

THE LAND LAWS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the laws relating land

ENACTED by the Parliament of Kenya, as follows—

- Short title. **1.** This Act may be cited as the Land Laws (Amendment) Act, 2023.
- Amendment to section 2 of Cap. 285. **2.** Section 2 of the Registration of Documents Act is amended by—
- (a) deleting the definition of the term “Principal Registrar”;
- (b) deleting the definition of the term “registrar” and substituting therefor the following new definition—
- “registrar” has the meaning assigned in the Land Registration Act, 2012.
- No. 3 of 2012 (c) inserting the following new definitions in their proper alphabetical sequence—
- “registration unit” has the meaning assigned to it under section 2 of the Land Registration Act, 2012;
- “registry” has the meaning assigned to it under section 2 of the Land Registration Act, 2012;
- Repeal of section 3 of Cap. 285. **3.** The Registration of Documents Act is amended by repealing section 3.
- Amendment to section 4 of Cap. 285. **4.** Section 4(1) of the Registration of Documents Act is amended by—
- (a) by deleting subparagraph (vii) and substituting therefor the following new subparagraph—

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No. 3 of 2012 (vii) any document registrable under the Land Registration Act, 2012;

(b) deleting the proviso and substituting therefor the following new proviso—

No. 3 of 2012 Provided that if any such document relates to land registrable under the Land Registration Act, 2012 and also to land not registrable under the Land Registration Act, 2012, such document shall also be registered under this Act.

Repeal and replacement of section 6 of Cap. 285.

5. The Registration of Documents Act is amended by repealing section 6 and replacing it with the following new section—

Documents not written in specified languages. **6.** If any document duly presented for registration is not written in English or Kiswahili, the registrar may refuse to register the document unless it is accompanied by a true translation in English, certified to the satisfaction of the registrar.

Repeal and replacement of section 11 of Cap. 285.

6. The Registration of Documents Act is amended by repealing section 11 and replacing it with the following new section—

Registry at which document to be registered **11.(1)** Any document relating to immovable property situate within a registration unit shall be registrable only in a registry in that registration unit:

Provided that if any document relates to immovable property within a given registration unit and elsewhere it shall be registrable in either of the registries in or both the registries.

(2) Any document not relating to immovable property shall, if the duties to be performed under the document are to be performed in a place, it shall be registrable in a registry within a registration unit in which the duty is to be performed:

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Provided that, if any such duty or duties under a document may be performed in a registration unit or elsewhere, the documents shall be registrable in either or both the registries.

Amendment of section 19 of Cap. 285.

7. Section 19 of the Registration of Documents Act is amended by deleting the words “both registries” and substituting therefor the words “a registry”.

Amendment of section 22 of Cap. 285.

8. Section 22 of the Registration of Documents Act is amended by deleting the words “the Principal Registrar may from time to time direct” and substituting therefor the words “may be prescribed in the regulations”.

Amendment of section 23 of Cap. 285.

9. Amend section 24(2) of the Registration of Documents Act is amended by deleting the words “the Principal Registrar may direct” and substituting therefor the words “may be prescribed in the regulations”.

Amendment of section 25 of Cap. 285.

10. Section 25 of the Registration of Documents Act is amended by deleting the words “the Principal Registrar may direct” and substituting therefor with the words “may be prescribed in the regulations”.

Repeal of section 30 of Cap. 285.

11. The Registration of Documents Act is amended by repealing section 30.

Amendment of section 34 of Cap. 285.

12. Section 34 of the Registration of Documents Act is amended by deleting the words “Principal Registrar” wherever they occur and substituting therefor the words “Chief Land Registrar”.

Amendment of section 35 of Cap. 285.

13. Section 35(1) of the Registration of Documents Act is amended by deleting the words “Principal Registrar” and substituting therefor the words “Chief Land Registrar”

Amendment of section 36 of Cap. 285.

14. Section 36 of the Registration of Documents Act is amended by deleting the words “Principal Registrar” and substituting therefor the words “Chief Land Registrar”.

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Amendment of section 37 of Cap. 285.

15. Section 37 of the Registration of Documents Act is amended by deleting the words “Principal Registrar” and substituting therefor the words “Chief Land Registrar”.

Repeal and replacement of section 39 of Cap. 285.

16. The Registration of Documents Act is amended by repealing section 39 and replacing it with the following new section—

Searches.

39. Any person desiring information in any registry may apply in person at the registry or by electronic means, and, on completion of the prescribed form and on payment of the prescribed fee, may inspect the register relating to the document mentioned in the form or the same be made available by electronic means.

Amendment to section 2 of Cap. 302.

17. Section 2 of the Land Control Act is amended by—

- (a) in the definition of “agricultural land” by deleting the word “Minister” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary”;
- (b) in the definition of “a board” deleting the words “a provincial land control appeals board” and substituting therefor the words “a county land control appeals board”;
- (c) in the definition of “land control area” by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;
- (d) deleting the definition of the term “county council”;
- (e) deleting the term “provincial land control appeals board”;
- (f) inserting the following new definitions in their proper alphabetical sequence—
 - (i) “county government” has the meaning assigned to it under the County Governments Act, 2012.

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(ii) “county land control appeals board” means a county land control appeals board established under section 10;

Amendment to section 3 of Cap. 302.

18. Section 3 of the Land Control Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 4 of Cap. 302.

19. Section 4 of the Land Control Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 5 of Cap. 302.

20. Section 5(1) of the Land Control Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 6 of Cap. 302.

21. Section 6(3) of the Land Control Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) a transaction to which the national government, the Land Settlement Fund or (in respect of community land) a county government is a party.

Amendment to section 9 of Cap. 302.

22. Section 9 of the Land Control Act is amended in subsection (1) by deleting paragraph (c).

Amendment to heading of Part VI of Cap. 302.

23. The Land Control Act is amended by deleting the heading of Part VI and substituting therefor the following new heading—

COUNTY LAND CONTROL APPEALS BOARD

Repeal and replacement of section 10 of Cap. 302.

24. The Land Control Act is amended by repealing section 10 and replacing it with the following new section—

Establishment of county land control appeals boards.

10.(1) The Cabinet Secretary shall establish for each County which contains a land control area, in consultation with the County Commissioner of that County, a County land control appeals board.

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(2) The membership of a County land control appeals board shall be as provided in paragraph 2 of the Schedule.

Amendment to section 11 of Cap. 302.

25. Section 11 of the Land Control Act is amended—

- (a) in the side note by deleting the word “provincial” and substituting therefor the word “county”;
- (b) in subsection (1) by deleting the words “the provincial land control appeals board for the province; and substituting therefor the words “the county land control appeals board for the county”;
- (c) in subsection (2) by deleting the words “A provincial land control appeals board; and substituting therefor the words “A county land control appeals board”;

Amendment to section 12 of Cap. 302.

26. Section 12(3) of the Land Control Act is amended by deleting the words “Commissioner of Lands” and substituting therefor the words “Director of Land Administration”.

Amendment to section 13 of Cap. 302.

27. Section 13(1) of the Land Control Act is amended by deleting the word “provincial” and substituting therefor the word “county”.

Amendment to section 14 of Cap. 302.

28. Section 14 of the Land Control Act is amended by deleting the word “Minister” wherever it occurs and substituting therefor the words “Cabinet Secretary”.

