	14
3	DELIVERY MECHANISM.....	17
4	WORK SCHEDULE AND COSTING.....	18
4.1	Work schedule	18
4.2	Costing of activities	22
5	STAKEHOLDER PROFILING.....	23
6	CONCLUSION	26

1 INTRODUCTION

1.1 Background

The first Physical Planning Handbook was prepared in 1971 in the context of the statutory and regulatory instruments that were in place then. The Handbook was a certification of standards and guidelines that were put together to rationalize and harmonize the minimum standards, regulations and guidelines that were contained in the Town Planning Act, Cap 134; the Land Planning Act, Cap 303; the Local Government Act, Cap 265; the Public Health Act, Cap 242; the Public Roads and Roads of Access Act, Cap 399 and the Building By-laws published by the Minister for Local Government. This handbook was also published as one of the initial attempts to localize the British Planning and developments Standards and guidelines to apply to the Kenyan situation under the respective legislations that were enacted by the independent government.

With enactment of the Physical Planning Act, Cap 286 in 1996 and the consequential repeal of both the Town Planning Act, Cap 134 and the Land Planning Act, Cap 303, it was expected that the Handbook was to be reviewed to bring it to accordance with the new law and its regulatory framework. However, the expected review was never realized which made the document to be out of step with the applicable law and regulations.

The need for review of the Handbook has been further underlined by the fact that since 1996 a lot more changes have taken place that have had fundamental impact on the manner and substance of the practice of physical and land use planning in the country. The changes in the statutory, policy and regulatory frameworks were informed by the enactment of the Constitution of Kenya, 2010 which fundamentally caused a paradigm shift in the land policy principles, land

tenure classification, institutional structures for administration and management of land, separation of the physical planning functions between the national and governments as well as the establishment of the devolved units of government. In this respect therefore the following legislations were enacted: the Physical and Land Use Planning Act 2019 (*Repealed the Physical Planning Act, Cap 286*); the Urban Areas and Cities Act, 2011 (*Repealed the Local Government Act, Cap 265*); the County Government Act, 2012; the Land Act, 2012 (*Repealed the Wayleaves Act, Cap 292 and the Land Acquisition Act, Cap 295*); the Land Registration Act, 2012, (*Repealed the Land Titles Act, Cap 282, Registration of Titles Act, Cap 281, the Registered Lands Act, Cap 300, the Government Lands Act, Cap 280 and the Indian Transfer of Property Act, 1882*) the National Land Commission Act, 2012 and the Community Land Act, 2016 (*Repealed the Land (Group Representatives) Act, Cap 287 and the Trust Lands Act, Cap 288*).

Besides the above statutes, the following national sectoral policies which are relevant to the practice of physical and land use planning were formulated: the Sessional Paper No. 3 of 2009 on National Land Policy, Sessional Paper No. 3 of 2016 on National Urban Development Policy and the Sessional Paper No. 1 of 2017 on National Land Use Policy. It has to be noted that the Physical and Land Use Planning Act, 2019 is yet to be operationalized because the subsidiary legislation has not yet been finalized and approved by Parliament.

Furthermore, the ushering in of devolution has presented a significant change in undertaking of planning functions in the country. The National and County governments have concurrent functions to prepare and implement various development plans.

This concept paper presents a road map towards the revision of the Physical and Land Use Planning Handbook to realign it to the Physical and Land Use Planning

Act, No. 13 of 2019 and relevant statutes. It also outlines the activities involved in the revision, stakeholder identification, time frame, the budget and the expected output.

1.2 The Physical and Land Use Planning Handbook

The general definition of a handbook is a detailed collection of instructions intended to provide ready reference on facts, methods and processes in a particular theme or subject. The Physical and Land Use Planning Handbook is a set of technical instructions, guidelines and standards presented in form of text and illustration for land use planning in the country. It guides the standardization of physical planning processes and practice. These instructions, guidelines and standards are derived from statutory instruments and other applicable documents.

The Physical and Land Use Planning Handbook should be reviewed periodically to respond to the changing planning dynamics and emerging issues in various sectors. The Handbook will constitute part of the physical and land use planning legislation providing basic principles, concepts, processes, methodologies and standards for physical planning in the country. It also incorporates standards and guidelines relating to the environmental and water management sectors, air and road transport sector, telecommunication sector, housing and building sector, maritime and public health sector, agriculture sector, manufacturing sector among others.