Amendment to section 15 of Cap. 302.

29. Section 15 of the Land Control Act is amended—

1(a) by deleting the word “provincial” appearing in subsection (2) and substituting therefor the word “county”;

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

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(3) The Land Control Board may schedule a special land control board meeting outside of the scheduled normal land control board meetings as may be necessary from time to time.

Amendment to section 23 of Cap. 302.

30. Section 23 of the Land Control Act is amended by deleting the word “President” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 24 of Cap. 302.

31. Section 24 of the Land Control Act is amended by deleting the word “President” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 25 of Cap. 302.

32. Section 25(1) of the Land Control Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Repeal of section 27 of Cap. 302.

33. Section 27 of the Land Control Act is repealed.

Amendment of the First Schedule to Cap. 302.

34. The First Schedule to the Land Control Act is amended—

~~(i)~~(a) in paragraph 1 by—

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~~(a)~~(i) deleting the words “the District Commissioner of the district” appearing in subparagraph (a) and substituting therefor the words “the Deputy County Commissioner for the sub-county”;

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~~(b)~~(ii) deleting subparagraph (c) and substituting therefor the following new paragraph—

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(c) two persons nominated by the County Executive Committee member for the time being responsible for lands in the county where the board has jurisdiction.

~~(ii)~~(b) by deleting paragraph 2 and substituting therefor the following new paragraph—

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2. A County land control appeals board shall consist of—

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~~(i)~~(a) the County Commissioner, who shall be chairman;

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~~(ii)~~(b) not more than two other public officers appointed by the Cabinet Secretary; and

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~~(iii)~~(c) not less than two and not more than five persons appointed by the Cabinet Secretary:

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Provided that more than one-half of the members of the board shall be owners or occupiers of agricultural land within the county.

~~(iii)~~(c) in paragraph 3 by—

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~~(a)~~(i) deleting the word “Minister” appearing in subparagraph (a) and substituting therefor the words “Cabinet Secretary;

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~~(b)~~(ii) deleting the word “Minister” appearing in subparagraph (b) and substituting therefor the words “Cabinet Secretary;

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~~(c)~~(iii) deleting the word “Minister” appearing in subparagraph (c) and substituting therefor the words “Cabinet Secretary;

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~~(d)~~(iv) deleting the word “Minister” appearing in subparagraph (d) and substituting therefor the words “Cabinet Secretary;

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~~(e)~~(v) deleting the word “Minister” appearing in subparagraph (e) and substituting therefor the words “Cabinet Secretary;

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Repeal of the Second Schedule to Cap. 302.

35. The Land Control Act is amended by deleting the Second Schedule.

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Amendment to section 2 of No.3 of 2012.

36. Section 2 of the Land Registration Act, 2012, is amended in section 2 by deleting the definition of the term “building” and substituting therefor the following new definition—

“building” means one or more structures on the same parcel;

Amendment to section 7 of No.3 of 2012.

37. Section 7(4) of the Land Registration Act, 2012, is amended by deleting the word “user” appearing in paragraph (d) and substituting therefor the word “use”.

Amendment to section 8 of No.3 of 2012.

38. Section 8(1) of the Land Registration Act, 2012, is amended by deleting the word “user” appearing in paragraph (d) and substituting therefor with the word “use”.

Amendment to section 9 of No.3 of 2012.

39. Section 9(2) of the Land Registration Act, 2012, is amended by deleting the word “user” appearing in paragraph (d) and substituting therefor the word “use”.

Amendment to section 54 of No.3 of 2012.

40. Section 54 of the Land Registration Act, 2012, is amended—

(a) in subsection (4) by deleting the expression “the Sectional Properties Act, 1987 (No. 21 of 1987)” and substituting therefor the expression “the Sectional Properties Act, 2020 (No. 21 of 2020)” .

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

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(5) The Registrar shall register long-term leases and issue certificates of lease in respect of interests in freehold and leasehold land if the respective interests are captured in a sectional plan drawn by a surveyor and approved by the authority responsible for land survey.

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

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(5A) Where long-term leases under subsection (5) are created over sectional units on a leasehold land to confer

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the entire leasehold interest by the transfer of such leases by the proprietor without retaining any interest including a reversionary interest, the registrar shall register each sectional unit and issue a certificate of lease in accordance with the Sectional Properties Act, 2020

Amendment to section 56 of No.3 of 2012.

42. Section 56 of the Land Registration Act, 2012, is amended—

(a) by deleting subsection (4) and substitute therefor with a new subsection—

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(4) The registrar shall not register a charge unless the registrar is satisfied that land rent is not owing or unless the land is freehold.

(b) by deleting subsection (5A)

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Amendment to section 59 of No.3 of 2012.

43. Section 59 of the Land Registration Act, 2012, is amended by deleting the word “borrower” appearing immediately after the words “implied by the” and substituting therefor the word “lender”.

Amendment to section 79 of No.3 of 2012.

44. Section 79 of the Land Registration Act, 2012, by deleting subsection (2) and substituting therefor the following new subsection—

(2) No alteration or cancellation 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

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(b) it would be, for any reason, unjust for the alteration or cancellation not to be made:

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

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Amendment to section 2 of No.6 of 2012.

45. Section 2 of the Land Act, 2012, is amended by—

- (a) deleting the definition “allocation of land” and substitute therefor with a new definition—

“allocation of land” means alienation of land by either the national government or the county government as the case may be, by way of issuance of a letter of allotment by the National Land Commission to any person to hold the land either under leasehold or freehold tenure;

- (b) deleting the definition of the term “alienation of public land”;

- (c) deleting the definition of the term “tribunal”;

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

“acquiring public body” means a public body that wishes to acquire land through compulsory acquisition;

“Committee” means the Land Acquisition Committee established by section 133A;

“letter of allotment” means a written expression of offer by the National Land Commission to a person who duly accepts the offer of being granted rights to hold public land in an alienation of public land or allocation of land process.

“public body” means—

- (a) the national or county government; or
- (b) any authority, board, commission or other body which has or performs, whether permanently or temporarily, functions of a public nature, or which engages or is about to engage in any activity that is of public purpose;

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Amendment to section 13 of No.6 of 2012.

46. Section 13 of the Land Act, 2012, is amended—

~~(i)~~(a) by deleting subsection (1A) and substituting therefor the following new subsection—

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(1A) Where a letter of allotment is not issued to the lessee after an application under subsection (1), the Commission shall in writing give the lessee the reasons for not allocating the land to the lessee.

~~(ii)~~(b) in subsection (2) by —

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~~(a)~~(i) deleting paragraph (a) and substituting therefor the following new paragraph—

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(a) prescribing the procedures for applying for renewal of leases before their expiry;

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~~(b)~~(ii) deleting paragraph (b) and substituting therefor the following new paragraph—

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(b) prescribing the factors to be considered by the Commission in re-allocating the land to the lessee;

~~(c)~~(iii) deleting paragraph (c) and substituting therefor the following new paragraph—

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(c) the stand premium or the annual rent to be paid by the lessee in consideration of re-allocation of the land;

(c) inserting the following new subsections immediately after subsection (2)—

(3) An application for extension of a lease shall be made to the Cabinet Secretary.

(4) The Cabinet Secretary may make regulations on extension of leases prescribing the application

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procedure, factors to be considered, stand premium and annual rent payable.

Repeal and replacement of section 20 of No. 6 of 2012.

47. The Land Act, 2012, is amended by repealing section 20 and replacing it with the following new section—

Licence for temporary purposes.

20. Whenever the national or county government is satisfied that it may be necessary to grant licence to any person to use unalienated public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission to handle the process including—

- (a) determining the criteria to be used in granting licence to any person for a period not exceeding five years subject to planning principles as it may prescribe.
- (b) issuing a notice to quit upon the licensee at any time after the expiration of nine months from the date of the licence.
- (c) determining the fee payable under a licence under this section, the period and the agreements and conditions of the licence.
- (d) the manner of giving consent upon transfer of the benefit of a licence.

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Amendment to section 23 of No.6 of 2012.

48. Section 23 of the Land Act, 2012, is amended—

- (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) that the lessor has full power to lease the land; and
 - (b) by deleting subsection (2) and substituting therefor the following new subsection—

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(2) A lease of public land shall be issued and sealed by the Cabinet Secretary on behalf of the national government or county government as the case may be.

Insertion of a new section 28A of No. 6 of 2012.

49. The Land Act, 2012, amended by inserting the following new sections immediately after section 28–

Rent for the several periods.

28A.(1) The annual rent payable under a lease under this Part shall be the rent reserved in the lease and for each subsequent period of ten years.

(2) The annual rent payable under subsection (1) shall be charged at such percentage, of the unimproved value of the land upon assessment after every ten years, as the Cabinet Secretary may by order in the *Gazette* determine.

Valuation of land for rent.

28B.(1) Notwithstanding any provision of a lease under this Part, the Cabinet Secretary shall, at every tenth year from the commencement of the lease until the expiry of the term of a lease under this Part, cause the land which is the subject of a lease under this Part to be valued for the purpose of determining the rent which shall be payable for the second or subsequent ten year period of the lease, whichever next follows the year in respect of which the valuation is made.

(2) The rent determined under subsection (1) shall be payable with effect from the beginning of the period for which it is determined to be payable.

Lessee to be notified of rent to be paid after valuation.

28C.(1) Upon the valuation under section 28B, the Cabinet Secretary shall, before the expiration of the year in which the valuation was made, cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by the lessee during the next following

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period and calling upon the lessee to state in writing whether he objects to the valuation.

(2) Where the lessee successfully objects to the valuation under subsection (1), the rent payable shall, upon the determination of the objection, be varied to be in accordance with the valuation determined under section 28B(1), and the lessee shall be entitled to a refund of any overpaid rent paid by the lessee.

(3) It shall be no defence to an action for any rent payable under a lease granted under this Part that any notice required by this section to be served on the lessee has not been served.

Amendment to section 30 of No.6 of 2012.

50. Section 30 of the Land Act, 2012, is amended by deleting the marginal note by deleting the word “Commission” and substituting therefor the words “national government or county government”.

Amendment to section 34 of No.6 of 2012.

51. Section 34(1) of the Land Act, 2012, by deleting the words “leased public land” and substituting therefor the words “leasehold land”.

Insertion of new section 54A of No.6 of 2012.

52. The Land Act, 2012 is amended by inserting the following new section immediately after section 54—

Levy on freehold land. **54A.** The owner of any freehold land or property situate within the boundaries of any urban area or city shall pay an annual land levy equivalent to land rent charged on a comparable leasehold land or property of the same size in the same zone.

Repeal and replacement of section 107 of No.6 of 2012.

53. The Land Act, 2012, is amended by repealing section 107 and replacing it with the following new section—

Preliminaries to acquisition. **107.**(1) Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County

Executive Committee Member shall submit a request for acquisition of land to the Cabinet Secretary to acquire the land compulsorily.

(2) The Cabinet Secretary shall prescribe a criteria and guidelines to be adhered to by the acquiring public bodies in the acquisition of land.

(3) The Cabinet Secretary may reject the request of an acquiring public body, to undertake an acquisition if the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution.

(4) Where the Cabinet Secretary rejects the request of an acquiring public body in accordance with subsection (3), the Cabinet Secretary shall within fourteen days of the decision inform the acquiring public body of the decision to reject the request and state the reason for the rejection.

(5) If the Cabinet Secretary establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Cabinet Secretary shall—

- (a) cause the affected land to be mapped out and valued using the valuation criteria set out under this Act; and
- (b) establish whether the acquiring public body has identified the number and maintained a register of persons in actual occupation of the land, confirming for each such occupation the duration of uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.

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(6) Upon approval of a request under subsection (1), the Cabinet Secretary shall publish a notice to that effect in the *Gazette* and deliver a copy of the notice to the Registrar and every person who has an interest in the land.

(7) The notice issued under subsection (6) shall contain—

- (a) the purpose for which the land is to be compulsorily acquired; and
- (b) the location, general description and approximate area of the land.

(8) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76(1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land until it vests in the acquiring public body.

(9) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition.

(10) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land register and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

(11) All land to be compulsorily acquired shall be geo-referenced and authenticated by the statutory body responsible for survey.

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Amendment to section 107A of No.6 of 2012.

54. Section 107A of the Land Act, 2012 is amended—

~~(i)~~(a) by adding the following new subsections immediately after subsection (3)—

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(3A) the Cabinet Secretary may on developing a land value index in respect of a particular county or counties immediately transmit such land value index to the National Assembly and the Senate without necessarily waiting to develop a land value index covering the entire republic of Kenya.

(3B) A land value index may be reviewed after every five years.

~~(ii)~~(b) in subsection (7)—

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(i) by deleting the word “Commission’s” appearing in paragraph (a) and substituting therefor the words “Cabinet Secretary’s”;

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(ii) by deleting the word “Commission’s” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary’s”;

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(iii) by deleting the word “Commission” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary”;

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(iv) by deleting the word “Commission” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary”;

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~~(iii)~~(c) in subsection (8) by deleting the word “Commission” and substituting therefor the words “Cabinet Secretary”.

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~~(iv)~~(d) in subsection (9)—

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~~(a)~~(i) by deleting the word “Commission’s” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary’s”;

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~~(b)~~(ii) by deleting the word “Commission” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary”;

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Amendment to section 107B of No.6 of 2012.

55. Section 107B of the Land Act, 2012 is amended by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) any other criteria which the Cabinet Secretary may in consultation with county governments prescribe in Regulations with the approval of the National Assembly and the Senate;

Amendment to section 108 of No.6 of 2012.

56. Section 108 of the Land Act, 2012, is amended by deleting the word “Commission” appearing in subsection (1) and substituting therefor the words “Cabinet Secretary”.

Repeal and replacement of section 109 of No.6 of 2012.

57. the Land Act, 2012, is amended by repealing section 109 and substituting therefor the following new section—

Payment for damage caused by entry for inspection.

109. As soon as practicable after entry has been made under section 108, the Cabinet Secretary shall determine the damage resulting from entry to enable the acquiring public body to promptly pay, just compensation for the damage.

Amendment to section 110 of No.6 of 2012.

58. Section 110 of the Land Act, 2012, is amended—

(a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”;

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(b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;

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(c) by deleting the word “Commission” appearing in subsection (3) and substituting therefor the word “Cabinet Secretary”.