1.3 Problem Statement

The current Handbook is outdated and not comprehensive. It fails to adequately address fundamental physical and land use planning standards and is incongruent with other Statutes and policies affecting physical and land use planning. It also fails to recognize the roles played by other institutions that were established under the new constitutional dispensation. The lack of up to date

guidelines by the counties during the formulation of physical development and land use plans and during development control necessitates its formulation to standardize the practice in the whole country. The Handbook will incorporate new planning paradigms and changes in circumstances such as governance systems, national aspirations and emerging sectors such as the Blue Economy.

The revised handbook will strive to address the following;

i. Provisions relating to Land Use Planning domiciled in different Sectoral Laws, Policies and Standards

Currently, there are different legislations, policies and standards impacting on the physical planning practice which are domiciled in the following sectors: agriculture and livestock; manufacturing; mining and energy; transport and infrastructure; natural resources and environment; housing and human settlement; tourism and wildlife. These will be mainstreamed in the handbook.

ii. Uncoordinated Private Planning Practice

Physical planning is undertaken by planners in public and private sector. The lack of a common reference material has brought pandemonium in the built environment. Therefore, there is need to have a standard framework to guide the engineers, surveyors, architects, valuers, and other players in the built environment.

iii. Lack of Awareness on Physical Planning Standards by the General Public

Physical Planning Handbook will help in creating awareness and empowerment of the general public on matters relating to physical planning.

iv. Weak Development Control

Due to lack of harmonized standards, it has been difficult to guide and control development resulting to haphazard development patterns, encroachment into

environmentally sensitive areas, wanton subdivision of land, land use conflicts among others.

v. Emerging Challenges

Lack of standards and guidelines that address the fundamentals of emerging challenges such as urban agriculture, climate change dynamics, disaster preparedness and management as well as the need to deal with the prevalent phenomenon of informal settlements in the urban areas and cities.

1.4 Rationale and Justification

The Physical and Land Use Planning Handbook aims to standardize the practice of planning and guide sustainable utilization of land and land based resources in the country. The challenges outlined below depict the need to revise the handbook;

- a. The existing Planning Handbook is outdated, and the other versions that attempted to revise it were inconclusive. For this reason, it does not respond adequately to changing planning dynamics such as Climate Change Management, Disaster Preparedness and Management, techno, compact and green cities, special economic zones and emerging economic frontiers of blue economy and oil, gas exploration and exploitation.
- b. The existing handbook was prepared before the new constitutional dispensation and therefore does not take cognizance of governance structures created in the form of two levels of government (National and County).
- c. The current handbook needs to be aligned to the Physical and Land Use Planning Act No.13 of 2019, and other statutes and policies affecting physical and land use planning such as the Environment Management and Coordination Act 1999, Land Act 2012, and County Government Act 2012, Urban Areas and Cities Act 2011, National Land Commission Act, 2012 among others.

1.5 Significance of the Handbook

The handbook is an important tool for guiding the practice and process of planning at both national and county levels. The multiplicity of actors in the practice and process of planning underlines the need to have a singular standardized and harmonized reference framework.

In light of the increasing urban population which is compounded further by the myriad of urbanization challenges, there is a need for responsive standards which will promote optimal and sustainable use of land.

Specifically, the handbook will

a) Standardize the Planning Practice:

Due to the multiplicity of actors involved in planning, the handbook will provide a single point of reference to direct and steer physical and land use planning, development and management. It is important that planning decisions are based on a standardized and harmonized framework in order to achieve a common national vision and goal.

b) Provide the Approach and Processes for Plan Preparation:

The planning practice entails the preparation of physical and land use development plans at both national and county levels. These plans are prepared by different planning entities, therefore, there is need for a harmonized process to ensure that the products are of high quality and adhere to statutory requirements. The preparation of these plans needs to be guided by a framework that spells out, guidelines, methodologies, standards and planning considerations.

c) Quick Reference Point for Decision Making:

It will be a reference document for the day to day undertaking of planning activities such as plan preparation, development control, infrastructural design among others by the Ministries, Departments and Agencies (MDAs), County

Governments, physical planners in public and private sector, academia /training institutions, professionals and stakeholders in the built environment.

d) Operationalize and Compliment the Physical and Land Use Planning

Law and Regulations:

The handbook will provide more detailed guidelines and standards for plan preparation and implementation. The handbook will prescribe the minimum standards for the different land uses in order to conform to the principles of the land policy.

e) Respond to dynamic development trends:

In view of the emerging development trends like special cities (techno/resort), malls, industrial parks, corridor development, the blue economy, the handbook will provide innovative standards and guidelines in line with global best practices.