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Amendment to section 111 of No.6 of 2012.

59. Section 111 of the Land Act, 2012, is amended—

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

(1A) The acquiring public body shall demonstrate to the Cabinet Secretary that compensation funds are available, and, deposit with the Cabinet Secretary survey fees, registration fees, and any other costs before the acquisition is undertaken.

- (b) by deleting subsection (2) and replacing it with a new subsection—

(2) The Cabinet Secretary shall make regulations to regulate the assessment of just compensation.

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Amendment to section 112 of No.6 of 2012.

60. Section 112 of the Land Act, 2012, is amended—

- (a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”;

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- (b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;

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- (c) by deleting the word “Commission” appearing in subsection (3) and substituting therefor the word “Cabinet Secretary”;

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- (d) by deleting the word “Commission” appearing in subsection (4) and substituting therefor the word “Cabinet Secretary”;

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- (e) by deleting the word “Commission” appearing in subsection (5) and substituting therefor the word “Cabinet Secretary”.

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Amendment to section 113 of No.6 of 2012.

61. Section 113 of the Land Act, 2012, is amended—

(a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”;

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(b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;

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

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(4) Every award shall be filed in the office of the Cabinet secretary and a copy sent to the acquiring public body.

Amendment to section 114 of No.6 of 2012.

62. Section 114 of the Land Act, 2012, is amended by deleting the word “Commission” wherever it occurs and substituting therefor the words “Cabinet Secretary”.

Amendment to section 115 of No.6 of 2012.

63. Section 115 of the Land Act, 2012, is amended—

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

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(1) After notice of an award has been served on all the persons determined to be interested in the land, and a copy sent to the acquiring public body, the acquiring public body shall, promptly pay compensation in accordance with the award to the persons entitled thereunder, except in a case where—

(a) there is no person competent to receive payment;

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(b) the person entitled does not consent to receive the amount awarded; or

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(c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid.

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

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(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the acquiring public body may keep the amount of the compensation in a separate account and notify any persons interested accordingly.

(c) by deleting the word “Commission” appearing in subsection (3) and substituting therefor the words “Cabinet Secretary”.

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Amendment to section 116 of No.6 of 2012.

64. Section 116 of the Land Act is amended by deleting the word “Commission” wherever it occurs and substituting therefor the words “acquiring public body”.

Amendment to section 117 of No.6 of 2012.

65. Section 117 of the Land Act, 2012, is amended by deleting the word “Commission” wherever it occurs in subsection (1) and substituting therefor the words “acquiring public body”.

Amendment to section 118 of No.6 of 2012.

66. Section 118 of the Land Act, 2012, is amended—

(a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”;

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(b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;

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Amendment to section 120 of No.6 of 2012.

67. Section 120 of the Land Act, 2012, is amended—

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

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(1) After the Cabinet Secretary makes an award and serves notice on every person who has an interest in the land notifying of the specific day possession of the land and title to the land will vest in the national or county government as the case may be, the acquiring public body may take possession of the respective land:

Provided that such taking of possession shall not result in any persons being rendered homeless.

(b) by deleting subsection (2) and replace it with a new subsection—

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(2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the acquiring public body may on expiration of fifteen days from the date of publication of the notice of intention to acquire, take possession of the land in the manner prescribed under subsection (1), notwithstanding that no award has been made.

(c) by deleting subsection (3) and replace it with a new subsection—

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(3) Upon taking possession of land under subsection (1) or subsection (2), the Cabinet secretary shall serve upon—

(a) the Commission;

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(b) the registered proprietor of the land; and

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(c) the Registrar,

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a notice that possession of the land has been taken and that the land has vested in the national or county government as the case may be.

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Amendment to section 121 of No.6 of 2012.

68. Section 121 of the Land Act, 2012, is amended by deleting the word “Commission” appearing in subsection (1) and substituting therefor the words “Cabinet secretary”.

Amendment to section 122 of No.6 of 2012.

69. Section 122 of the Land Act is amended—

- (a) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;
- (b) by deleting the word “Commission” appearing in subsection (3) and substituting therefor the word “Cabinet Secretary”;
- (c) by deleting the word “Commission” appearing in subsection (5) and substituting therefor the word “Cabinet Secretary”.

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Amendment to section 123 of No.6 of 2012.

70. Section 123 of the Land Act, 2012, is amended—

- (a) by deleting subsection (1) and replace it with a new subsection—

(1) At any time before possession is taken of any land acquired under this Act, the Cabinet Secretary may, revoke a direction to acquire the land, and, shall determine all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land to enable the acquiring public body to make compensation.

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- (b) by deleting subsection (2) and replace it with a new subsection—

(2) The principles relating to the determination of compensation as may be set out in the regulations shall apply, so far as they are relevant, to the determination of compensation payable under this section.

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Amendment to section 124 of No.6 of 2012.

71. Section 124 of the Land Act, 2012, is amended—

- (a) by deleting subsection (1) and replacing with a new subsection—

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(1) If the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that—

- (a) the possession of the land is necessary for public purpose or public interest;

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- (b) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and

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- (c) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing,

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possession of such land may be taken for that period under this section.

- (b) by deleting the word “Commission” wherever it occurs in subsection (2) and substituting therefor the words “Cabinet Secretary”.

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- (c) by deleting subsection (3) and replacing it with a new subsection—

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(3) At the end of seven days after service of notices has been completed under subsection (2), the acquiring public body may take possession of the land by entering, personally or by agents, on the land and posting on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.

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Amendment to section 125 of No.6 of 2012.

72. Section 125 of the Land Act, 2012, is deleted and replaced with a new section—

Payment of compensation.

125. The Cabinet secretary shall on making of an award under section 124, send a copy of the award of compensation to the acquiring public body to, as soon as is practicable, pay full and just compensation to all persons interested in the land.

Repeal and replacement of section 126 of No.6 of 2012.

73. Section 126 of the Land Act, 2012, is repealed and replaced by the following new section—

Compensation for damages.

126. If the Cabinet Secretary is satisfied that any land of which the occupation or use has been secured under section 124 is needed solely as a means of access to any other land, then—

- (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- (b) the compensation to be paid under section 124(3) shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

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Amendment to section 127 of No.6 of 2012.

74. Section 127 of the Land Act, 2012, is amended—

- (a) by deleting the word “Commission” appearing in subsection (1) and substituting therefor the word “Cabinet Secretary”;

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(b) by deleting the word “Commission” appearing in subsection (2) and substituting therefor the word “Cabinet Secretary”;

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Amendment to section 129 of No.6 of 2012.

75. Section 129 of the Land Act, 2012, is amended by deleting the word “Commission” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 130 of No.6 of 2012.

76. Section 130 of the Land Act, 2012, is amended by deleting the word “Commission” and substituting therefor the words “Cabinet Secretary”.

Amendment to section 120 of No.6 of 2012.

77. Section 131 of the Land Act, 2012, is amended by deleting the word “Commission” appearing in paragraph (e) and substituting therefor the words “Cabinet Secretary”.

Repeal and replacement of section 133 of No.6 of 2012.

78. The Land Act, 2012, is amended by repealing section 133 and replacing it with a new section—

Regulations.

133. The Cabinet Secretary may make regulations generally for carrying out the purposes and provisions of this Part.

Repeal and replacement of Part VIII A of No.6 of 2012.

79. The Land Act, 2012, is amended by repealing Part VIII A and replacing it with the following new Part—

PART VIII A-THE LAND ACQUISITION COMMITTEE

Establishment of the Land Acquisition Committee

133A.(1) There is established a Committee to be known as the Land Acquisition Committee which shall consist of five members appointed by the Cabinet Secretary through a notice in the *Gazette*.

(2) The Land Acquisition Committee which shall consist of—

(a) an advocate of at least ten years standing, who shall be the chairperson;

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(b) two registered valuers with at least ten years' experience in statutory valuation in a public body;

(c) one licensed surveyor of at least ten years' standing; and

(d) one person with extensive knowledge and experience in the informal sector representing the public.

(2) The Cabinet Secretary shall deploy such staff as may be necessary to provide secretariat services to the Committee.

(3) The Committee may co-opt an expert to advise it on any matter before it and shall regulate its own procedure.

(4) The chairperson of the Committee shall serve for a term of four years and shall be eligible for re-appointment for one further term of four years.

(5) A member of the Committee shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(6) The Chairperson and members of the Committee shall serve on a part-time basis.

(7) The members of the Committee shall be paid such allowances or other remuneration as the Cabinet Secretary may, on the advice of the Salaries and Remuneration Commission, determine.

Functions of the Committee.

133B.(1) The Committee shall hear and determine appeals from the decision of the Cabinet Secretary in matters relating to the compulsory land acquisition process.

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(2) A person dissatisfied with the decision of the Cabinet Secretary shall, within thirty days, apply to the Committee in the prescribed manner.

(3) The Committee shall hear and determine the application made under subsection (1) within ninety days of the filing of an application.

(4) Despite subsection (3) the Committee may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.

(5) If, on an application to the Committee, the form or sum which in the opinion of the Committee ought to have awarded as compensation is greater than the sum which the Cabinet Secretary did award, the Committee may direct that the Cabinet Secretary pay interest on the excess at the prescribed rate.

(6) Despite the provisions of sections 127, 128 and 148(5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way, shall in the first instance, be referred to the Committee.

(7) Subject to this Act, the Committee shall have the power to confirm, vary or quash the decision of the Cabinet Secretary.

(8) The Committee may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23(2) and 47(3) of the Constitution, using the framework set out under the Fair Administrative Action Act, 2015 or any other law.

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Appeals.

133C.(1) A party to an application to the Committee who is dissatisfied with the decision of the Committee may, in the prescribed time and manner, appeal to the court on any of the following grounds—

- (a) the decision of the committee was contrary to law or to some usage having the force of law;
- (b) the Committee failed to determine some material issue of law or usage having the force of law; or
- (c) substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case.

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(2) An appeal from the decision of the Committee may be made on a question of law.

Limitation of liability.

133D. A members of the Committee shall not be personally liable for any act or default done or committed in good faith in the course of exercising the powers conferred by this Act.

Amendment to section 2 of No. 27 of 2016.

80. Section 2 of Community Land Act, 2016, is amended by deleting the definition of the term “community land” and substituting therefor the following new definition—

“community land” means land declared as such under Article 63(2) of the Constitution;

Amendment to section 46 of No. 27 of 2016.

81. Section 46 of the Community Land Act, 2016, is amended by deleting subsection (7) and substituting therefor the following new subsection—

- (7) If at the lapse of the time specified under subsection (6) there is any adjudication programme not finalized, the

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Cabinet Secretary shall gazette new completion dates and finalize the registration under the law applicable to it immediately before the commencement of this Act.

Amendment to section 2 of No. 21 of 2020.

82. Section 2 of the Sectional Properties Act, 2020, is amended by inserting the following new definitions in their proper alphabetical sequence—

“consolidated sectional plan” means a sectional plan that is a composition of all registered sectional plans of a building or buildings on a phased development or any other development;

“long-term lease” means a lease for an unexpired residue of the term of not less than twenty-one years;

“management company” means a corporate entity incorporated to manage common property and to hold reversionary interest in trust for owners of long-term leases encumbering a specific parcel of land;

“part sectional plan” means a sectional plan on part of land designated for developing each phase of a phased development, and shall be prepared before development commences;

“phased development” means development of buildings on a parcel of land in phases in accordance with a duly approved plan for a phased development that clearly sets out timelines within which development in respect of each phase is to be done and completed;

“reversionary interest” means the residue of the unexpired term of a lease reserved for the lessor.

Insertion of new section 5A in No. 21 of 2020.

83. The Sectional Properties Act, 2020, is amended by inserting the following new section immediately after section 5—

Registration of part sectional plans of a **5A.(1)** An owner or developer of land shall before making a phased development cause a part sectional plan to be prepared by a surveyor, based

phased
development.

on a master plan that has been approved by a county government, for land designated for each phase and apply to the registrar for the registration of all the part sectional plans of a phased development.

(2) An application for the registration of part sectional plans under subsection (1) shall be accompanied by the master plan approved by the county government and a phased development declaration containing the information set out in the Schedule and executed by the owner.

(3) The registrar may register part sectional plans prepared under subsection (1) and issue, in respect of each sectional plan, a sectional certificate of title or lease as the case may be and close the mother title or head lease of the parcel.

(4) Upon the issuance of a sectional certificate of title or lease under subsection (3), the owner or developer of land shall, develop land in respect of which a sectional certificate or lease has issued in accordance with the master plan approved by a county government and prepare a sectional plan on the building for registration.

(5) The registrar may on application for registration of a sectional plan prepared under subsection (4) issue certificates of title or lease as the case may be for each unit in a building and close the sectional certificate of title or lease issued under subsection (3).

(6) Where the development on land that is subject of a phased development is complete and an application for registration of a sectional plan on a building on the last phase is made, the owner or developer of land shall be required to file a consolidated sectional plan with the registrar.

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Amendment to section 13 of No. 21 of 2020.

84. Section 13 of the Sectional Properties Act, 2020, is amended—

(a) by deleting subsection 2 and substituting a new subsection—

(2) All long-term leases that were intended to confer the entire leasehold interest over an apartment, flat, maisonette, town house or an office that were registered before the commencement of this Act shall be reviewed to conform to section 54(5) of the Land Registration Act, 2012 within a period of two years of the commencement to this Act.

No. 3 of 2012

(b) by adding the following new subsection immediately after subsection (2)—

(3) A long-term lease under subsection (2) that by agreement provided for the vesting or eventual vesting of reversionary interest on the management company in trust for the unit owners shall be converted to a sectional unit under this Act.

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

(4) In this section, “to confer entire leasehold interest” means the transfer of a unit within a building on a parcel of land held on a leasehold tenure with an unexpired residue of the term of not less than twenty-one years, by a developer or owner without retaining any interest including reversionary interest.

Insertion of new section 17A in No. 21 of 2020.

85. The Sectional Properties Act, 2020, is amended by inserting a new section immediately after section 17—

Establishment of an umbrella Corporation.

17A.(1) The registrar may register an umbrella corporation upon application by two or more corporations sharing a common property within any development, in the prescribed form, on the registration of a consolidated sectional plan or at

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any time after the registration of a consolidated sectional plan.