1.6 Scope of the Handbook

The handbook will be applicable throughout the country as a tool for decision making on matters relating to physical and land use planning, it will cover the following:

- i. Specific standards for various sectors including: agriculture and livestock; manufacturing; mining and energy; transport and infrastructure; natural resources and environment; housing and human settlement; tourism and wildlife
- ii. Emerging developments such as urban agriculture, corridor development, maritime planning, road side stations concept, transport interchanges, shopping malls, and Information Communication Technology hubs.

The handbook will be reviewed after every ten years, unless there are a critical and urgent emerging issue that necessitates an earlier revision. Planning

manuals such as the development control, housing, education, infrastructure manuals will also be prepared to provide detailed specific standards.

1.7 Guiding Principles

- i. Effective and efficient , productive and sustainable use of the land resource
- ii. Orderly and harmonious land use development and management
- iii. Aesthetics, safety, convenience, compact, mixed-use and diversity, connectivity, walk ability, green transportation and sustainability
- iv. Inclusivity and accountability in planning, management and development of land
- v. Participatory planning
- vi. Uniformity in plan preparation and openness in information sharing
- vii. Capacity building and technological transfer.

1.8 Activities

The following activities will be undertaken in the revision of the handbook;

- I. **Preparation and circulation of the concept paper** to form a basis for engagement and provide a roadmap including process design, a work plan, and budgets and identifying the key stakeholders towards its delivery.
- II. **Resource mobilization** from potential financiers and consultative meetings.
- III. **Publication of notice of intention to prepare the handbook** as a way of creating awareness to the public and stakeholders of this process.
- IV. **Formation of technical/thematic working groups**
- V. **Data collection and collation by thematic working groups** on the existing situation from agencies and sectors standards and regulations.

- VI. **Data analysis and synthesis**
- VII. **Formulation of zero draft handbook**
- VIII. **Plan and convene stakeholder workshops** with MDAs, counties, professional bodies, academia among others to seek for validation and consensus building.
- IX. **Incorporation of comments in the final Draft**
- X. **Adoption and Approval** of the Handbook by the Cabinet Secretary for publication and dissemination.
- XI. **Dissemination, capacity building and implementation** for purposes of review and revision of the handbook.

1.9 Methodology

The approach adopted will be collaborative, multi-disciplinary, multi-sectoral and participatory involving all the stakeholders drawn from the public, private and non-state actors. A pragmatic approach will be employed in gaps identification as well as in the gathering of local knowledge towards formulation of the handbook.

1.10 Expected Outputs

The expected outputs/deliverables will be a written statement of processes, standards and guidelines relating to physical and land use developments including graphics, illustrations, prototypes, diagrams and maps.

1.11 Target Users

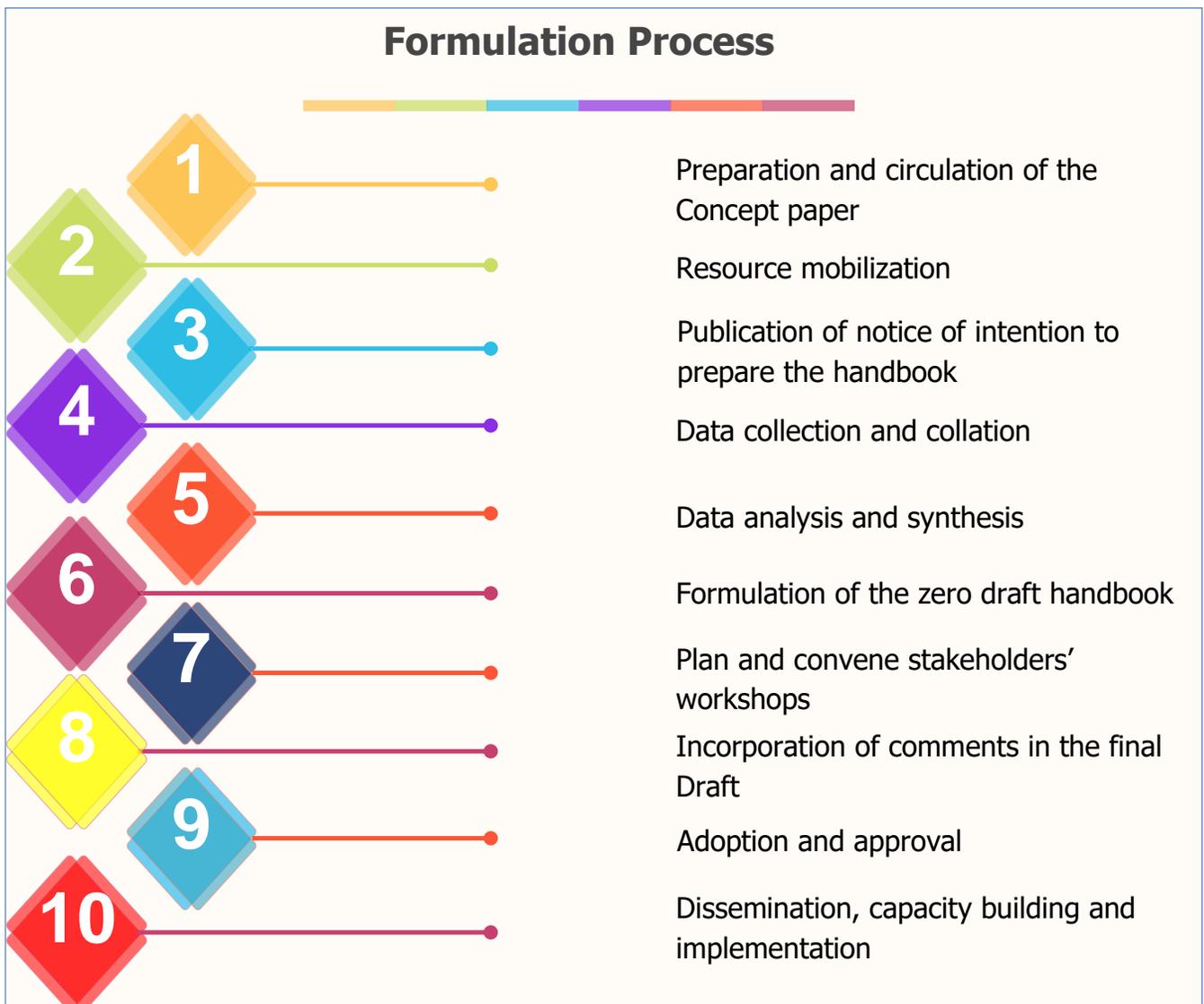
The handbook is intended to achieve orderly, harmonious, efficient and effective land use development and management. The intended users therefore include:

- The general public
- Private sector
- Physical planners in the public and private sector
- Ministries, Departments and Agencies
- Forty seven (47) County Governments

- Universities and research institutions
- Professionals in the built environment
- Land owners and property developers
- Regional and international agencies
- Civil society

2 FORMULATION PROCESS

This section outlines the workflow in the preparation of the Planning Handbook. The preparation of the handbook will be informed by the following guiding approaches: building upon existing standards and guidelines; incorporating best practices; appreciating the current situation; effective involvement of the stakeholders in the process and formulating appropriate standards and guidelines. The preparatory process is as illustrated in the table below.



2.1 Work Plan

Steps	Technical Processes	Activities	Expected outputs/Indicators
1.	Preparation of the Concept paper	<ul style="list-style-type: none"> • Convene technical workshops validate and adopt the concept paper • Circulate the concept paper 	<ul style="list-style-type: none"> • Final concept paper • Workshop reports
2.	Resource mobilization	<ul style="list-style-type: none"> • Identify potential financiers • Engage the financiers. • Identify the stakeholders. • Identify thematic areas and the experts 	<ul style="list-style-type: none"> • Funding proposals • List of identified stakeholders • Letters of stakeholders invitation
3.	Publication of notice of intention to prepare the handbook	<ul style="list-style-type: none"> • Prepare the notice • Submit the notice to the government printer and the local dailies. 	<ul style="list-style-type: none"> • Notice of intention to prepare the Physical and land use planning handbook
4.	Data Collection and collation	<ul style="list-style-type: none"> • Review the existing literature • Identify data gaps • Prepare research instruments • Undertake field research 	<ul style="list-style-type: none"> • Data gaps report • Research tools such as checklists, interviews schedules