(2) The registrar may register an umbrella corporation under the name “The Owners, Consolidated Sectional Plan No. (the number to be specified being the number given to the consolidated sectional plan on registration)” and issue a certificate of registration of an umbrella corporation.

(3) The board of management of the umbrella corporation shall be constituted by members nominated by the board of management of corporations incorporating the umbrella corporation.

(4) The duties and powers of the corporation provided under this Act shall with necessary modifications apply on the umbrella corporation and as may be further provided in the umbrella corporation by-laws.

(5) Provisions relating to the corporation under this Act shall with necessary modifications apply on the umbrella corporation.

(6) The Cabinet Secretary shall make regulations to govern the umbrella corporation.

Amendment to section 52 of No. 21 of 2020.

86. Section 52 of the Sectional Properties Act, 2020, is amended by deleting the words “a rating authority” and substituting therefor the words “the national government or a county government”.

Insertion of Schedule to No. 21 of 2020.

87. The Sectional Properties Act, 2020, is amended by inserting the following Schedule immediately after section 60—

SCHEDULE (s. 5A(2))

INFORMATION CONTAINED IN A PHASED DEVELOPMENT DECLARATION

A phased development declaration executed by the owner or owners of the land shall contain the following—

- (a) a statement that the plan is to be developed in phases;
- (b) certification by an approving officer that the planning authority has approved the elements in the phased development
- (c) a schedule setting out the estimated due date for the beginning and completion of construction for each phase;
- (d) the minimum and maximum number of units to be included in the entire phased project;
- (e) a description of the units and common property included in the initial phase;
- (f) description of the units and the common property to be included in each of the subsequent phases;
- (g) zoning use or uses of the units and common property for each phase;
- (h) a list of the common facilities that the owners shall share after the creation of common property in a subsequent phase if it is to be available for the use of the owners in the previous phases;
- (i) an statement indicating when the facilities would be completed and available to those owners;
- (j) the extent to which the developer will contribute to the common expenses relating to the building and land during the development and sale of each phase and on the completion and sale of the entire phased project;

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- (k) the method used to determine the allocation or distribution of administrative expenses with respect to all of the units in each separate phase and for all of the units in the entire completed project;
- (l) the basis for allocating unit factors in the phased development;
- (m) contingency plan describing what happens if any subsequent phase does not proceed and the effect of this to the unit owner's contribution for common expenses;
- (n) any additional information required by the regulations.

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MEMORANDUM OF OBJECTS AND REASONS

The Bill proposes to amend the Registration of Documents Act; the Land Control Act, the Land Registration Act, 2012, the Land Act, 2012, Community Land Act, 2016 and the Sectional Properties Act, 2020 as follows–

Registration of Documents Act

The Bill seeks to *inter-alia* amend the Registration of Documents Act by decentralizing land registries for registration of documents across the country as opposed to when such services were only available in Nairobi and Mombasa, and align the Registration of Documents Act to the Constitution of Kenya, 2010.

The Land Control Act

The Bill seeks to reconstitute and align land control boards according to the Constitution of Kenya, 2010 new governance structure and enable granting consents to transact in agricultural land within paradigms of Article 65 of the Constitution which allows non-citizens to own land on leasehold terms not exceeding 99 years, as opposed to when their ownership could only be permitted by the President.

The Land Registration Act, 2012

The Bill seeks to streamline registration of long term leases within the provisions of the Sectional Properties Act, 2020 and also to widen the scope under which the registrar can revoke a title obtained through fraud by the proprietor.

The Land Act, 2012

The Bill seeks to amend the Land Act by giving clarity as to what it means by allocation of public land and the respective roles played by the National and County government as opposed to the National Land Commission and to separate the roles of renewal and extension of leases and respectively assigning them to the National Land Commission and the Cabinet Secretary. The Bill also seeks to provide for the periodical review of rent and valuation of land for rent after every ten years to be in tandem with the current property values, vest upon the Cabinet Secretary, the mandate of handling compulsory land acquisition, eliminate conflict of interest likely to occur when one entity is involved in valuation process and at the same time making compensation payments and eliminate delay in acquiring land since the acquiring public body has direct control in making compensation payments as opposed to when funds were being transferred to the Commission and establish the Land Acquisition Committee to replace of the Land Acquisition Tribunal.

The Community Land Act, 2016

The Bill seeks to amend the Community Land Act to allow the Cabinet Secretary to complete pending adjudication programmes under the Land Adjudication Act beyond the 2 year period permitted by the Community land Act.

The Sectional Properties Act, 2020

The Bill seeks to amend the Sectional Properties Act to widen the scope of the Sectional Properties Act to include phased developments, introduce a second tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed use sectional development.

Section 19 of Cap. 285, which it is proposed to amend—

19. The following books shall be kept in both registries—

- (a) register of documents of which the registration is compulsory;
- (b) register of documents of which the registration is optional;
- (c) register of reasons for refusal to register;

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(d) register of reasons for cancellation of the registration of a document.

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Section 22 of Cap. 285, which it is proposed to amend—

22. Upon receiving for registration any instrument relating to immovable property the registrar may give public notice thereof in such manner with such particulars as the Principal Registrar may from time to time direct.

Section 24(2) of Cap. 285, which it is proposed to amend—

(2) Subject to the provisions of this Act, the registrar shall register the document by filling a photostatic copy thereof in the register in such manner as the Principal Registrar may direct, and shall number every such copy consecutively and shall inscribe thereon the day of the month and year when it was presented for registration.

Section 25 of Cap. 285, which it is proposed to amend—

25. At each registry indexes shall be kept of all registered documents in such form and containing such particulars as the Principal Registrar may direct.

Section 34 of Cap. 285, which it is proposed to amend—

34. Appeals against refusals to register from registrars to Principal Registrar
An appeal shall lie against an order of refusal or of cancellation from any registrar to the Principal Registrar, and the Principal Registrar may reverse or alter such order; and if the order of the Principal Registrar directs the document to be registered the registrar shall register it.

Section 35(1) of Cap. 285, which it is proposed to amend—

35.(1) When the Principal Registrar—

(a) has refused to register a document presented to him for registration or has cancelled the registration of any such document; or

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(b) has, pursuant to section 34, refused to direct a registrar to register a document or to re-register a document the registration whereof such registrar has cancelled,

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any person claiming under such a document, or his representative, assignee or agent, may, within thirty days after the making of the order of refusal pursuant to section 32 or of the order of cancellation pursuant to section 33, institute in the High Court a suit for a decree directing that the document be registered or re-registered, as the case may be, in such office, and, notwithstanding anything in this Act, the document shall be receivable as evidence in such suit.

Section 36 of Cap. 285, which it is proposed to amend—

36. The Principal Registrar or any registrar shall not be liable to any suit, claim or demand by reason of anything in good faith done or omitted to be done in his official capacity.

Section 37 of Cap. 285, which it is proposed to amend—

37. Nothing done in good faith pursuant to this Act or any regulations thereunder by the Principal Registrar or any registrar shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Section 2 of Cap. 302, which it is proposed to amend—

2. Interpretation

“agricultural land” means—

(a) land that is not within—

(i) a municipality or a township; or

(ii) an area which was, on or at any time after the 1st July 1952, a township under the Townships Act (Cap. 133, 1948 now repealed); or

(iii) an area which was, on or at any time after the 1st July 1952, a trading centre under the Trading Centres Act (Cap. 278, 1948 now repealed); or

(iv) a market;

(b) land in the Nairobi Area or in any municipality, township or urban centre that is declared by the Minister, by notice in the Gazette, to be agricultural land for the purposes of this Act,

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(iii)(c) other than land which, by reason of any condition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non-agricultural purpose;

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“a board” means a land control board, a provincial land control appeals board or the central land control appeals board;

“land control area” means an area to which the Minister has applied this Act under section 3;

Section 3 of Cap. 302, which is proposed to amend—

3. The Minister may, by notice in the Gazette, apply this Act to any area, if he considers it expedient to do so.

Section 4 of Cap. 302, which is proposed to amend—

4. The Minister may, by notice in the Gazette, divide a land control area into two or more divisions, if he considers it expedient to do so.

Section 5(1) of Cap. 302, which is proposed to amend—

5.(1) The Minister shall, by notice in the Gazette, establish a land control board for every land control area or, where it is divided into divisions, for each division.

Section 11 of Cap. 302, which is proposed to amend—

11.(1) Where a land control board refuses to grant consent in respect of a controlled transaction, the applicant may, within thirty days of the copy of the board’s decision being delivered or posted under section 16(2) of this Act, appeal to the provincial land control appeals board for the province in which the land in question is situated.

(2) A provincial land control appeals board shall, in its absolute discretion, hear and determine all appeals made to it under subsection (1), and, subject to the right of appeal conferred by section 13, the decision of a provincial land control appeals board shall be final and conclusive and shall not be questioned in any court.

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Section 12(3) of Cap. 302, which is intended to amend—

12.(3) The Commissioner of Lands shall be the secretary of the Central land control appeals board, and shall attend and may speak at meetings, but may not vote.

Section 13(1) of Cap. 302, which is intended to amend—

13.(1) Any person whose appeal has been dismissed by a provincial land control appeals board may, within thirty days of the copy of the board's decision being delivered or posted under section 16(2) of this Act, appeal to the central land control appeals board.

Section 14 of Cap. 302, which it is proposed to amend—

14. An appointed member of a board shall hold office for such period as may be prescribed or, where no period is prescribed, for such period as may be specified in his appointment:

Provided that a member's appointment may be terminated at any time by the Minister, and a member may resign at any time by notice in writing to the Minister.

Section 15(2) of Cap. 302, which it is proposed to amend—

(2) The quorum of a meeting of a land control board or a provincial land control appeals board, where the total number of members of the board is an even number, shall be one-half of that number, and where the total number is an uneven number it shall be one-half of the even number which is greater than the uneven number by one.

Section 23 of Cap. 302, which it is proposed to amend—

The President may, by notice in the Gazette, prohibit any controlled transaction or any class of controlled transaction.

Section 24 of Cap. 302, which it is proposed to amend—

24. The President may, by notice in the *Gazette*, exempt—

(a) any land or share, or any class of land or share; or

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(b) any controlled transaction, or any class of controlled transaction; or

(c) any person in respect of controlled transactions or some class of controlled transaction,

from all or any of the provisions of this Act, or from any prohibition made under section 23 of this Act, on such conditions (if any) as he may think fit to impose. *Section 25(1) of Cap. 302, which it is proposed to amend—*

(1) The Minister may make regulations for prescribing anything which may be prescribed under this Act, and generally for carrying into effect the purposes and provisions of this Act.

First schedule of Cap. 302, which it is proposed to amend —

1. A land control board shall consist of—

(a) the District Commissioner of the district in which the land control area or division is situated, or a District Officer deputed by him in writing, who shall be chairman;

(b) not more than two other public officers;

(c) two persons nominated by the county council having jurisdiction within the area of jurisdiction of the board; and

(d) not less than three and not more than seven persons resident within the area of jurisdiction of the board,

all appointed by the Minister:

3. The central land control appeals board shall consist of—

(a) the Minister, who shall be chairman;

(b) the Minister for the time being responsible for economic planning;

(c) the Minister for the time being responsible for agriculture;

(d) the Minister for the time being responsible for home affairs;

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(e) the Minister for the time being responsible for co-operatives and social services; and

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(f) the Attorney-General.

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Section 7(4)(d) of No. 3 of 2012, which it is proposed to amend —

7.(4)(d) the user of the land; and

Section 8(1)(d) of No.3 of 2012, which is proposed to amend—

8.(1)(d) the user of the land;

Section 9(2)(d) of No.3 of 2012, which is proposed to amend—

9.(2)(d) size, location, user and reference number of the parcel; and

Section 54(4) of No. 3 of 2012, which is proposed to amend—

(4) The land register maintained under section 7 of this Act shall be deemed to be the land register for purposes of the Sectional Properties Act, (No. 21 of 1987).

Section 59 of No. 3 of 2012, which is proposed to amend—

59. If a charge contains a condition, express or implied by the borrower that the borrower will not, without the consent of the lender, transfer, assign or lease the land or in the case of a lease, sublease, no transfer, assignment, lease or sublease shall be registered until the written consent of the lender has been produced to the Registrar.

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

23.(1) In every lease relating to public land, unless the lease expressly provides otherwise, there is an implied covenant by the lessor—

(a) that the lessor has full power to the land or lease; and

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Section 30 of No.6 of 2012, which is proposed to amend—

30. Without prejudice to the right, of the respective government to recover a debt in any other way, such government may sue in Court for any rent, principal, installment, royalty or other payment, payable under any agreement, lease or license under this Act, that is in arrears, or for any penalty payable under section 29.

Section 34(1) of No.6 of 2012, which is proposed to amend—

34.(1) If the national government or county government as the case maybe proposes to resurvey the boundaries of any land held under leasehold tenure, or to subdivide land that is the subject of any interests or cautions, the national government or county government as the case maybe may, with reasonable notice to the holders of the interests, or of the relevant cautioners, by order incorporating a survey plan or revised survey plan authenticated by the office or authority responsible for survey, make such adjustments to those boundaries as—

- (a) the national government or county government as the case maybe considers necessary; and
- (b) according to any proposed plan of subdivision approved under the law relating to physical planning,

without any obligation to make or pay compensation.

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

107A.(1) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate.

(2) The land value index under subsection (1) shall be developed within six months of the commencement of this Act.

(3) For purposes of this Part, "land value index" means an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.

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(4) In addition to any other principle that may be employed in calculating the land value index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account.

(5) In assessing the value of freehold land and determining the just compensation to be awarded for land acquired under this Act, an increase in the value shall be disregarded if—

(i)(a) the increase in the value of land is occasioned by the intended use or development of the land to be acquired;

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(i)(b) the increase in the value of the land as at the date of publication of the notice of intention to acquire it is likely to accrue from the use to which the land will be put when acquired;

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(i)(c) the increase in the value of the land is occasioned by any development or improvement to the land if—

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(i)(i) the improvement was made on the land within two years prior to the date of publication in the Gazette of the notice of intention to acquire the land, unless it is proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land: Provided that where the national government or the county government makes changes in the use of the land compulsorily acquired to affect other land owners, these owners shall be excluded from the application of this provision.

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(i)(ii) the improvement was done after the date of publication in the Gazette of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair and are not capital improvements.