		<ul style="list-style-type: none"> • Technical workshops for benchmarking 	<ul style="list-style-type: none"> • Field reports • Thematic group reports • Workshop reports
5.	Data analysis and synthesis	<ul style="list-style-type: none"> • Analyze data • Synthesize the findings 	<ul style="list-style-type: none"> • Data analysis reports • Experts reports
6.	Formulation of zero draft handbook	<ul style="list-style-type: none"> • Formulate the zero draft • Conduct thematic group workshops 	<ul style="list-style-type: none"> • Zero draft handbook • Workshop reports
7.	Plan and convene stakeholders workshops	<ul style="list-style-type: none"> • Build consensus • Validate the zero draft 	<ul style="list-style-type: none"> • Validated draft handbook. • Minutes of the stakeholder workshops
8.	Incorporation of the comments in the final Draft	<ul style="list-style-type: none"> • Incorporate comments into the draft handbook 	<ul style="list-style-type: none"> • Final draft Physical and Land use Planning Handbook
9.	Adoption and approval of the final draft Physical and Land use Planning Handbook	<ul style="list-style-type: none"> • Submit the final draft to the Cabinet Secretary for approval • Approval of the Handbook 	<ul style="list-style-type: none"> • Approved Physical and Land Use Planning Handbook
10.	Publication, dissemination and	<ul style="list-style-type: none"> • Prepare notice of completion for gazettelement and 	<ul style="list-style-type: none"> • Notice of completion • Published handbook

	capacity build	publication <ul style="list-style-type: none">• Publishing of the Handbook• Launch of the Handbook	<ul style="list-style-type: none">• The proceeding of the Launch
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3 DELIVERY MECHANISM

The effective completion of the handbook necessitates formation of three working teams namely the coordinating team, the technical committee and consultancy services.

3.1 Coordinating Team

The secretariat will comprise of officers from the Physical Planning Department. It will be in charge of organizing, coordinating and keeping custody of all information related to the preparation of the handbook.

3.2 Technical Committee

The technical team will comprise of representatives from MDAs, County Governments, relevant professional associations, academia, and other professionals in the built environment; engineers, architects, surveyors, environmentalists and valuers. The team will focus on different thematic areas and assignments.

3.3 Consultancy Services

In relation to the preparation process the following activities will be carried out by the Consultant;

- i. Literature review: Review of the existing handbook including the earlier versions and related land regulations
- ii. Benchmarking for best practices with other planning jurisdictions
- iii. Gaps identification in planning standards and specifications in various thematic areas
- iv. Formulation of draft standards and guidelines
- v. Publishing and Professional editing.

4 WORK SCHEDULE AND COSTING

The review process shall be undertaken as per the schedule below;

4.1 Work schedule

Step	Technical/ participatory process	Activities	Year 2020							Year 2021					
			June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
1.	Preparation of the concept paper	Convene technical workshops to													
		validate and adopt the concept paper													
		Circulate the concept paper													
2.	Resource mobilization	Identify potential financiers													
		Engage the financiers.													
		Identify the stakeholder s.													

		Identify thematic areas and the experts													
3.	Publication of notice of intention to prepare the handbook	Prepare the notice													
		Submit the notice to the government printer and the local dailies.													
4.	Data Collection and collation	Review the existing literature													
		Identify data gaps													
		Prepare research instrument													
		Undertake field research													
		Technical workshops for benchmarking													

5.	Data analysis and synthesis	Analyze data and synthesize the findings													
6.	Formulation of zero draft handbook	Formulate the zero draft													
		Conduct thematic group workshops.													
7.	Plan and convene stakeholders workshops	Build consensus and validate the zero draft													
8.	Incorporation of the comments in the final Draft	Incorporate comments into the draft handbook													
9.	Adoption and approval of the final draft Physical and Land use Planning Handbook	Submit the final draft to the Cabinet Secretary for approval													
10.	Publication,	Prepare													

4.2 RESOURCE MOBILIZATION STRATEGY

Due to inadequate funds a project funding proposal shall be prepared to mobilize funds from the potential financiers. The financial resources required for the formulation process is approximately Kshs. 240,300,000 as shown in the table below

No.s	Activities	Estimated cost
1.	Issuance of the notice of intention	300,000
2.	Review of the existing handbook workshops	20,000,000
3.	Formulation of the draft Physical Planning Handbook workshops	50,000,000
4.	Validation of the draft Physical Planning Handbook workshops	30,000,000
5.	Finalization, packaging and publishing	50,000,000
6.	Dissemination and sensitization	40,000,000
	Total	240,300,000

5 STAKEHOLDER PROFILING

Stakeholders will be drawn from MDAs, County governments, relevant professional associations, academia among others. The table showing the targeted stakeholders is provided below.

List of Stakeholders

Category	Organizations
National government	<ul style="list-style-type: none"> - Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works - Ministry of Environment and Forestry - Ministry of Agriculture, Livestock, Fisheries and Irrigation - Ministry of Petroleum and Mining - Ministry of Energy - Lands and Physical Planning - Ministry of Water and Sanitation and Irrigation - Ministry of Tourism and Wildlife - Ministry of Health - Ministry of Education - Ministry of Industry, Trade & Co-operatives - Ministry of Sports, Culture and Heritage - Ministry of Information, Communication and Technology
Agencies and parastatals	<ul style="list-style-type: none"> - Kenya Urban Roads Authority (KURA) - Kenya Rural Roads Authority (KERRA) - Kenya National Highways Authority (KENHA) - Kenya Ports Authority (KPA) - Kenya Railways Corporation (KRC) - National Traffic and Safety Authority (NTSA) - National Construction Authority (NCA) - Kenya Civil Aviation Authority (KCAA) - Kenya Airports Authority(KAA) - National Housing Corporation (NHC) - Kenya Ferry Services Limited,(KFSL) - National Environmental Management Authority (NEMA) - Kenya Water Towers Agency(KWTA) - Kenya Wildlife Service (KWS)

	<ul style="list-style-type: none"> - Kenya Forestry Service(KFS) - Kenya Marine Authority (KMA) - Kenya Pipeline - National Oil Corporation of Kenya (NOCK) - National Land Commission (NLC) - Survey of Kenya (SOK) - National Irrigation Board (NIB) - Water Resources Authority - Kenya Industrial Estates - Kenya Water Harvesting and storage Authority - Kenya Power and Lighting Company - Kenya Electricity Transmission Company - Regional Development Authorities - Konza Technopolis Development Authority - Kenya Forestry Research Institute - Kenya Agricultural & Livestock Research Organization - International Livestock Research Institute - Kenya Marine and Fisheries Research Institute - Kenya Industrial Research and Development Institute - Kenya Medical Research Institute
<p>Forty Seven County Governments</p>	<ul style="list-style-type: none"> - County Directors in charge of: - Physical Planning - Lands - Environment and natural resources - Public works, housing and infrastructure - Water and irrigation - Mining - Transport and infrastructure - Health - Education - Agriculture

Professional Associations	<ul style="list-style-type: none"> - Kenya Institute of Planners (KIP) - Architectural Association of Kenya (AAK) – Town Planning Chapter - Towns and County Planners Association of Kenya (TCPAK) - Institute of Surveyors of Kenya (ISK) - Institute of Engineers of Kenya - Kenya Airlines Pilots Association - Environment Institute of Kenya - Institute of Construction Project Managers of Kenya
Academia	<ul style="list-style-type: none"> - University of Nairobi (UON) - Jaramogi Oginga Odinga University of Science and Technology (JOOUST) - Kenyatta University (KU) - Maseno University - Technical University of Kenya (TUK) - Maasai Mara University
Civil Societies	<ul style="list-style-type: none"> - Pamoja Trust - Kenya National Land Alliance - Kenya Alliance of Resident Associations (KARA) - Land Development and Governance institute (LDGI) - Kenya Property Developers Association - Kenya Private Sector Alliance - The Institute for Social Accountability
International organizations	<ul style="list-style-type: none"> - UN-HABITAT - UNEP - UNDP - FAO - World Bank - World Wide Fund (WWF)

6 CONCLUSION

The current Physical Planning Handbook has been overtaken by development dynamics and the changing planning environment that calls for tactical change and adaptation. The revised handbook will address the emerging development challenges in the wake of changes in the policy, statutory, institutional framework and liberalized physical planning services. The main challenge hindering the revision of the Physical and Land Use Planning Handbook is inadequate internal resources which will be sourced from potential development partners.