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(i)(iii) the improvement is contrary to any law or is detrimental to the health of the occupiers or to public health generally.

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(6) In addition to the provisions of subsection (1), the following circumstances shall not be taken into account in determining the value of the land—

(a) the degree of urgency which has led to the acquisition;

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(b) any inconvenience caused to a person interested in the land; or

(c) damage which is likely to be caused to the land after the date of publication in the Gazette of the notice of intention to acquire the land or in consequence of the intended land use;

(7) Despite subsections (1) and (3), the following matters may be taken into consideration in assessing the value of land—

(a) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from other land;

(b) damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;

(c) if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission;

(d) damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commission takes possession of the land; and

(e) the effect of any express or implied condition of title or law which restricts the intended land use.

(8) In determining the damage resulting from diminution of the profits of the land, the Commission shall require proof of existence of the profits including evidence of tax returns.

(9) For purposes of Article 40(4) of the Constitution, compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land shall be assessed based on—

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- (a) the number of persons in actual occupation of the land for an uninterrupted period of six years immediately before the publication of the notice of intention to acquire the land;
- (b) improvements done before the date of publication in the Gazette of the notice of intention to acquire the land;
- (c) damage sustained or likely to be sustained by the occupants of the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings; and
- (d) if, in consequence of the acquisition, any of the occupants in good faith of the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission.

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(10) An occupant in good faith does not include a person unlawfully occupying any land without the consent of the owner.

(11) The compensation payable under subsection (7) shall not in any case exceed the value of the structures and improvements on the land.

(12) Despite subsection (10), where boundaries of land are ascertainable, prompt payment in full, of just compensation may be made to occupants in good faith in the case of—

- (a) land lawfully held, managed or used by individuals or families as ancestral land; or
- (b) land traditionally occupied by individuals, families or entities pending adjudication.

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(13) For the purposes of this section, "value" in relation to land means the value of the land, assessed in accordance with this section, at the date of publication in the Gazette of the notice of intention to acquire the land.

Section 108 of No.6 of 2012, which is proposed to amend—

108.(1) The Commission may authorize, in writing, any person, to enter upon any land specified in a notice published under section 107 and inspect the land

and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose.

Section 110 of No.6 of 2012, which is proposed to amend—

110.(1) Land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose.

(2) If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may offer the original owners or their successors in title pre-emptive rights to re-acquire the land, upon restitution to the acquiring authority the full amount paid as compensation.

(3) If any plant or machinery is attached or permanently fastened to the land, the person interested in that plant or machinery may serve on the Commission a notice in writing that such person desires to sever and remove the plant or machinery, after receiving the notice of intention to acquire the land under section 107(5), and not later than fifteen days before the inquiry appointed under section 112(1).

Section 112 of No.6 of 2012, which is proposed to amend—

112.(1) At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall—

- (a) cause notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry; and
- (b) serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

(2) The notice of inquiry shall call upon persons interested in the land to deliver a written claim of compensation to the Commission, not later than the date of the inquiry.

(3) At the hearing, the Commission shall—

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(a) make full inquiry into and determine who are the persons interested in the land; and

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(b) receive written claims of compensation from those interested in the land.

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(4) The Commission may postpone an inquiry or adjourn the hearing of an inquiry from time to time for sufficient cause.

(5) For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission of documents of title to the land.

(6) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

Section 113 of No.6 of 2012, which is proposed to amend—

113.(1) Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.

(2) Subject to Article 40 (2) of the Constitution and section 122 and 128 of this Act, an award—

~~(a)~~ shall be final and conclusive evidence of—

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~~(i)~~ the size of the land to be acquired;

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~~(ii)~~ the value, in the opinion of the Commission, of the land;

(iii) the form of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and

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~~(b)~~ shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

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(3) If an interest in land is held by two or more persons as co-tenants, the award shall state—

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- (a) the amount of compensation awarded in respect of that interest; and
- (b) the shares in which it is payable to those persons.

(4) Every award shall be filed in the office of the Commission.

Section 114 of No.6 of 2012, which is proposed to amend—

114.(1) On making an award, the Commission shall serve on each person whom the Commission has determined to be interested in the land, a notice of the award and offer of compensation.

Section 115(3) of No.6 of 2012, which is proposed to amend—

(3) If the compensation payable in any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), is in the form of an alternative land, the Commission may hold the title to such land in trust for the beneficiaries.

Section 116 of No.6 of 2012, which is proposed to amend—

116. If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission.

Section 117(1) of No.6 of 2012, which is proposed to amend—

117.(1) If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time of taking possession until the time of payment.

Section 118 of No.6 of 2012, which is proposed to amend—

118.(1) If part of the land comprised in documents of title has been acquired, the Commission shall, as soon as practicable, cause a final survey to be made of all the land acquired.

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(2) Upon completion of final survey under subsection (1), the Commission shall cause to be issued new title documents for every affected parcel.

Section 121 of No.6 of 2012, which is proposed to amend—

121.(1) If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

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

122.(1) The powers of acquisition conferred by this Part shall not be exercised so as to acquire a part only of a permanent building in any case if—

- (a) that part is reasonably required for the full and unimpaired use of that building; and
- (b) a person interested in the building desires that the whole of the building shall be acquired.

(2) The person referred to under subsection (1)(b) may, at any time before the Commission has made an award, withdraw or modify the person's statement by notice in writing served on the Commission.

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

(4) The remaining land referred to in subsection (3) shall be used for public purposes or be included in the Land Bank.

(5) If a question arises as to whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Commission to the Court for determination.

Section 127 of No.6 of 2012, which is proposed to amend—

127.(1) The Commission may at any time, by application in the prescribed form,

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refer to the Court for its determination any question as to—

- (a) the construction, validity or effect of any instrument;
- (b) the persons who are interested in the land concerned;
- (c) the extent or nature of their interest;
- (d) the persons to whom compensation is payable;
- (e) the shares in which compensation is to be paid to tenants in common;
- (f) the question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or
- (g) the condition of any land at the expiration of the term for which it is occupied or used.

(2) Without prejudice to the powers of the Court under this Part, the costs of any reference to the Court under subsection (1) shall be paid by such person as the Court may direct, where the Court does not give direction, by the Commission.

Section 129 of No.6 of 2012, which is proposed to amend—

129. The Commission and any officer or person authorized under section 108 shall, upon notice, have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of this Act.

Section 130 of No.6 of 2012, which is proposed to amend—

130. A person who wilfully hinders or obstructs the Commission or an officer or person mentioned in section 129 in doing any of the acts authorized or required by this Act, or who wilfully fills up, destroys, damages or displaces any trench, post or mark made or put on land under this Act, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding three million shillings, or to both.

Section 131 of No.6 of 2012, which is proposed to amend—

131.(1) A notice which may be given under this Part may be served on a

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person—

- (a) by delivering it to the person personally;
- (b) by sending it by registered post to the person's last known address;
- (c) if the whereabouts of the person or the address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land;
- (d) if the person is a body corporate, society or other association of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land; or
- (e) the Commission may in addition to serving notice by paragraphs (c) and (d), place an advertisement in two newspapers with a national circulation.

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Section 52 of No.21 of 2020, which is proposed to amend—

52. The Corporation is not liable in relation to the parcel for any rate, ground rent, charge or tax levied by a rating authority.